

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/STOP PRESS: LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009

TOWN AND COUNTRY PLANNING (

STOP PRESS:

The Local Democracy, Economic Development and Construction Act 2009 makes provision for the purposes of promoting public involvement in relation to local authorities and other public authorities, about bodies representing the interests of tenants, local freedoms and honorary titles, and the procedures of local authorities and their powers relating to insurance and the audit of entities connected with them, to establish the Local Government Boundary Commission for England and to make provision relating to local government boundary and electoral change, about local and regional development, and to amend the law relating to construction contracts. The Act received the royal assent on 12 November 2009 and the following provisions came into force on that date: ss 25, 26, 62, 64, 68, 146-150, Sch 3. Sections 27-30, 32, 33, and 121-137 came into force on 12 January 2010 and the following provisions also come into force on that day: ss 114-117 (SI 2009/3318). The following provisions were brought into force on 25 November 2009: ss 69 (in part), 71, 84, 86, 87 (SI 2009/3087). The following provisions were brought into force on 17 December 2009: ss 88-113, 118-120 and Sch 6 (SI 2009/3318). Further provisions come into force on 1 April 2010: ss 23, 24, 31, 55-61, 63, 65-67, 69, 70, 72-83, 85, Schs 1, 2, 4, 5, 7 (in part) (SI 2009/3318). The remaining provisions come into force on a day or days to be appointed. For details of commencement see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-30) Democracy and involvement

Chapter 1 (ss 1-9) Duties relating to promotion of democracy

Section 1 places a duty on principal local authorities to promote understanding of their functions and their democratic arrangements. By virtue of s 2, principal local authorities are under a duty to promote understanding among local people of public bodies which relate to the authority's area. A duty is placed on principal local authorities by s 3 to promote understanding among local people of courts boards, independent monitoring boards for prisons and immigration removal centres and Youth Offending Teams. Section 4 places a duty on principal local authorities to promote understanding among local people of lay justices. By virtue of s 5, ss 2-4 do not apply to principal local authorities if information has not been provided by the connected authorities, monitoring boards, courts boards, youth offending teams and, in the case of lay justices, the Lord Chancellor, after it has been requested of them. The appropriate national authority may produce guidance for principal local authorities on how to fulfil their duties: s 6. Section 7 deals with the Isles of Scilly. Section 8 specifies that any order made under Pt 1 Ch 1 is to be made by statutory instrument and is to be subject to negative resolution procedure. Section 9 deals with interpretation.

Chapter 2 (ss 10-22) Petitions to local authorities

Section 10 places duties on principal local authorities in relation to electronic petitions signed by those who live, work or study in local areas. Under s 11, principal local authorities are required to make, publicise and comply with a scheme for handling both paper and electronic petitions. Section 12 makes provision about the petitions to which a petition scheme must apply. By virtue of s 13, petition schemes are required to ensure that petitions are acknowledged in writing within a time specified in the scheme. Principal local authorities are required by s 14 to take one or more steps in response to petitions which meet the specified criteria and are therefore 'active' petitions. Section 15 gives an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it. By virtue of s 16, certain senior officers of a principal local authority can be called to account at a public meeting. Under s 17, the petition organiser is given the power to ask an overview and scrutiny committee, or its equivalent in authorities not operating executive arrangements, to review the principal local authority's response to their petition, if the organiser is not satisfied with the steps taken by the authority under s 14. Section 18 sets out other issues which principal local authorities' schemes may include. The powers of the appropriate national authority to issue guidance in relation to the discharge of the petition function by principal authorities are set out by s 19. Section 20 provides that the appropriate national authority may by order make provision for the handling of petitions by any specified body. Section 21 provides that orders under Ch 2 are to be made by statutory instrument. Section 22 deals with interpretation.

Chapter 3 (ss 23, 24) Involvement in functions of public authorities

Section 23 places a duty on the authorities listed to involve representatives of interested persons in the exercise of their functions, where they consider that it is appropriate to do so. The Secretary of State may, by virtue of s 24, issue guidance on the discharge of the duties under s 23.

Chapter 4 (ss 25, 26) Housing

Section 25 makes provision for the Secretary of State to establish and give financial or other support to a body that will represent the interests, at national level, of housing tenants in England. Section 26 provides a power to the Secretary of State to nominate a body representing the interests of social housing tenants for the purposes of consultation in connection with certain functions carried out by the social housing regulator and the Secretary of State and set out in the Housing and Regeneration Act 2008.

Chapter 5 (ss 27-29) Local freedoms and honorary titles

The 2009 Act s 27 makes provision for a daughter of a freeman of a city or town to be admitted as a freeman where a son would have the right to be so admitted. By virtue of s 28, the laws relating to the admission of freeman are more easily amended. The power to confer the title of 'honorary freeman' is extended by s 29 to all principal councils, parish and community councils, and charter trustees in England.

Chapter 6 (s 30) Politically restricted posts

Section 30 removes the requirement imposed by the Local Government and Housing Act 1989 s 2 for local authorities to prepare and maintain a list of posts that exceed a specified salary, and which as a consequence mean that the post-holder is subject to political restrictions.

Part 2 (ss 31-54) Local authorities: governance and audit

Chapter 1 (ss 31-33) Governance

Section 31 requires local authorities, with the exception of district councils in areas where there is a county council, to designate one of their officers as a scrutiny officer to support the work of the authority's overview and scrutiny committee. By virtue of s 32, the scope of joint overview

and scrutiny arrangements are broadened so that joint overview and scrutiny committees may be set up by any two or more local authorities, so that such committees may make reports and recommendations on any matter, other than excluded matter, and so that associated authorities may be required to provide any information to joint overview and scrutiny committees, other than that relating to crime and disorder matters, and not just that relevant to local improvement targets. Section 33 extends the legislative competence of the National Assembly for Wales to make Measures of the National Assembly for Wales.

Chapter 2 (ss 34, 35) Mutual insurance

Section 34 provides that a qualifying authority may become a member of a body corporate whose objects must be those specified and all of whose members are other qualifying bodies. Section 35 lists the qualifying authorities that are being provided with the power to become members of a mutual insurance body corporate.

Chapter 3 (ss 36-54) Audit of entities connected with local authorities

Section 36 provides that the relevant audit authority may appoint a person to carry out audit functions in relation to a local authority entity which meets certain qualifying criteria. By virtue of s 37, a local authority must notify the entity and the relevant audit authority if an entity meets, or ceases to meet, the qualifying conditions or ceases to be connected with the authority. Under s 38, the audit authority may appoint a person to carry out an audit of a local authority entity where the entity appears to the audit authority to meet the qualifying criteria. Where an appointed auditor dies, is dismissed, or is unable or unwilling to act, the audit authority may appoint a replacement auditor for that financial year: s 39. Section 40 provides that, unless the entity otherwise requests, the audit authority must not make an appointment if the entity appears to be exempt from statutory audit. Section 41 specifies who is eligible for appointment as an auditor. The terms of appointment for an auditor are set out by s 42. Where an audit authority appoints an auditor to an entity, s 43 provides that the entity may also appoint that same auditor as its statutory auditor under the Companies Act 2006 Pt 16 (ss 475-539) or the Friendly and Industrial and Provident Societies Act 1968 s 4. The 2009 Act s 44 applies when the entity does not wish to exercise the power in s 39 and instead chooses to appoint a different auditor as its statutory auditor, or where the entity exercises the power in s 39 but then terminates the appointment, so as to provide that the audit's authority's appointed auditor has the same powers as in the 2006 Act or the 1968 Act to enable the auditor to make a report to the company, partnership or society on the annual accounts. The 2009 Act ss 45-49 provide the powers for an auditor appointed under Ch 3 to make a report in the public interest. By virtue of s 50, a fee must be paid by the entity to the appointing audit authority when an auditor discharges any functions under ss 44-49. Section 51 sets out the power of the audit authority to request information relating to the accounts audited by the auditor and any other document or information relating to the entity, which would have been available to the auditor under the powers he had. By virtue of s 52, a company which is a subsidiary of a Passenger Transport Executive is to be regarded as connected with the Integrated Transport Authority for the areas for which the executive is established. Section 53 makes general provision in respect of regulations, and s 54 deals with interpretation.

Part 3 (ss 55-68) Local government boundary and electoral change

Section 55 establishes the Local Government Boundary Commission for England as a separate corporate body, and Sch 1 contains the detailed provisions for the constitution and administration of the new body. Section 56 provides that the Local Government Boundary Commission for England must from time to time conduct a review of electoral arrangements of each principal council in England and recommend whether a change should be made to the electoral arrangements for an area, and introduces Sch 2, which sets out the criteria that the Local Government Boundary Commission for England must have regard to when conducting electoral reviews. Under s 57, a power is provided for the Local Government Boundary

Commission for England to conduct a review of the area of a principal council, at that council's request, with a view to making recommendations as to whether each electoral area in the area of the principal council should return only one member. The procedure which the Local Government Boundary Commission for England must follow when conducting electoral reviews under s 53 is set out by s 58. By virtue of s 59, the Local Government Boundary Commission for England is provided with the power to make an order to give effect to all or any of the recommendations which it makes following a review of electoral arrangements for a local government area. Various functions are transferred from the Electoral Commission and the Boundary Committee for England to the new Local Government Boundary Commission for England by s 60. Section 61 abolishes the Electoral Commission's duty to establish a Boundary Committee for England and repeals the Political Parties, Elections and Referendums Act 2000 ss 14, 15. The Electoral Commission is placed under a duty by the 2009 Act s 62 to produce one or more schemes for the transfer of property, rights and liabilities from the Electoral Commission to the Local Government Boundary Commission for England. Section 63 provides that anything done by the Boundary Committee for England or by the Electoral Commission, in relation to structural or boundary changes or electoral arrangements, may be treated as having been done by the new Local Government Boundary Commission for England. Section 64 introduces Sch 3, which makes modifications to the Local Government Act 1992. Under the 2009 Act s 65, the process set out for the review by the Boundary Committee for England of the boundaries of local government areas is amended to enable the new Local Government Boundary Commission for England to consider whether consequential changes should be made to electoral arrangements as part of the same review. Provisions which relate to the defunct Local Government Commission for England are repealed by s 66. Section 67 gives effect to Sch 4, which contains amendments consequential on provision made in Pt 3 and gives the Secretary of State a power by order to amend, repeal or revoke enactments for the purposes of making further consequential provisions in relation to any provisions within Pt 3. Section 68 deals with interpretation.

Part 4 (s 69) Local authority economic assessments

Section 69 requires principal local authorities to prepare an assessment of the economic conditions of their area.

Part 5 (ss 70-87) Regional strategy

Section 70 provides for a regional strategy in each region other than London, which must set out policies in relation to sustainable economic growth, development and the use of land within the region and can include different policies for different areas within the region. By virtue of s 71, the participating authorities in each region, other than London, must make a scheme for the establishment and operation of a body known as a 'Leaders' Board'. Under s 72, the regional development agency and local authorities' Leaders' Board for the region, are, jointly, the 'responsible regional authorities' referred to in Pt 5, and if there is not a Leaders' Board the regional development agency will act alone. In accordance with s 73, the bodies responsible for regional strategy are required to exercise their functions with the objective of contributing to the achievement of sustainable development and having regard to the desirability of achieving good design. Section 74 gives the responsible regional authorities a duty to keep the regional strategy and relevant matters under review and explains when a draft revision is to be prepared either of part or the whole of the strategy. The responsible regional authorities are required by s 75 to prepare, publish and comply with a statement setting out their policies for involving interested persons when preparing a draft revision of a regional strategy. Section 76 provides for the responsible regional authorities to arrange for an examination in public into the draft revision to be held by a person appointed by the Secretary of State. The matters that the responsible regional authorities must take into account when preparing a revision are set out

by s 77. Once the responsible regional authorities have prepared and published a draft revision of the regional strategy and the sustainability appraisal report, s 78 requires them to submit these to the Secretary of State, who can then choose either to approve the draft revision as it stands or to modify it before approving it. Section 79 sets out the Secretary of State's reserve power to revise a regional strategy in whole or in part, where the responsible regional authorities fail to do so at the time specified in the regulations or directions. The Secretary of State's power to make regulations for procedural matters in connection with the revisions of regional strategies is set out by s 80. Section 81 imposes duties on the responsible regional authorities to implement and monitor the regional strategy. Under s 82, until a regional strategy is revised, the statutory development plan for an area will only consist of the policies that were previously in the regional spatial strategy. Section 83 requires regional development agencies to have regard to the regional strategy in exercising their functions. By virtue of s 84, the Secretary of State has the power to give guidance and directions in relation to the exercise of functions under Pt 5. Section 85, Sch 5 make consequential provision. Section 86 provides that regulations under Pt 5 are to be made by statutory instrument, and s 87 deals with interpretation.

Part 6 (ss 88-120) Economic prosperity boards and combined authorities

Section 88 provides that the Secretary of State can make an order establishing an Economic Prosperity Board ('EPB') for an area and specifies the conditions that need to be met for an area to be capable of designation as an EPB's area. Under s 89, the Secretary of State may by order make provision in relation to an EPB about the membership of the EPB, the voting powers of the members of the EPB, and the executive arrangements of the EPB. Section 90 sets out the provision which must be included in an order made under s 89 that deals with the number and appointment of members of an EPB. By virtue of s 91, the Secretary of State is allowed to make an order that provides for functions of a county council or district council to be exercisable by the EPB. The Secretary of State is allowed by s 92 to set out how the EPB will be funded. Under s 93, an EPB is required to keep a general fund whereby all receipts of the EPB must be carried to that fund and all liabilities falling to be discharged by the EPB must be discharged out of that fund. Section 94 provides that an existing EPB can pass a resolution to change its name. By virtue of s 95, the Secretary of State is allowed to make an order changing the boundary of an existing EPB's area. The Secretary of State is allowed to make an order to dissolve an EPB's area and abolish the EPB: s 96. Section 97 provides that any two or more of the specified authorities may review the effectiveness and efficiency of arrangements to promote economic development and regeneration within the geographical area covered by the review. Under s 98, if two or more of the councils that have conducted a review under s 97 conclude that the establishment of an EPB for an area would be likely to improve the exercise of statutory functions relating to economic development and regeneration and economic conditions within the area, then they have the power to prepare and publish a scheme for the establishment of an EPB for the area. In accordance with s 99, the Secretary of State may make an order establishing an EPB for an area if, having had regard to a scheme prepared and published under s 98, the Secretary of State considers that the establishment of an EPB for an area is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area. By virtue of s 100, one or more of the specified authorities is allowed to review an EPB matter. Section 101 provides that, if one or more of the authorities who have concluded a s 100 review conclude that the exercise of economic development and regeneration functions, or economic conditions, in an existing or proposed area of an EPB would be likely to be improved by the making of an order under any one or more of ss 89, 91, 92, 95 and 96, then those authorities have the power to prepare and publish a scheme proposing how this should be done. The requirements applying to the Secretary of State's power to make orders under ss 89, 91, 92, 95 and 96 in relation to an existing EPB are set out by s 102. By virtue of s 103, the Secretary of State can make an order establishing a combined authority for an area which meets certain conditions. The

Secretary of State is allowed by s 104 to make an order about the constitutional arrangements and functions of an individual combined authority. By virtue of s 105, the Secretary of State may make in relation to a combined authority any provision that may be made in relation to an EPB under s 91. Section 106 allows the Secretary of State to make an order changing the boundary of the area of an existing combined authority. The Secretary of State is allowed by s 107 to make an order to dissolve a combined authority's area and abolish its combined authority. Under s 108, any two or more of the specified authorities may review the effectiveness and efficiency of transport, and of the arrangements to promote economic development and regeneration, within the geographical area covered by the review. If two or more of the authorities who have conducted a s 108 review conclude that the establishment of a combined authority for an area would be likely to improve the exercise of statutory functions relating to transport and economic development and regeneration, the effectiveness and efficiency of transport in the area, and the economic conditions in the area, by virtue of s 109 the authorities may prepare and publish a scheme for the establishment of a combined authority for the scheme area. Section 110 specifies that the Secretary of State may make an order establishing a combined authority for an area if, having regard to the prepared and published scheme, the Secretary of State considers that the establishment of a combined authority is likely to improve the exercise of statutory functions relating to transport and the effectiveness and efficiency of transport in the area as well as the exercise of statutory economic development and regeneration functions in the area and the economic conditions in the area. Under s 111, one or more of the authorities specified is allowed to review a 'combined matter'. By virtue of s 112, authorities are able to prepare a scheme if one or more of the authorities who have conducted a s 111 review conclude that the exercise of statutory transport or economic development and regeneration functions, the effectiveness and efficiency of transport, or the economic conditions in an existing or proposed area of a combined authority would be likely to be improved by the making of an order under any one or more of ss 104-107. The requirements applying to the Secretary of State's power to make orders under ss 104-107 in relation to an existing combined authority are set out by s 113. Section 114 provides that the Secretary of State may make incidental, consequential, transitional or supplementary provision in support of an order made under Pt 6. Under s 115, the Secretary of State may make provision by order for the transfer of property, rights and liabilities for the purpose of, or in consequence of, an order under Pt 6. By virtue of s 116, the Secretary of State is allowed, by order, to make provision in consequence of any provision made by Pt 6. Section 117 sets out the procedure for making orders under Pt 6. Under s 118, the Secretary of State can issue guidance about anything which could be done under or by virtue of Pt 6 by a specified authority. Section 119 introduces Sch 6, which makes a number of amendments to apply provisions of local government and transport law to EPB's and combined authorities. Section 120 deals with interpretation.

Part 7 (ss 121-137) Multi-area agreements

Section 121 defines a multi-area agreement, and s 122 defines 'local authority' for the purpose of Pt 7. A list of public bodies and persons that will be 'partner authorities' for the purpose of a multi-area agreement are set out by s 123. By virtue of s 124, any group of two or more local authorities may approach the Secretary of State and request that the Secretary of State direct a multi-area agreement to be prepared for their area and submitted to the Secretary of State. Section 125 provides for the Secretary of State, in response to a request made under s 124, to direct the responsible authority to prepare and submit a draft multi-area agreement. Section 126 places certain duties on the responsible authority and other local and partner authorities where a direction has been issued under s 125, following a request under s 124. Provision is made by s 127 for the Secretary of State to approve, require modifications to or reject a draft multi-area agreement that is submitted in accordance with a direction issued under s 125. Section 128 provides for a multi-area agreement that is prepared through procedures other than following a direction from the Secretary of State under s125 to be submitted with a

request that the Secretary of State approve it. Under s 129, the Secretary of State is able to approve a multi-area agreement submitted under s 128. A duty is placed by s 130 on all local and partner authorities for the area covered by a multi-area agreement approved by the Secretary of State under ss 127 or 129 to have regard, when exercising their functions, to each improvement target in the agreement that relates to them. Section 131 defines who the responsible authority is and provides a mechanism for this to be changed by the local authorities to whom improvement targets in a multi-area agreement relate, with the agreement of the Secretary of State. A mechanism is provided by s 132 for a multi-area agreement that has been approved by the Secretary of State to be amended. Section 133 places equivalent duties on the responsible authority to consult and co-operate and have regard to guidance, and on other local and partner authorities to co-operate and have regard to guidance, when preparing a revision proposal as is placed on them when they are preparing a draft multi-area agreement by s 126. In accordance with s 134, the Secretary of State may approve or reject a revision proposal that is submitted by the responsible authority. A duty is placed on the responsible authority by s 135 to publish information about the multi-area agreement and any subsequent changes that are made to it through a revision proposal but leaves the decision as to what information is to be published and the manner of publication to the responsible authority. Under s 136, the Secretary of State is required to consult representatives of local government and, if appropriate, other people with an interest in multi-area agreements before issuing the guidance that responsible, local and partner authorities will have to have regard to in preparing agreements and revision proposals. Section 137 deals with interpretation.

Part 8 (ss 138-145) Construction contracts

Section 138 substitutes a new power allowing the Secretary of State and Welsh Ministers to disapply, by order, any or all of the provisions of the Housing Grants, Construction and Regeneration Act 1996 Pt 2 (ss 104-117) in relation to descriptions of construction contract specified in the relevant order. By virtue of the 2009 Act s 139, the original limitation of the 1996 Act Pt 2 to contracts which were in writing is removed, but it is prescribed that various matters must nonetheless be in writing. A provision to facilitate the correction of clerical or typographical errors in an adjudicator's decision is introduced by s 140. Section 141 provides that any contractual provision by the parties to a construction contract concerning the allocation between them of costs relating to an adjudication is ineffective unless certain conditions apply. Section 142 addresses the issue of making periodic payments under a construction contract conditional on obligations under another contract, and the issue of making the date a payment becomes due dependent on the giving of a notice by the payer of the sum the payer proposes to pay. Section 143 amends the original provisions of the 1996 Act relating to the notices which a payer gives of the sum which the payer proposes to pay and introduces provisions relating to the giving of notices by the payee. A statutory requirement to pay sums specified in such notices is introduced by the 2009 Act s 144. Section 145 amends the provisions relating to a contractor's right to stop working when the contractor has not been paid so as to put it beyond a doubt that a contractor may stop carrying out some, and not simply all, of the work in such a case.

Part 9 (ss 146-150) Final

Section 146 introduces Sch 7, which contains various repeals. Sections 147-150 deal with extent, commencement and the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. Please also note that these lists are not exhaustive.

Specific provisions of a number of Acts are amended, added or repealed. These include: Local Government Act 1972 ss 248, 249, Sch 28A; Housing Grants, Construction and Regeneration Act 1996 ss 106A, 107, 108, 108A, 110, 110A, 110B, 111, 112; Regional Development Agencies Act 1998 s 7; Local Government Act 2000 s 21ZA; Government of Wales Act 2006 Sch 5; Local Government and Public Involvement in Health Act 2007 ss 8, 10-12, 123; and Housing and Regeneration Act 2008 s 278A.

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The Planning Act 2008 establishes the Infrastructure Planning Commission and makes provision about its functions, makes provision about the authorisation of projects for the development of nationally significant infrastructure, and makes provision about town and country planning and the imposition of a community infrastructure levy. The Act received the royal assent on 26 November 2008 and the following provisions came into force on that date: ss 205, 207-210, 211 (in part), 212-223, 226-237, 239-242. Sections 194 (in part), 201-203, 225, Schs 7 (in part), 13 (in part) came into force on 26 January 2009. Sections 5-13, 175 (in part), 177, 179-182, 184, 191 (in part), 194 (in part), 195, 196, 206 (for certain purposes), 211 (in part), 224 (in part), 238 (for certain purposes), Schs 7 (in part), 9 (in part), 10 (in part), 13 (for certain purposes) come into force in relation to England and Wales on 6 April 2009: SI 2009/400. Sections 183, 185, 187, 191 (in part), 197-199, 238, Schs 7 (in part), 11, 13 (for certain purposes), come into force in relation to England on 6 April 2009: SI 2009/400. So far as not already in force, ss 14(1)(a)-(l), (2)-(7), 15-26, 31-36, 55, 60-133, 135-152, 154-175, and Schs 2-5 came into force on 1 March 2010: SI 2010/101. The remaining provisions come into force on a day or days to be appointed. For details of commencement, see the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet.

Part 1 (ss 1-4) The Infrastructure Planning Commission

Section 1 creates the Infrastructure Planning Commission ('the Commission'), and gives effect to Sch 1, which describes the structure of the Commission, the process by which Commissioners are appointed, and their terms and conditions of employment. By virtue of s 2, the Commission must issue a code of conduct for its Commissioners, which should include a requirement for Commissioners to disclose all relevant interests, including financial information. The Commission is required under s 3 to establish a procedure for the disclosure and registration of financial and other interests of the Commissioners and arrange for a register of entries to be published. The Secretary of State may make regulations to allow the Commission to charge fees for the performance of any of its functions: s 4.

Part 2 (ss 5-13) National policy statements

Section 5 enables the Secretary of State to designate a national policy statement dealing with matters such as the criteria to be applied in deciding whether a location is suitable for a

particular description of development. The Secretary of State may review all or part of a national policy statement when he considers it appropriate: s 6. Consultation and publicity requirements in relation to national policy statements are prescribed by ss 7-9. Where the Secretary of State is either designating or reviewing a national policy statement, by virtue of s 10 he must do so with the objective of contributing to sustainable development, which includes a duty to have regard to the desirability of mitigating, and adapting to, climate change, and achieving good design. Section 11 empowers the Secretary of State to suspend the operation of part or all of a national policy statement if he decides that, since the relevant part of the statement was issued or reviewed, there has been a significant and unanticipated change in circumstances. The Secretary of State is entitled to designate a statement as a national policy statement even if the statement was issued by the Secretary of State before the commencement of s 5: s 12. Under s 13, legal challenges in connection with national policy statements can be brought only by judicial review and only during specified six-week periods.

Part 3 (ss 14-30) Nationally significant infrastructure projects

Section 14 lists at the general level the categories of project that are nationally significant infrastructure projects for the purposes of the 2008 Act. The situations in which the following specific types of project constitute nationally significant infrastructure projects are also prescribed: (1) the construction or extension of a generating station (s 15); (2) the installation of an electric line above ground (s 16); (3) development relating to the underground storage of gas (s 17); (4) the construction or alteration of a facility for the import of liquid natural gas or other natural gas (ss 18, 19); (5) the construction of a pipe-line by a gas transporter licensed under the Gas Act 1986 (2008 Act s 20); (6) the construction of a pipe-line other than by a gas transporter (s 21); (7) highway-related development (s 22); (8) airport-related development (s 23); (9) the construction or alteration of harbour facilities (s 24); (10) the construction or alteration of a railway or a rail freight interchange (ss 25, 26); (11) the construction or alteration of a dam or reservoir or development relating to the transfer of water resources (ss 27, 28); (12) the construction or alteration of a waste water treatment plant (s 29); and (13) the construction or alteration of a hazardous waste facility (s 30).

Part 4 (ss 31-36) Requirement for development consent

Under s 31, development consent must be given for development which is, or forms part of, a nationally significant infrastructure project, and s 32 defines 'development' for this purpose. Where a project requires development consent, by virtue of s 33 it no longer requires certain other consents under existing consent regimes. Section 34 preserves the powers of Welsh Ministers to make orders under the Transport and Works Act 1992 s 3 in relation to the construction or extension of Welsh offshore generating stations. Under the 2008 Act s 35, the Secretary of State may direct that an application made to the relevant authority for a consent or authorisation under s 33 should be referred to the Commission, which must then treat it as an application for development consent. Section 36 gives effect to Sch 2, which makes amendments consequential on the development consent regime.

Part 5 (ss 37-54) Applications for orders granting development consent

Chapter 1 (ss 37-40) Applications

Where development consent is required under the new single consent regime, promoters of nationally significant infrastructure projects must submit an application to the Commission in the prescribed form: s 37. Section 38 allows the Secretary of State to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent. Under s 39, the Commission has a duty

to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public. The Secretary of State is authorised by s 40 to make regulations modifying or excluding certain statutory provisions in relation to applications made by the Crown for an order granting development consent.

Chapter 2 (ss 41-50) Pre-application procedure

Where a person proposes to make an application for an order granting development consent, he is required to consult certain local authorities, persons with rights over the land and other prescribed persons: ss 41-44. Under s 45, the applicant must give each consultee a deadline for responding to the consultation. Section 46 requires the applicant to give the Commission a copy of the consultation documents on or before commencing consultation. The applicant must also, by virtue of s 47, prepare and publish a statement setting out how he proposes to consult local people about the proposed application, and, by virtue of s 48, publicise the proposed application in the prescribed manner. Section 49 provides that the applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission. A power is given to the Commission and the Secretary of State by s 50 to give guidance on how to comply with the requirements of the pre-application procedures.

Chapter 3 (ss 51-54) Assistance for applicants and others

Under s 51, the Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application. Section 52 provides that the Commission may authorise an applicant or proposed applicant to serve a notice on specified persons, requiring them to give to the applicant the names and addresses of persons who have an interest in the land to which the application relates. The Commission may authorise a person to enter a particular piece of land in order to survey or take levels in connection with various prescribed matters: s 53. Section 54 modifies the rights of entry in relation to Crown land.

Part 6 (ss 55-119) Deciding applications for orders granting development consent

Chapter 1 (ss 55-63) Handling of application by Commission

An application for an order granting development consent can be accepted by the Commission only if it complies with the requirements of s 37: s 55. Sections 56, 57 specify the persons who must be notified of an application for an order granting development consent that the Commission has accepted. By virtue of s 58, the applicant must certify to the Commission that he has complied with s 56. Where the Commission has accepted an application for an order granting development consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, under s 59 the applicant must give the Commission names and other prescribed information in relation to persons with an interest in the land. Section 60 requires the Commission to notify relevant local authorities of the acceptance of an application for development consent and to invite them to submit a report giving details of the likely impact of the proposed development on their area. Where a Commissioner accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a panel or by a single Commissioner: s 61. Section 62 provides that, where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a panel. Under s 63, the chair has the power to delegate any of his functions under Pt 6 to one of the deputy chairs, subject to certain specified restrictions.

Chapter 2 (ss 64-77) The panel procedure

Special provisions apply when the Commission has accepted an application and the chair has decided that it should be handled by a panel: s 64. Provision is made for the appointment of

the panel (s 65), for when a person ceases to be a member, or the lead member, of a panel (s 66), for when a panel member ceases to be a Commissioner (s 67), for additional appointments to be made to a panel where the panel has fewer than three members (s 68), and for the replacement of the lead member of a panel if the lead member ceases to hold that office (s 69). Under s 70, a panel that considers an application relating to land in Wales must include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated as a Welsh Commissioner nominated by them. If the chair of the Commission decides that an application that was being considered by a single Commissioner should instead be considered by a panel, the single Commissioner who has considered the case may by virtue of s 71 become a member of the panel. Section 72 provides that, if the panel ceases to have any members, a new panel must be constituted. The identity of the panel is not affected by changes to the membership of the panel or the lead member, or any vacancies: s 73. Section 74 sets out the panel's role in relation to applications, and s 75 provides that a decision of the panel requires the agreement of a majority of its members, with the lead member having the casting vote. Under s 76, during the examination of an application the panel may allocate part of the examination to any one or more of its members. The procedural powers of the panel may, unless the panel decides otherwise, be exercised by any one or more of the panel's members: s 77.

Chapter 3 (ss 78-85) The single-Commissioner procedure

Part 6 Ch 3 has effect where it has been decided that an application should be handled by a single Commissioner: s 78. In that situation, the chair or a deputy chair to the Commission must appoint a Commissioner to handle the application: s 79. Provision is made by s 80 for where a person ceases to be the single Commissioner. By virtue of s 81, a person can in certain circumstances continue to act as a single Commissioner although he is no longer a Commissioner. Section 82 provides that, when a person ceases to be a single Commissioner, a replacement Commissioner must be appointed. Under ss 83, 84, the single Commissioner is responsible for examining the application and making a report to the authority responsible for determining the application. At least five members of the Commission's Council must participate in any decision that requires majority agreement: s 85.

Chapter 4 (ss 86-102) Examination of applications under Chapter 2 or 3

Part 6 Ch 4 applies to the examination of an application by a panel or by a single Commissioner: s 86. Section 87 provides that it is for the examining authority to decide how to examine an application. Under s 88, the examining authority must make an initial assessment of the principal issues arising on an application, before holding a preliminary meeting with the applicant and any interested parties. Section 89 requires the examining authority, in the light of the discussion at the preliminary meeting, to make procedural decisions in respect of the examination of the application, and s 90 provides that the examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in ss 91-93 and to any decision of the examining authority that it should take a different form. The examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue or so that an interested party has a fair chance to put its case: s 91. Where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land, under s 92 the examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place. By virtue of s 93, the examining authority must also arrange an open floor hearing if at least one interested party informs the examining authority of a wish to be heard within the specified deadline. General provision with regard to hearings is made by s 94, and s 95 empowers the examining authority to exclude a person from a hearing if he behaves in a disruptive manner. Where a person has asked to make an oral representation at a hearing, but has not done so, he

can make a written representation, which the examining authority must consider as part of its examination of an application: s 96. The Lord Chancellor or, in certain cases, the Secretary of State, may by virtue of s 97 make procedural rules for the examination of applications. Section 98 imposes a duty on the examining authority to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to s 88. The examining authority must inform each interested party once it has completed its examination of the application: s 99. Under s 100, the chair or a deputy chair of the Commission may, at the examining authority's request, appoint a suitably qualified assessor to help it examine an application. Section 101 allows the chair of the Commission to appoint a barrister, solicitor or advocate to provide legal advice and assistance to the examining authority. Section 102 deals with interpretation.

Chapter 5 (ss 103-107) Decisions on applications

The Secretary of State is required by s 103 to decide an application for an order granting development consent where he receives a report from the panel or a single Commissioner. Where a panel or the Commission's Council is responsible for deciding an application for an order granting development consent, it must have regard to various specified matters, including any relevant national policy statement and any local impact report submitted by a relevant local authority: s 104. Section 105 provides that, in deciding an application for an order granting development consent, the Secretary of State must have regard to certain prescribed matters. Under s 106, a person deciding an application for an order granting development consent may disregard representations that are vexatious or frivolous or relate to the merits of policy set out in a national policy statement or to compensation payable on the compulsory acquisition of land or of an interest in or right over land. Section 107 specifies that the decision-maker is under a duty to decide an application for a development consent order within a period of three months.

Chapter 6 (s 108) Suspension of decision-making process

By virtue of s 108, if the Secretary of State considers it necessary to review all or part of a relevant national policy statement before an application for an order granting development consent is decided, he may direct that the examination and decision of the application is suspended by the panel or Commission's Council until the review of the national policy statement has been completed.

Chapter 7 (ss 109-113) Intervention by Secretary of State

The various circumstances in which the Secretary of State may intervene and decide an application in place of the Commission are prescribed by ss 109-112. Section 113 details the consequences of the Secretary of State making an intervention, and gives effect to Sch 3, which makes provision in relation to the Secretary of State's function of examining an application.

Chapter 8 (ss 114-117) Grant or refusal

Section 114 provides that, at the conclusion of consideration of an application for an order granting development consent, the decision-maker must either make an order granting development consent or refuse development consent. An order may grant development consent not only for development for which consent is required but also for associated development (as defined): s 115. Under s 116, a statement of reasons for deciding to make an order granting development consent or to refuse development consent must be given to interested parties and published, and under s 117 certain formalities must be observed in relation to the order.

Chapter 9 (s 118) Legal challenges

Section 118 provides that specified decisions in connection with applications for development consent can be challenged only by way of judicial review.

Chapter 10 (s 119) Correction of errors

Section 119 gives effect to Sch 4, which describes the mechanisms by which the decision-maker can correct errors in decision documents relating to an application for an order granting development consent.

Part 7 (ss 120-159) Orders granting development consent

Chapter 1 (ss 120-152) Content of orders

Section 120, Sch 5 specify what may be included in an order granting development consent. Under s 121, the panel or Council must send to the Secretary of State a draft of any proposed order that affects the application of statutory provisions. The purpose for which an order granting development consent can authorise the compulsory acquisition of land are specified in s 122. The decision-maker can authorise the compulsory acquisition of land only if he is satisfied that one of various specified conditions is met: s 123. Section 124 empowers the Secretary of State to issue guidance about the authorisation of the compulsory acquisition of land in an order granting development consent. By virtue of s 125, the Compulsory Purchase Act 1965 Pt 1 (ss 1-32) applies with specified modifications to any order granting development consent that contains provisions on compulsory acquisition of land, unless the order specifies otherwise. The 2008 Act s 126 places restrictions on the provision that may be made about compensation in an order granting development consent that authorises the compulsory acquisition of land. The conditions that must be satisfied for an order granting development consent to authorise the compulsory purchase of land which a statutory undertaker has acquired for the purpose of its undertaking in circumstances where a representation has been made about the application for the order and that representation is not withdrawn are contained in s 127. Section 128 details the circumstances in which an order granting development consent that authorises the compulsory purchase of land belonging to a local authority or statutory undertakers is to be subject to the special parliamentary procedure. Under s 129, the procedure does not apply where the person who would acquire the land is one of certain specified public bodies. In certain circumstances, an order granting development consent that authorises the compulsory purchase of land held inalienably by the National Trust is subject to the special parliamentary procedure: s 130. By virtue of s 131, the special parliamentary procedure also applies in relation to an order granting development consent that authorises the compulsory purchase of land forming part of a common, open space or fuel or field garden allotment, where the acquisition does not involve the acquisition of a new right over that land. An order granting development consent that authorises the compulsory acquisition of a new right over land forming part of a common, open space or fuel or field garden allotment is also subject to the special parliamentary procedure unless the Secretary of State is satisfied of certain facts: s 132. Section 133 modifies some of the usual procedures where an order granting development consent authorises the development of underground gas storage facilities, and authorises the compulsory acquisition of rights to store gas underground or certain other rights over land. Under s 134, a person who has been authorised to acquire land compulsorily by an order granting development consent is required to serve a notice about this on persons with certain interests in that land. An order granting development consent can authorise the compulsory purchase of an interest in Crown land only if the interest is for the time being held otherwise than by or on behalf of the Crown and the appropriate Crown authority consents to the acquisition: s 135. By virtue of s 136, no order granting development consent can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required. An order granting development consent may provide for the acquisition of land and authorise the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed only if the relevant undertaker or operator of the network has given its consent: s 137. Section 138 makes

provision for orders granting development consent that authorise the acquisition of land on, under or over which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed. Under s 139, an order granting development consent cannot include provisions that exclude or modify the application of a provision of, or made under, the Commons Act 2006, or authorise the suspension of, or extinguishment or interference with, registered rights of common. An order granting development consent that authorises the operation of a generating station can, by virtue of the 2008 Act s 140, be made only if the development to which the order relates is or includes the construction or extension of the generating station. Section 141 provides that an order granting development consent may authorise overhead electric lines to be kept installed only if the development to which the order relates is or includes the installation of such lines. An order granting development consent that authorises the use of underground gas storage facilities can be made only if the order authorises the development of such facilities: s 142. Under s 143, an order granting development consent that authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is conveniently navigable by vessels of a kind accustomed to using that part of the watercourse. Section 144 provides that an order granting development consent may authorise the charging of tolls in relation to a highway only if a request for such provision was included in the application for the order. The circumstances in which an order granting development consent may provide for the creation of a harbour authority, the modification of the powers or duties of an existing harbour authority or the transfer of property, rights or liabilities from one harbour authority to another are set out in s 145. Where an order granting development consent authorises the discharge of water into inland waters or underground strata, the person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order: s 146. Under s 147, where an order granting development consent includes certain prescribed provisions in relation to Green Belt land, the panel, the Council or the Secretary of State, as the case may be, must notify the relevant local authorities of the provision made by the order. An order granting development consent may deem a consent under the Coast Protection Act 1949 s 34 to have been given in relation to operations in specified areas: 2008 Act s 148. Section 149 provides that an order granting development consent may deem a licence under the Food and Environment Protection Act 1985 Pt 2 (ss 5-15) to have been issued for operations in specified areas. Under the 2008 Act s 150, an order granting development consent may include provision removing a requirement for a prescribed consent or authorisation to be granted only if the relevant body consents. Section 151 prevents an order granting development consent from excluding or modifying liability under any of the statutory regimes specified. By virtue of s 152, a right to compensation in cases where, as a result of s 158 or the terms of a development consent order, a person would not be able to succeed in a claim for nuisance in respect of works authorised by a development consent order.

Chapter 2 (s 153) Changes to, and revocation of, orders

Section 153 gives effect to Sch 6, which describes the mechanisms by which subsequent modifications or revocations can be made to orders granting development consent.

Chapter 3 (ss 154-159) General

After a development consent order is granted, the development must begin before the end of the period prescribed by the Secretary of State or such other period as is specified in the order: s 154. By virtue of s 155, development is taken to begin as soon as any material operation comprised in or carried out for the purposes of the development begins to be carried out. Section 156 provides that, while a development consent order generally has effect for the benefit of the land mentioned in the order and all those for the time being interested in it, it is possible for the order to make provision to the contrary. Where an order granting development consent grants consent for the erection, extension, alteration or re-erection of a building, the order may specify the purposes for which the building may be used: s 157. Where nuisance

proceedings arise out of the carrying out of a development for which consent is granted by an order granting development consent, a defence of statutory authority is provided for by s 158. Section 159 defines 'land' for the purposes of Pt 7.

Part 8 (ss 160-173) Enforcement

A person commits an offence if he carries out development for which development consent is required without such consent (s 160), carries out development in breach of the terms of an order granting development consent or fails to comply with the terms of such a consent without reasonable excuse (s 161). The time limits for bringing charges in relation to the offences created by ss 160, 161 are prescribed by s 162. Local planning authorities and justices of the peace are given the power under ss 163, 164 to authorise a person to enter land if he has reasonable grounds to suspect an offence is being or has been committed under s 160 or s 161. By virtue of s 165, a person so authorised must produce evidence, if requested, of the authority and state the purpose for entry before entering the land. The rights of entry do not apply to Crown land: s 166. Section 167 enables the relevant local planning authority to serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose. A person commits an offence contrary to s 168 if, without reasonable excuse, he fails to comply with any requirement of an information notice within a period of 21 days beginning on the day the notice is served. Where a person has been found guilty of an offence under s 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition: s 169. Under s 170, where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance, the relevant local planning authority may enter the land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land. Section 171 authorises the relevant local planning authority to apply to the county court or the High Court for an injunction where it considers it necessary or expedient to prevent an actual or anticipated offence under s 160 or s 161. The application of the enforcement provisions to the Isles of Scilly is dealt with in s 172. Section 173 defines 'relevant local planning authority' for the purposes of Pt 8.

Part 9 (ss 174-201) Changes to existing planning regimes

Chapter 1 (ss 174-178) Changes related to development consent regime

Section 174 enables the promoter of a nationally significant infrastructure project to enter into agreements with local authorities in the same way as a developer seeking planning permission under the Town and Country Planning Act 1990. The 2008 Act s 175 amends the Town and Country Planning Act 1990 to allow owner-occupiers adversely affected by a nationally significant infrastructure project to have the benefit of the existing statutory provisions relating to blight, and the 2008 Act s 176 makes equivalent provision with regard to Scotland. Section 177 amends the Town and Country Planning Act 1990 s 304A(1) to ensure that the Secretary of State may make grants for advice and assistance in connection with applications for development consent under the 2008 Act. Section 178 deals with Scotland.

Chapter 2 (s 179-201) Other changes to existing planning regimes

Sections 179-185 amend the Planning and Compulsory Purchase Act 2004. By virtue of the 2008 Act s 179, a regional planning body may enter into an agreement with the regional development agency for its region regarding the delegation of any of the body's functions. Section 180 makes provision relating to supplementary planning documents and statements of community involvement. Regional spatial strategies and development plan documents must include policies on climate change: ss 181, 182. Under s 183, persons or bodies exercising functions in relation to development plans have a duty to have regard to the desirability of achieving good design. The requirement for the Secretary of State or an inspector to obtain the

consent in writing of the applicant and, if different, the owner of the land before he may correct an error in a decision document is removed by s 184. Section 185 provides that, where certain development-related strategies, plans and documents are successfully challenged in the High Court, the judge can give directions as to the steps required for the strategy, plan or document to be accepted. By virtue of s 186, certain local planning authorities in Wales can complete unitary development plans under the Town and Country Planning Act 1990 before embarking on the local development plans required by the 2004 Act. The 2008 Act s 187 gives effect to Sch 7, which makes amendments in relation to the power to decline to determine applications. Sections 188-192 amend the Town and Country Planning Act 1990. The restriction under which local development orders can be made only to implement a policy in a development plan document or a local development plan is removed by the 2008 Act s 188. Under s 189, where planning permission of a prescribed description granted by a development order or local development order is withdrawn by the issue of directions under powers conferred by that order, compensation is payable only if an application for planning permission for development formerly permitted by that order is made within 12 months of the directions taking effect. Local authorities are empowered by s 190 to make non-material changes to planning permissions. Legal proceedings challenging decisions made in connection with applications for major infrastructure projects must be brought within six weeks of the decision: s 191. Section 192, Sch 8 provide for the transfer of provisions from tree preservation orders into regulations, and s 193 makes transitional provision in regard to tree preservation orders. Section 194 gives effect to Sch 9, which amends the Town and Country Planning Act 1990 by authorising a local authority to override easements and other rights restricting the use of land which it has acquired or appropriated for planning purposes. Under the 2008 Act s 195, the joint determination of certain planning applications and appeals by the Secretary of State and the appropriate minister is disapplied in certain prescribed circumstances. Section 196 requires the Secretary of State to determine the procedure by which certain proceedings under the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 should be considered, and gives effect to the 2008 Act Sch 10, which makes amendments consequential on the new duty. Section 197 gives effect to Sch 11, which amends various legislation to provide for notices of appeal to be accompanied by prescribed information. Sections 198-201 amend the Town and Country Planning Act 1990. By virtue of the 2008 Act s 198, regulations may be made for the transfer to inspectors of appeals under the Planning and Compensation Act 1991 in respect of old mining permissions for development authorised under interim development orders made between 1943 and 1948. Provision may be made for the whole of the fee payable when an applicant appeals under the Town and Country Planning Act 1990 s 177(5) against an enforcement notice to be paid to either the local planning authority, the appropriate authority, or both the local planning authority and the appropriate authority: 2008 Act s 199. Under s 200, the Secretary of State is entitled to make provision for the payment of a fee for appeals made under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990. The 2008 Act s 201 amends the definition of 'local authority' in the Town and Country Planning Act 1990 to include the London Fire and Emergency Planning Authority.

Part 10 (ss 202-204) Wales

Section 202 amends the Government of Wales Act 2006 Sch 5 to enable the National Assembly for Wales to pass measures relating to plans of the Welsh Ministers and local planning authorities concerning the development and use of land, subject to an exception regarding the status of such plans. The Welsh Ministers are empowered under the 2008 Act s 203 to make an order giving effect in Wales to certain reforms to the land use planning system provided for in Pt 9 which would otherwise have effect only in England. Transitional provision concerning blighted land is made in relation to Wales by s 204.

Part 11 (ss 205-225) Community infrastructure levy

Section 205 authorises the Secretary of State to establish a community infrastructure levy with the purpose of ensuring that costs incurred in providing infrastructure to support the development of an area can be funded wholly or mainly by owners or developers of land. Under s 206, charging authorities (as defined) can charge a levy in respect of development within their respective areas. Regulations may provide that a joint committee established under the 2004 Act s 29, where it includes a charging authority, is to exercise specified functions in relation to the area of the committee on behalf of the charging authority: 2008 Act s 207. Provision for how liability to pay a levy arises is made in s 208, and s 209 defines various terms used in s 208. By virtue of s 210, charities may be entirely or partially exempt from the levy. Section 211 requires a charging authority that proposes to charge a levy to issue a charging schedule setting out the rates or other criteria by reference to which the amount is to be calculated. Before a charging schedule is approved, a draft of it must have been examined by a person appointed for that purpose by the charging authority: s 212. The circumstances in which a charging authority may approve a charging schedule are prescribed by s 213. Under s 214, an approved charging schedule does not take effect until it has been published. Section 215 makes provision for appeals in relation to the calculation of the levy due. Regulations concerning the levy must require charging authorities to apply it to funding infrastructure (s 216), must include provision about the collection of the levy (s 217), and must include provision for enforcement (s 218). Under s 219, such regulations may also require a charging or other public authority to pay compensation for loss and damage caused by enforcement action that has been improperly taken by them, and under s 220 they may also make provision about the procedures to be followed in connection with the levy. Section 221 empowers the Secretary of State to give guidance on any matter connected with the levy. Various supplementary powers in relation to the making of regulations regarding the levy are conferred by s 222. Under s 223, regulations dealing with the levy may include provision controlling the use of the Town and Country Planning Act 1990 s 106, which relates to planning obligations, and the Highways Act 1980 s 278, which relates to agreements with highways authorities for highways works. The 2008 Act ss 224, 225 make various amendments and repeals consequential on the establishment of the levy.

Part 12 (ss 226-242) Final provisions

Subject to certain specified exceptions, the 2008 Act applies to the Crown: s 226. 'Crown land' and 'the appropriate Crown authority' are defined by s 227. By virtue of s 228, offences in the 2008 Act do not apply to the Crown. Sections 229-231 make provision concerning the service of notices and other documents. General provision for orders, regulations and directions under the 2008 Act is made by ss 232, 233. Sections 234, 235 deal with interpretation. Schedule 12, which is given effect by s 236, makes various modifications to the 2008 Act in its application to Scotland. An order-making power is conferred on the Secretary of State by s 237. Section 238 gives effect to Sch 13, which makes various repeals. Section 239 makes financial provision, s 240 deals extent, s 241 makes provision concerning commencement and s 242 specifies the short title.

Amendments, repeals and revocations

Subscribers should note that the lists below mention repeals and amendments which are or will be effective when the Act is fully in force. Please refer to the top of this summary for details of the in-force dates of the provisions of the Act. This information may also be found in the COMMENCEMENT OF STATUTES table in the Current Service Noter-up booklet. Please also note that this list is not exhaustive.

Specific provisions of a number of Acts are amended or repealed. These include: Town and Country Planning Act 1990 ss 61A(1), 78, 195, 198(3), (4), (6), (8), (9), 199, 201, 202(3), 203-205, 208, 212(4); Sch 1 para 17, Sch 1A para 9; Environmental Protection Act 1990 Sch 13 para 10; Planning and Compensation Act 1991 s 6(6); Planning and Compulsory Purchase Act 2004 ss 15(2)(a), (c), 17(1), (2), 18(4)-(6), 42(3), 46-48, 53, 122(5)(a), Sch 6 para 5; Greater London Authority Act 2007 s 36.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(i) Introduction/1. The planning system.

1. INTRODUCTION

(1) LEGISLATIVE FRAMEWORK

(i) Introduction

1. The planning system.

The planning system in England and Wales is regulated by statute and by subordinate instruments made both under the relevant domestic legislation and in order to give effect to European Community obligations¹. It is a plan-led system which operates on a national, regional and local level². National policies are formulated by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴ and published in policy statements, guidance notes, departmental or Assembly circulars and Parliamentary or Assembly statements⁵.

In England, under the arrangements introduced by the Planning and Compulsory Purchase Act 2004⁶, regional spatial strategies are prepared by regional planning bodies⁷, except in relation to Greater London, where the Mayor of London is responsible for preparing the spatial development strategy⁸. At local level, local planning authorities⁹ other than county councils in England must prepare a local development framework comprising a folder of documents for delivering the spatial or minerals planning strategy for the area; this includes a local development scheme¹⁰, local development documents¹¹ and a statement of community involvement¹². In Wales, the Assembly prepares the Wales Spatial Plan¹³ and local planning authorities must prepare a local development plan¹⁴. In practice, however, the unitary development plans prepared for areas of England and Wales under the Town and Country Planning Act 1990¹⁵ and the structure and local plans also prepared under that Act¹⁶ continue to provide the framework for local development¹⁷.

An important objective of the planning system is the achievement of sustainable development¹⁸.

The planning system does not exist to protect the private interests of one person against the activities of another, although private interests may coincide with the public interest in some cases. The basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings which ought to be protected in the public interest¹⁹.

1 See PARA 2 et seq post.

- 2 For a summary of the planning system in England see *The Planning System--General Principles* (ODPM, January 2005) PARAS 1-30.
- 3 As to the Secretary of State see PARA 19 post.
- 4 As to the Assembly see PARA 20 post.
- 5 As to policy statements and guidance see PARA 9 post.
- 6 As to the changes introduced by the Planning and Compulsory Purchase Act 2004 see PARA 4 post.
- 7 As to regional planning bodies see PARA 24 post; and as to regional spatial strategies see PARA 72 et seq post.
- 8 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81; and as to the Mayor's spatial development strategy for Greater London see PARA 86 post.
- 9 As to local planning authorities see PARA 28 et seq post.
- 10 As to local development schemes see PARA 96 et seq post.
- 11 As to local development documents see PARA 105 et seq post.
- 12 As to the statement of community involvement see PARA 103 post.
- 13 As to the Wales Spatial Plan see PARAS 87-88 post.
- 14 As to local development plans in Wales see PARA 135 et seq post.
- 15 See PARA 155 et seq post.
- 16 See PARA 176 et seq post.
- 17 For transitional arrangements with regard to England see PARA 125 et seq post; and as to transitional arrangements with regard to Wales see PARA 147 post.
- 18 See PARA 6 post.
- 19 See *The Planning System--General Principles* (ODPM, January 2005) PARA 29; and see eg *Davey v First Secretary of State* [2005] All ER (D) 117 (Oct) (refusal of planning permission for conservatory; wall would run along boundary between properties and inspector hearing appeal considered the development would be intrusive, despite the fact that the neighbouring occupants had no objection; held that the inspector was plainly entitled to have regard to the fact that the development might remain long into the future, and to consider the public interest rather than the views of the present neighbours).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/2. The planning Acts.

(ii) Domestic Legislation

2. The planning Acts.

There are four principal consolidating Acts relating to town and country planning legislation ('the planning Acts'):

- 1 (1) the Town and Country Planning Act 1990 ('the principal Act')¹;
- 2 (2) the Planning (Listed Buildings and Conservation Areas) Act 1990 ('the listed buildings Act')²;

- 3 (3) the Planning (Hazardous Substances) Act 1990 ('the hazardous substances Act')³; and
- 4 (4) the Planning (Consequential Provisions) Act 1990⁴.

The substitution of the consolidating Acts⁵ for the repealed enactments does not affect the continuity of the law⁶; and anything done or having effect as if done under or for the purposes of a provision of the repealed enactments has effect, if it could have been done under or for the purposes of the corresponding provision of the consolidating Acts, as if done under or for the purposes of that corresponding provision⁷. Any reference, whether express or implied, in the consolidating Acts or any other enactment, instrument or document to a provision of the consolidating acts is to be construed, so far as the context permits, as including, in relation to the times, circumstances and purposes in relation to which the corresponding provision of the repealed enactments has effect, a reference to that corresponding provision⁸; and any reference, whether express or implied, in any enactment, instrument or document to a provision of the repealed enactments is to be construed, so far as is required for continuing its effect, as including a reference to the corresponding provision of the consolidating Acts⁹.

The provisions of the Town and Country Planning Act 1990, and any restrictions or powers imposed or conferred by it in relation to land¹⁰, apply and may be exercised in relation to any land notwithstanding that provision is made by any enactment¹¹ in force on 6 August 1947¹², or by any specified local Act¹³, for authorising or regulating any development¹⁴ of the land¹⁵.

The planning Acts have been significantly amended and supplemented by subsequent legislation, in particular by the Planning and Compensation Act 1991¹⁶, the Environment Act 1995¹⁷ and the Planning and Compulsory Purchase Act 2004¹⁸.

1 Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1); Planning (Hazardous Substances) Act 1990 s 39(1); Planning (Consequential Provisions) Act 1990 s 1(1); Planning and Compulsory Purchase Act 2004 s 117(5). As to the Town and Country Planning Act 1990 see PARA 3 et seq post. The Town and Country Planning Act 1990 extends to England and Wales only: s 337(3). That Act also applies, however, to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct: s 319(1) (s 319(1)-(3) substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 49). Such an order may in particular provide for the exercise by the Council of the Isles of Scilly of any functions exercisable by a local planning authority or mineral planning authority: Town and Country Planning Act 1990 s 319(2) (as so substituted). Before making such an order, the Secretary of State must consult with that Council: s 319(3) (as so substituted). As to the exercise of this power see the Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085, arts 2-4; for transitional provisions see art 5(2), (3); as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36; as to the Secretary of State see PARA 19 post; and as to the making of orders generally see PARA 3 post.

For these purposes, except in so far as the context otherwise requires, 'functions' includes powers and duties; 'local planning authority' is to be construed in accordance with the Town and Country Planning Act 1990 Pt I (ss 1-9) (as amended) (see PARAS 28-36 post); and 'mineral planning authority' has the meaning given in s 1(4) (see PARA 29 post): s 336(1). It is unlawful for a planning authority to discriminate on racial grounds against a person in carrying out its planning functions: see the Race Relations Act 1976 s 19A (as added); and DISCRIMINATION vol 13 (2007 Reissue) PARA 468. See also the Disability Discrimination Act 1995 s 21B (as prospectively added) (unlawful for a public authority to discriminate against a disabled person in carrying out its functions); and DISCRIMINATION vol 13 (2007 Reissue) PARA 593.

As to what constitutes consultation see *Fletcher v Minister of Town and Country Planning* [1947] 2 All ER 496; *Rollo v Minister of Town and Country Planning* [1948] 1 All ER 13, CA; *Agricultural, Horticultural and Forestry Industry Training Board v Aylesbury Mushrooms Ltd* [1972] 1 All ER 280, [1972] 1 WLR 190; *R v Secretary of State for Social Services, ex p Association of Metropolitan Authorities* [1986] 1 All ER 164, [1986] 1 WLR 1. As to statutory consultees see PARA 70 post.

2 Planning and Compulsory Purchase Act 2004 s 117(6). As to the Planning (Listed Buildings and Conservation Areas) Act 1990 see PARA 1072 et seq post. The Planning (Listed Buildings and Conservation Areas) Act 1990 extends to England and Wales only: s 94(3). After consultation with the Council of the Isles of Scilly, the Secretary of State may, however, by order provide for the application to those Isles of specified provisions of that Act as if those Isles were a separate county: s 92(1). As to the specified provisions see s 92(2) (amended by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 Pt II para 27, Sch 19 Pt I; and by the Planning and Compulsory Purchase Act 2004 s 120, Sch 9). He may also, after the like consultation, by order

provide for the application to those Isles of certain other specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 as if those Isles were a separate county or district: see s 92(3). Any order under s 92 (as amended) may provide for the application of provisions to the Isles subject to such modifications as may be specified in the order: s 92(4). In exercise of the power so conferred the Secretary of State made the Planning (Listed Buildings and Conservation Areas) (Isles of Scilly) Order 1990, SI 1990/2237, which came into force on 3 December 1990: art 1(1).

3 Planning and Compulsory Purchase Act 2004 s 117(7). As to the Planning (Hazardous Substances) Act 1990 see PARA 1212 et seq post. The Planning (Hazardous Substances) Act 1990 extends to England and Wales only: s 41(4). In relation to land in the Isles of Scilly, however, the provisions of that Act, and any other provisions of the planning Acts in so far as they apply or have effect for the purposes of those provisions, have effect as if those Isles were a district and the Council of the Isles were the council of that district: Planning (Hazardous Substances) Act 1990 s 35. For these purposes, except in so far as the context otherwise requires, 'land' has the same meaning as in the Town and Country Planning Act 1990 (see note 10 infra): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

4 Town and Country Planning Act 1990 s 336(1); Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(2); Planning (Hazardous Substances) Act 1990 s 39(2); Planning and Compulsory Purchase Act 2004 s 117(4).

5 For these purposes, 'the consolidating Acts' means the Town and Country Planning Act 1990, the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 and, so far as it reproduces the effect of the repealed enactments, the Planning (Consequential Provisions) Act 1990: s 1(1). 'The repealed enactments' means the enactments repealed by the Planning (Consequential Provisions) Act 1990: s 1(1). For these purposes, 'enactment' has the same meaning as in the Town and Country Planning Act 1990 (see note 11 infra): Planning (Consequential Provisions) Act 1990 s 1(1), (2).

6 Ibid s 2(1).

7 Ibid s 2(2).

8 Ibid s 2(3).

9 Ibid s 2(4).

10 For these purposes, except in so far as the context otherwise requires, 'land' means any corporeal hereditament, including a building and, in relation to the acquisition of land under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq post), includes any interest in or right over land; 'building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building; and 'erection', in relation to buildings as so defined, includes extension, alteration and re-erection: s 336(1).

'Erection' refers to a structure or erection which can be said to form part of the realty and to change the physical character of the land, but there is no one test: *Cheshire County Council v Woodward* [1962] 2 QB 126, [1962] 1 All ER 517, DC. Possible criteria were indicated in *Barvis Ltd v Secretary of State for the Environment* (1971) 22 P & CR 710 at 716, DC, per Bridge J: (1) a building or structure is something which has either been in fact, or normally would be, built or constructed on the land as opposed to being brought on to it ready made; (2) it will have some degree of permanence; (3) whether the object is or is not physically attached to the land is relevant but not conclusive; and (4) the fact that a thing has a limited degree of motion does not necessarily prevent its being a structure or erection. A model railway and model buildings were held to be a structure or erection in *Buckingham County Council v Callingham* [1952] 2 QB 515, [1952] 1 All ER 1166, CA. See also *Cooper v Bailey* (1956) 6 P & CR 261, DC (concrete kerb held to be part of the building or structure of the garage); *James v Brecon County Council* (1963) 15 P & CR 20, DC (swing-boats held not to be a building).

In relation to the meaning of 'building', incorporation in the realty is but one factor and is not determinative either way, the degree of permanence is a highly material factor and size and composition by components are significant factors: *R v Swansea County Council, ex p Elitestone Ltd* (1993) 66 P & CR 422. Mobile caravans should not be treated as 'buildings' as of right: *Measor v Secretary of State for the Environment* [1999] JPL 182.

11 For these purposes, except in so far as the context otherwise requires, 'enactment' includes an enactment in any local or private Act of Parliament, and an order, rule, regulation, byelaw or scheme made under an Act of Parliament: Town and Country Planning Act 1990 s 336(1).

12 Ie the date of the passing of the Town and Country Planning Act 1947.

13 Ie any local Act passed at any time during the session of Parliament during the regnal years 10 & 11 Geo 6.

14 For these purposes, except in so far as the context otherwise requires, 'development' has the meaning given in the Town and Country Planning Act 1990 s 55 (as amended) (see PARA 217 post); and 'develop' is to be construed accordingly: s 336(1).

15 Ibid s 335. The land referred to must be the particular piece of land over which it is sought to exercise powers under the Town and Country Planning Act 1990 and not other land to which the prior enactment also relates: *Harlow v Minister of Transport and Rugby Portland Cement Co Ltd* [1951] 2 KB 98 at 108, [1950] 2 All ER 1005 at 1011, CA.

16 The Planning and Compensation Act 1991 reformed and streamlined the previous development plan system in accordance with the proposals set out in *The Future of Development Plans* (Cm 569, January 1989) as modified by the government decision announced in September 1990 to retain county structure plans. Other changes introduced by that Act include:

- 1 (1) the amendment of the definition of 'development', in particular so as to include the demolition of certain buildings (see PARA 218 post) and development of land for the purposes of fish farming (see PARA 219 post);
- 2 (2) new arrangements relating to publicity for planning applications (see PARA 468 post);
- 3 (3) a new power to make regulations requiring environmental assessment of proposed developments (see PARA 487 post);
- 4 (4) the introduction of a power to grant planning permission retrospectively (see PARA 525 post);
- 5 (5) new provisions regarding planning obligations (previously referred to as 'section 106 agreements') (see PARAS 244-249 post);
- 6 (6) new arrangements for compensation in respect of mineral working (see PARA 925 post);
- 7 (7) new provisions relating to enforcement which implement certain recommendations of the Carnwath Report (*Enforcing Planning Control* (HMSO, February 1989));
- 8 (8) provisions relating to certain old mining permissions (see PARA 718 et seq post).

Heads (1)-(8) supra do not purport to be an exhaustive list.

17 The Environment Act 1995 made a number of amendments to the planning Acts relating to National Parks: see eg the Town and Country Planning Act 1990 s 147A (added by the Environment Act 1995 s 67(5)); and PARA 966 post. Schedules 13, 14 (as amended) contain provisions relating to certain mineral planning permissions: see PARA 726 et seq post.

18 As to the Planning and Compulsory Purchase Act 2004 see PARA 4 post.

UPDATE

2-4 The planning Acts ... The Planning and Compulsory Purchase Act 2004

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/3. Regulations and orders under the Town and Country Planning Act 1990.

3. Regulations and orders under the Town and Country Planning Act 1990.

The Secretary of State¹ or, in certain cases, the National Assembly for Wales², may make regulations under the Town and Country Planning Act 1990 for:

- 5 (1) prescribing the form of any notice, order or other document authorised or required by that Act to be served, made or issued by any local authority³ or National Park authority⁴;
- 6 (2) any purpose for which regulations are authorised or required to be made under that Act, other than a purpose for which regulations are authorised or required to be made by another minister⁵.

Regulations may make different provision for different purposes⁶. Any power so conferred to make regulations is exercisable by statutory instrument⁷; and any statutory instrument containing regulations so made is, subject to the specified exceptions⁸ and if made by the Secretary of State, subject to annulment in pursuance of a resolution of either House of Parliament⁹.

The power to make development orders¹⁰ and other specified orders¹¹ is exercisable by statutory instrument¹².

Any statutory instrument:

- 7 (a) which contains an order relating to joint planning boards¹³ which has been made after a relevant local inquiry has been held¹⁴; or
- 8 (b) which contains a development order or other specified order¹⁵,

is, if made by the Secretary of State, subject to annulment in pursuance of a resolution of either House of Parliament¹⁶. Where, however, a development order makes provision for excluding or modifying any enactment¹⁷ contained in a public general Act¹⁸, the order does not have effect¹⁹ until that provision is approved by a resolution of each House of Parliament²⁰.

Any power²¹ so to make an order includes²² power to vary or revoke any such order by a subsequent order²³.

1 As to the Secretary of State see PARA 19 post.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 333 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 post.

3 For these purposes, except in so far as the context otherwise requires, 'local authority' means, except in the Town and Country Planning Act 1990 s 252 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 798 note 9) and subject to s 336(10) (as amended) (see infra) and the Environment Act 1995 s 71(7) (see note 4 infra): (1) a billing authority or a precepting authority, as defined in the Local Government Finance Act 1992 s 69 (as amended) (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARAS 9, 229) or the Metropolitan Police Authority; (2) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies (see FIRE SERVICES); (3) a levying body within the meaning of the Local Government Finance Act 1988 s 74 (as amended) (see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 530); (4) a body as regards which s 75 (as amended) applies (special levies: see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 530); and includes any joint board or joint committee if all the constituent authorities are local authorities within heads (1), (3) or (4) supra: Town and Country Planning Act 1990 s 336(1) (amended by the Local Government Finance Act 1992 s 117(1), Sch 13 para 91; the Police and Magistrates' Courts Act 1994 s 93, Sch 9 Pt I; the Environment Act 1995 s 78, Sch 10 para 32(13); the Greater London Authority Act 1999 ss 325, 423, Sch 27 para 66, Sch 34 Pt VII; the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 72).

In the Town and Country Planning Act 1990 s 90 (as amended) (see PARA 238 post), Pt VI Ch I (ss 137-148 (as amended): see PARA 966 et seq post) and s 330 (as amended) (see PARA 53 post), 'local authority', in relation to land in the Broads, includes the Broads Authority: s 336(10) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 52(4)). Except in so far as the context otherwise requires, 'the Broads' has the same

meaning as in the Norfolk and Suffolk Broads Act 1988 (see WATER AND WATERWAYS vol 101 (2009) PARA 735): Town and Country Planning Act 1990 s 336(1). As to the service of notices see PARA 54 post.

4 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. A National Park authority is not by virtue of the Environment Act 1995 s 71 (National Park authorities to be levying bodies: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 652) a local authority within the meaning of the Town and Country Planning Act 1990: Environment Act 1995 s 71(7).

5 Town and Country Planning Act 1990 s 333(1). For these purposes, except in so far as the context otherwise requires, 'minister' means any Minister of the Crown or other government department (s 336(1)); and 'government department' includes any Minister of the Crown (s 336(1)).

As to the power to make regulations under the Planning (Listed Buildings and Conservation Areas) Act 1990 see PARA 1074 post; and as to the power to make regulations under the Planning (Hazardous Substances) Act 1990 see PARA 1213 post.

6 Town and Country Planning Act 1990 s 333(2A) (added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 14).

7 Town and Country Planning Act 1990 s 333(2).

8 Ie except regulations made under *ibid* s 88 (as amended) (see PARA 1502 post) and regulations which by virtue of the Town and Country Planning Act 1990 are of no effect unless approved by a resolution of each House of Parliament.

9 *Ibid* s 333(3). As to Parliamentary procedure with regard to regulations made by the Assembly see PARA 20 post.

10 For these purposes, except in so far as the context otherwise requires, 'development order' has the meaning given in *ibid* s 59 (see PARA 252 post): s 336(1).

11 Ie orders under *ibid* s 2 (as amended) (see PARA 30 post), s 28 (repealed with savings) (see PARA 155 post), s 55(2)(f) (see PARA 223 post at head (6) in the text), s 61A(5) (as prospectively added) (see PARA 419 post), s 87 (as amended) (see PARA 427 post), s 149(3)(a) (see PARA 987 post) and s 319 (as substituted) (see PARA 2 ante).

12 *Ibid* s 333(4) (amended by the Planning and Compulsory Purchase Act 2004 s 40(3)(a), partly as from a day to be appointed under s 121; at the date at which this title states the law, s 40 was in force for limited purposes only: see PARA 4 post).

13 Ie an order under the Town and Country Planning Act 1990 s 2 (as amended): see PARA 30 post.

14 Ie in accordance with *ibid* s 2(2) (as amended): see PARA 30 post.

15 Ie an order under: (1) *ibid* s 28 (repealed with savings) (see PARA 155 post); (2) s 61A(5) (as prospectively added) (see PARA 419 post), unless it is made by the Assembly; (3) s 87 (as amended) (see PARA 427 post) or s 149(3)(a) (see PARA 987 post).

16 *Ibid* s 333(5) (amended by the Planning and Compulsory Purchase Act 2004 s 40(3)(b), partly as from a day to be appointed: see note 12 *supra*)

17 For the meaning of 'enactment' para 2 note 11 ante.

18 Ie other than any of the enactments specified in the Town and Country Planning Act 1990 s 333(6), Sch 17 (as amended). The enactments so specified are (1) the following provisions of the Highways Act 1980, ie s 73(1)-(3), (6), (9)-(11) (as amended); s 74 (as amended) (except s 74(6)); s 241 (as amended); s 261(5) and, so far as it relates to it, s 261(6); s 307(5), (7); and Sch 9 (as amended); (2) the following further provisions of that Act, ie s 247(6) so far as applicable for the purposes of s 241 (as amended); s 307(1)-(3) (as amended) so far as applicable for the purposes of s 73 (as amended); s 307(1), (3), (6) (as amended) so far as applicable for the purposes of s 74 (as amended); s 311 so far as applicable for the purposes of s 74 (as amended); (3) s 279 so far as the purposes in question are the purposes of the exercise by a county council, county borough council or metropolitan district council in relation to roads maintained by that council of its powers under s 73(1)-(3), (6), (9)-(11) (as amended) or s 241 (as amended); (4) any enactment making such provision as might by virtue of any Act of Parliament have been made in relation to the area to which the order applies by means of a byelaw, order or regulation not requiring confirmation by Parliament; (5) any enactment which has been previously excluded or modified by a development order, and any enactment having substantially the same effect as any such enactment: Town and Country Planning Act 1990 Sch 17 (paras 2-6) (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt III; the Planning and Compensation Act 1991 s 84(6), Sch 19 Pt V; and the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(19)). As to county, county borough and

metropolitan district councils see PARA 28 post; and as to the provisions of the Highways Act 1980 mentioned in heads (1)-(3) supra see HIGHWAYS, STREETS AND BRIDGES.

19 Ie without prejudice to the Town and Country Planning Act 1990 s 333(5) (as amended): see the text and notes 13-16 supra.

20 Ibid s 333(6).

21 Ie any power conferred by any of the provisions of the Town and Country Planning Act 1990.

22 Ie without prejudice to the Interpretation Act 1978 s 14 (implied power to amend).

23 Town and Country Planning Act 1990 s 333(7).

UPDATE

2-4 The planning Acts ... The Planning and Compulsory Purchase Act 2004

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

3 Regulations and orders under the Town and Country Planning Act 1990

NOTE 3--Definition of 'local authority' amended by addition of the London Fire and Emergency Planning Authority: Planning Act 2008 s 201.

NOTE 12--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/4. The Planning and Compulsory Purchase Act 2004.

4. The Planning and Compulsory Purchase Act 2004.

The Planning and Compulsory Purchase Act 2004 received royal assent on 13 May 2004. With specified exceptions¹, the provisions of the Act come into force on such day as the Secretary of State² may by order appoint³; but he must not make an order relating to certain specified provisions⁴ unless he first consults the National Assembly for Wales⁵. Part 6 of the Act⁶ comes into force in accordance with provision made by the Assembly by order⁷. Several commencement orders were made in 2004 and 2005 but the Act was still not fully in force at the date at which this title states the law⁸. The 2004 Act does not replace, but rather amends and supplements, the planning Acts⁹.

The provisions of the 2004 Act introduce powers which allow for the reform and speeding up of the plans system¹⁰ and an increase in the predictability of planning decisions¹¹, the speeding up of the handling of major infrastructure projects¹² and the need for simplified planning zones to be identified in the strategic plan for a region or in relation to Wales¹³. The Act also provides for a number of reforms to make the handling of planning applications by both central government and local authorities quicker and more efficient¹⁴. There are also provisions to make the planning Acts bind the Crown, fulfilling a long-standing policy commitment to end the Crown's

immunity from the planning system¹⁵. The changes made by the Act to the compulsory purchase and compensation regime¹⁶ are largely dealt with elsewhere in this work¹⁷.

The 2004 Act lays emphasis on the need for sustainable development, as discussed in more detail below¹⁸.

1 The Planning and Compulsory Purchase Act 2004 s 115 (grants for research and education: see PARA 49 post); s 122 (regulations and orders: see PARA 5 post); s 123 (finance: see PARA 51 post); s 124 (extent: see note 3 infra); s 125 (short title); and the provisions specified in s 121(4), (5), (6). Schedule 7 para 10(7) (urban development corporations; delegation of functions: see PARA 1465 post) came into force on 13 July 2004 (subject to transitional provisions set out in Sch 7 para 10(6)): s 121(6). Certain provisions relating to Scotland come into force on such day as the Scottish Ministers may by order appoint: see s 121(4). As to provisions relating to Wales see the text and notes 6-7 infra.

2 As to the Secretary of State see PARA 19 post.

3 Planning and Compulsory Purchase Act 2004 s 121(1). Except as otherwise provided in s 124, the Planning and Compulsory Purchase Act 2004 extends to England and Wales only: s 124(1). As to application to Scotland see s 124(2), (3). The extent of any amendment, repeal or revocation made by that Act is the same as that of the enactment amended, repealed or revoked: s 124(4).

The Planning and Compulsory Purchase Act 2004 applies to the Isles of Scilly subject to such exceptions, adaptations and modifications as the Secretary of State may by order direct: s 116(1). An order may in particular provide for (1) the Council of the Isles of Scilly to enter into arrangements in pursuance of s 4 (see PARA 73 post); (2) the exercise by the Council of the Isles of Scilly of any function exercisable by a local planning authority under Pt 2 (ss 13-37) (see PARA 89 et seq post); but an order must not be made under this provision unless the Secretary of State has consulted the Council of the Isles of Scilly: s 116(2), (3). As to the exercise of this power see the Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

4 The specified provisions are: (1) the Planning and Compulsory Purchase Act 2004 Pt 3 (ss 38, 39) (see PARAS 6, 91 post); (2) Pt 4 (ss 40-55) (development control: see PARA 213 et seq post), except s 44 (major infrastructure projects: see PARA 481 post) and s 55 (time in which the Secretary of State is to take decisions: see PARA 527 post); (3) Pt 5 (ss 56-59) (correction of errors: see PARA 56 post); (4) in Pt 7 (ss 79-98), Ch 1 (ss 79-89) (Crown application of planning Acts in England and Wales: see PARAS 13 et seq, 456, 555, 652, 723 et seq, 855, 877, 1123 post); (5) Pt 8 (ss 99-110) (compulsory purchase: see PARA 934 post; and COMPULSORY ACQUISITION OF LAND); (6) s 113 (see PARA 42 post), s 114 (see PARA 108 post), s 117 (interpretation: see PARA 2 ante; and generally in this title), s 118 (amendments: see PARA 20 post; and generally in this title); and s 120 (repeals); (7) Schs 3, 4 (Crown application), Sch 6 (amendments of the planning Acts), Sch 7 (amendments of other enactments) and Sch 9 (repeals): s 121(2).

5 Ibid s 121(2). As to the Assembly see PARA 20 post; and for an example of an order made under these powers after such consultation see the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847. As to the Secretary of State's duty to consult the Scottish Ministers in certain cases see the Planning and Compulsory Purchase Act 2004 s 121(3).

6 Ie ibid Pt 6 (ss 60-78): see PARAS 87-89, 133 et seq post.

7 Ibid s 121(5).

8 At the date at which this title states the law, the following commencement orders had been made: the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097; the Planning and Compulsory Purchase Act 2004 (Commencement No 1 and Transitional Provision) (Wales) Order 2004, SI 2004/1814; the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202 (amended by SI 2005/2085); the Planning and Compulsory Purchase Act 2004 (Commencement No 2) (Wales) Order 2004, SI 2004/1813; the Planning and Compulsory Purchase Act 2004 (Commencement No 3) Order 2004, SI 2004/2593; the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Savings) Order 2005, SI 2005/204; the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229; the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005, SI 2005/2722; the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081; and the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847.

The Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, provides that so much of the following provisions of the Planning and Compulsory Purchase Act 2004 as confers on the Secretary of State, the Lord Chancellor, the National Assembly for Wales or the Scottish Ministers a power or

imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty, was to come into force on 6 August 2004 (ie ss 1-3; s 5; s 8; ss 10-15; ss 16-17; s 19-22; ss 24-26; ss 28-29; s 31; ss 35-36; ss 40-42; s 44; ss 46-50; ss 52-54; s 57; s 59; ss 79-83; s 88; s 91; ss 100-101; s 116; s 117(1)-(7); s 118 except s 118(2) in so far as it relates to the Town and Country Planning (Scotland) Act 1997; the Planning and Compulsory Purchase Act 2004 s 119(1); s 120 except in so far as it relates to the Town and Country Planning (Scotland) Act 1997, to the Planning (Hazardous Substances) (Scotland) Act 1997 or to the Planning (Listed Buildings and Conservation Areas) (Scotland) Act 1997; the Planning and Compulsory Purchase Act 2004 Sch 1; Sch 2 para 3; Sch 3 para 6-8, 10-12; Sch 6 paras 1, 3, 14, 16, 19, 20, 23, 24, 26, 27; Sch 7 para 19 and Sch 8 paras 4, 9, 17, 18: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2. Some of the provisions listed in art 2 have now been brought fully into force; an indication of their current status is given in the notes to the appropriate paragraph of this title. As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 2004 Act see the Constitutional Reform Act 2005 s 19.

The Planning and Compulsory Purchase Act 2004 (Commencement No 1 and Transitional Provision) (Wales) Order 2004, SI 2004/1814, brought the Planning and Compulsory Purchase Act 2004 s 60 (Wales Spatial Plan: see PARAS 87-88 post) into force on 14 July 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1 and Transitional Provision) (Wales) Order 2004, SI 2004/1814, art 2. For transitional provisions see art 3; and PARA 87 note 8 post.

The Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, brought the following provisions of the Planning and Compulsory Purchase Act 2004 into force on 28 September 2004 in relation to both England and Wales, ie (1) Pt 5 (ss 56-59) so far as not previously in force; (2) s 117(1)-(7), so far as not previously in force; (3) s 118, except so much of s 118(2) as relates to the Town and Country Planning (Scotland) Act 1997, and so far as not previously in force; (4) the Planning and Compulsory Purchase Act 2004 s 120, except so far as it relates to the Town and Country Planning (Scotland) Act 1997, to the Planning (Listed Building and Conservation Areas) (Scotland) Act 1997 and to the Planning (Hazardous Substances) (Scotland) Act 1997, and so far as not previously in force; (4) the Planning and Compulsory Purchase Act 2004 Sch 6 paras 20, 23, 24 and 26, so far as not previously in force; and (6) Sch 9, so far as it gives effect to the repeals specified in the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, Sch 1 Pt 2: see art 3. The specified repeals relate to the wording of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(3) (see PARA 1111 post); the repeal of s 67(2)-(7); and the wording of s 91(2) (removal of the definition of 'development plan').

Other provisions were brought into force by that order on 28 September 2004, in relation to England only, ie (a) the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12) (see PARA 72 et seq post), so far as not previously in force; (b) Pt 2 (ss 13-37) (see PARA 89 et seq post), so far as not previously in force; (c) s 38 (see PARA 91 post); (d) s 39 (see PARA 6 post); (e) s 113 (see PARA 42 post); (f) s 114 so far as it relates to Pt 2 (see PARA 108 post); (g) s 119(1) (see PARA 125 et seq post), so far as not previously in force; (h) in Sch 6 (amendments of the planning Acts), Sch 6 para 1, so far as not previously in force, Sch 6 paras 8-13, 15, 16(1), (2), 17, 18, Sch 6 para 19, so far as not previously in force, and Sch 6 paras 21, 22 and 25; (i) in Sch 7 (amendments of other enactments), Sch 7 paras 2, 3, 6, 8, 11(1)-(3), 16, 17, Sch 7 para 19(2), so far as not previously in force and Sch 7 paras 22, 23; (j) Sch 8 (see PARA 125 et seq post), so far as not previously in force; and (k) Sch 9, so far as it gives effect to the repeals specified in the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, Sch 1 Pt 1: see art 2. The specified repeals relate to the wording of the Greater London Council (General Powers) Act 1973 s 24(4); the repeal of the Town and Country Planning Act 1990 Pt II (ss 10-54A); the wording of s 284(1)(a) (see PARA 43 post); the wording of s 287 (see PARA 46 post); the repeal of s 303(6); the partial repeal of s 303A (as added) (see PARA 658 post); the repeal of Sch 1 para 2; the wording of Sch 1 para 3(7) (see PARA 39 post); the repeal of Sch 2 Pts I, II and III; and in Sch 13, the repeal of paras 1-4; the repeal of the Planning and Compensation Act 1991 Sch 4 Pt III; the wording of the Local Government Act 1992 s 14(5); the repeal of the Environment Act 1995 s 67(2)-(4); and the wording of the Countryside and Rights of Way Act 2000 s 86(4).

The provisions set out in the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, Sch 2 continue, however, to have effect on and after 28 September 2004 for the purposes of the Planning and Compulsory Purchase Act 2004 Sch 8 (see PARA 125 et seq post) and any regulations made pursuant to Sch 8 paras 17, 18 (see PARA 125 post) as if those provisions had not been amended or repealed by that 2004 Act: see the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4 (revoked in so far as it related to the Isles of Scilly by SI 2005/2085); and PARA 148 post.

The Planning and Compulsory Purchase Act 2004 (Commencement No 2) (Wales) Order 2004, SI 2004/1813, brought the following provisions into force on 1 August 2004, ie the Planning and Compulsory Purchase Act 2004 s 62(4), (5)(g) (form and content of plans: see PARA 135 post); s 63(3)(a), (7) (power to prescribe persons to be included in a community involvement scheme and preparation requirements for plans: see PARA 136 post); s 75 (guidance: see PARA 133 post); s 76(2), (3), but only for the purpose of empowering the Assembly to make regulations prescribing the matters referred to in those subsections (annual monitoring reports: see PARA 134

post); s 77 (regulation-making powers: see PARA 133 post); and s 78 (interpretation): see the Planning and Compulsory Purchase Act 2004 (Commencement No 2) (Wales) Order 2004, SI 2004/1813, art 2.

The Planning and Compulsory Purchase Act 2004 (Commencement No 3) Order 2004, SI 2004/2593, brought into force in both England and Wales on 31 October 2004 the Planning and Compulsory Purchase Act 2004 Pt 8 (ss 99-110) (compulsory purchase: see PARA 934 post; and COMPULSORY ACQUISITION OF LAND) and s 111(2) (application to the Crown of an amendment of an enactment by or by virtue of Pt 8) together with certain consequential amendments in Schs 6 and 7 and repeals in Sch 9: see the Planning and Compulsory Purchase Act 2004 (Commencement No 3) Order 2004, SI 2004/2593, art 2.

The Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Savings) Order 2005, SI 2005/204, brought into force in relation to England only, and to the extent that they were not previously in force: (i) the Planning and Compulsory Purchase Act 2004 s 52 (temporary stop notices: see PARA 573 post) and s 53 (fees and charges: see PARA 458 post) on 7 March 2005; and (ii) s 55, Sch 2 (time in which Secretary of State is to take decisions: see PARA 527 et seq post) on 1 April 2005: see the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Savings) Order 2005, SI 2005/204, arts 2, 3. For transitional provisions see art 4; and PARA 528 note 3 post.

The Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, brought into force the Planning and Compulsory Purchase Act 2004 s 62 (local development plan: see PARA 135 post) and s 63 (preparation requirements: see PARA 136 post) and also brought into force s 72 (joint local development plans: see PARA 137 post) and s 73 (exclusion of certain representations: see PARA 138 note 13 post) on 30 April 2005: see the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 2. The transitional provisions made by art 4 were revoked with effect from 15 October 2005: see PARA 147 post.

The Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, brought into force in relation to England only on 24 August 2005: (A) the Planning and Compulsory Purchase Act 2004 s 43 (power to decline to determine applications: see PARAS 516-517, 1125-1126, 1177 post) except (aa) in so far as the substitution made by s 43(1) relates to the Town and Country Planning Act 1990 s 70B (see PARA 517 post); (bb) the Planning and Compulsory Purchase Act 2004 s 43(2) (see PARA 598 post); (cc) in so far as the substitution made by s 43(3) relates to the Planning (Listed Buildings and Conservation Areas) Act 1990 81B (see PARA 1126 post); (dd) in so far as the substitution made by the Planning and Compulsory Purchase Act 2004 s 43(4)(b) (see PARA 1186 post) relates to the provision mentioned in head (cc) supra; (B) s 44 (major infrastructure projects: see PARAS 481-482 post); (C) s 51 (duration of permission and consent: see PARAS 519, 524, 537, 1129, 1131 post); and (D) to the extent to which they were not previously in force, s 54 (duty to respond to consultation: see PARA 472 post) and Sch 6 para 16(4) (consultation requirements: see PARA 477 post): see the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 2. For transitional provisions and savings see art 4. That order also brought into force on 24 August 2005 the Planning and Compulsory Purchase Act 2004 s 116 (Isles of Scilly: see note 3 supra), to the extent to which it was not previously in force: see the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 3.

The Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005, SI 2005/2722, brought into force in relation to Wales on 5 October 2005 for the purpose of making regulations, and on 15 October in all other respects, the Planning and Compulsory Purchase Act 2004 s 61 (see PARA 89 post), ss 64-71 (see PARA 138 et seq post), s 74 (see PARA 133 post), and also s 76 (see PARA 134 post) so far as not already in force: see the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005, SI 2005/2722, art 2. That order also makes consequential amendments to the Town and Country Planning Act 1990 Sch 13 (blighted land: see PARA 981 et seq post), revokes the transitional provisions previously made by the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 4, and makes new transitional provisions and savings: see the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005, SI 2005/2722, arts 3-7, Schedule.

The Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847 (made by the Secretary of State in exercise of the powers set out in the text and notes 4-5 supra and after consultation with the Assembly) brought into force in relation to Wales on 15 October 2005 the Planning and Compulsory Purchase Act 2004 s 38 (see PARA 91 post), s 39 (see PARA 6 post), s 113 (see PARA 42 post), s 114 (see PARA 138 post), Sch 6 paras 1, 8-13, 15, 17-18, 19 (so far as not otherwise in force), 21-22, 25 (amendments of the planning Acts), Sch 7 paras 2, 3, 11(1)-(3), 16-17, 19(2) (so far as not otherwise in force) and 23 (amendments of other enactments), and specified repeals made by Sch 9: see the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 2, Sch 1. For transitional provisions and savings see art 3, Sch 2.

9 As to the planning Acts see PARA 2 ante. The Planning and Compulsory Purchase Act 2004 Pts 1, 2, 6 (ss 1-37, 60-78) does, however, replace (subject to transitional provisions) the previous system of development plans under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings). As to regional strategies under the Planning and Compulsory Purchase Act 2004 and the Wales Spatial Plan see PARA

72 et seq post; as to local development schemes and plans see PARA 91 et seq post; and as to the previous system of development plans see PARA 148 et seq post.

See further the Explanatory Notes to the Planning and Compulsory Purchase Act 2004 (Crown Copyright) PARA 4. The stated aim of the Act is to give effect to the policy on the reform of the planning system, the principal features of which were set out in the policy statement *Sustainable Communities--Delivering through Planning* which was published in July 2002. That paper took forward proposals that were outlined in the Green Paper *Planning--Delivering a Fundamental Change* published in December 2001. The policy on reform of the compulsory purchase system was set out in the Green Paper daughter document *Compulsory Purchase and Compensation--delivering a fundamental change* published in December 2001 and confirmed in the policy statement *Compulsory Purchase Powers, Procedures and Compensation--the way forward* published in July 2002. In relation to Wales, the Assembly Government published its own consultation paper: *Planning Delivering for Wales* in January 2002. The 2004 Act gives effect to the Assembly government's policy, formulated in the light of responses to the consultation document, as announced by the Assembly Minister for Environment in November 2002: see the Explanatory Notes to the Planning and Compulsory Purchase Act 2004 (Crown Copyright) PARAS 5, 6.

10 See the Planning and Compulsory Purchase Act 2004 Pts 1, 2 (ss 1-37) (regional functions and local development in England), s 38 (development plans), Pt 6 (ss 60-78) (plans in Wales); and PARAS 72 et seq, 89 et seq post.

11 Eg as to the power decline to determine subsequent applications similar to one already refused within a specified period, or overlapping applications, see *ibid* s 43; and PARAS 516-517, 1125-1126 post; and as to the power to grant local development rights by means of a local development orders see s 40; and PARA 419 post.

12 See *ibid* s 44; and PARA 481 post.

13 See *ibid* s 45; and PARA 428 et seq post.

14 See eg s 50; and PARA 598 post; s 55, Sch 2; and PARAS 527-531 post. As to changes to the system of planning obligations see ss 46-48; and PARA 241 et seq post.

15 See *ibid* Pt 7 Ch 1 (ss 79-89); and PARAS 13 et seq, 456, 555, 652, 723 et seq, 855, 877, 1123 post.

16 *le by* *ibid* Pt 8 (ss 99-110).

17 As to *ibid* s 99 see PARA 934 post; for the remaining provisions of Pt 9 see COMPULSORY ACQUISITION OF LAND.

18 See PARA 6 post.

UPDATE

2-4 The planning Acts ... The Planning and Compulsory Purchase Act 2004

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

4 The Planning and Compulsory Purchase Act 2004

NOTE 8--SI 2005/2722 amended: SI 2006/842, SI 2006/1700, SI 2006/3119, SI 2007/546, SI 2007/1023, SI 2007/2371, SI 2007/2447, SI 2007/2449, SI 2008/10, SI 2008/2162.

2004 Act ss 40, 41, 49, Sch 1, all so far as not previously in force, and s 42(1), (5)-(9) and a repeal in Sch 9, now in force in relation to England: SI 2006/1061.

2004 Act s 43(1)-(4) (so far as not already in force) in force 6 April 2009 in relation to England: SI 2009/384.

2004 Act s 53, so far as not previously in force, now in force in relation to Wales: SI 2006/931.

2004 Act ss 79-89, Sch 3, all so far as not previously in force, and ss 111(1), 112, Sch 4, Sch 6 para 2 and repeals in Sch 9, now in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/5. Regulations and orders under the Planning and Compulsory Purchase Act 2004.

5. Regulations and orders under the Planning and Compulsory Purchase Act 2004.

A power to prescribe under the Planning and Compulsory Purchase Act 2004 is, unless express provision is made to the contrary, a power to prescribe by regulations exercisable by the Secretary of State¹ in relation to England or by the National Assembly for Wales² in relation to Wales³.

Subordinate legislation⁴ under that Act:

- 9 (1) may make different provision for different purposes;
- 10 (2) may include such supplementary, incidental, consequential, saving or transitional provisions, including provision amending, repealing or revoking enactments⁵, as the person making the subordinate legislation thinks necessary or expedient⁶.

A power to make subordinate legislation must be exercised by statutory instrument⁷. Unless it contains:

- 11 (a) certain specified regulations or orders⁸;
- 12 (b) provision amending or repealing an enactment contained in an Act⁹;
- 13 (c) provision made by the National Assembly for Wales¹⁰,

such a statutory instrument is subject to annulment in pursuance of a resolution of either House of Parliament¹¹.

1 As to the Secretary of State see PARA 19 post.

2 As to the Assembly see PARA 20 ante.

3 Planning and Compulsory Purchase Act 2004 s 122(1).

4 References in *ibid* s 122 to subordinate legislation are to any order or regulations under the Planning and Compulsory Purchase Act 2004: s 122(2).

5 For these purposes, 'enactment' includes an enactment comprised in, or in an instrument made under, an Act of the Scottish Parliament; and in *ibid* s 122(8), (9) (see note 8 *infra*), 'Act' includes such an Act and 'enactment' includes an enactment comprised in such an Act: s 122(10).

6 *Ibid* s 122(3).

7 *Ibid* s 122(4).

8 I.e. unless it contains (1) regulations made by the Secretary of State under *ibid* s 46 (planning contribution: see PARA 242 post); (2) an order under s 98 (subordinate legislation; Scotland), s 116(1) (Isles of Scilly: see PARA 4 note 3 ante) or s 119(2) (transitional provision relating to Scotland); (3) an order under s 110(2) (corresponding amendments of other enactments in relation to compulsory acquisition of land: see COMPULSORY ACQUISITION OF LAND); (4) an order under s 121(1) (commencement) to which s 122(8) applies; (5) an order under

s 121(4) (commencement: orders made by Scottish Ministers): see s 122(5)(a)-(e). Section 122(8) applies to an order which does not contain provision amending or repealing an enactment contained in an Act: s 122(8).

A statutory instrument mentioned in s 122(5)(a), (c) (see heads (1), (3) supra) must not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament: s 122(6). A statutory instrument containing an order under s 98 or s 119(2) is subject to annulment in pursuance of a resolution of the Scottish Parliament: s 122(7). A statutory instrument containing an order under s 121(4), if it includes provision amending or repealing an enactment contained in an Act, must not be made unless a draft of the instrument has been laid before and approved by resolution of the Scottish Parliament: s 122(9).

9 See *ibid* s 122(5)(f). A statutory instrument mentioned in ss 122(5)(f) must not be made unless a draft of the instrument has been laid before and approved by resolution of each House of Parliament: s 122(6).

10 See *ibid* s 122(5)(g). As to subordinate legislation made by the Assembly see further PARA 20 post.

11 *Ibid* s 122(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/6. Statutory requirements relating to sustainable development.

6. Statutory requirements relating to sustainable development.

Any person who, or body which, exercises any function:

- 14 (1) under Part 1 of the Planning and Compulsory Purchase Act 2004¹ in relation to a regional spatial strategy²;
- 15 (2) under Part 2 of that Act³ in relation to local development documents⁴;
- 16 (3) under Part 6 of that Act⁵ in relation to the Wales Spatial Plan⁶ or a local development plan⁷,

must exercise the function with the objective of contributing to the achievement of sustainable development⁸. For these purposes, the person or body must have regard to national policies and advice contained in guidance issued by:

- 17 (a) the Secretary of State⁹ for the purposes of heads (1) and (2) above¹⁰;
- 18 (b) the National Assembly for Wales¹¹ for the purposes of head (3) above¹².

'Sustainable development' is frequently defined as 'development that meets the needs of the present without comprising the ability of future generations to meet their own needs'¹³.

Under the Government of Wales Act 1998, the Assembly has a general duty to make a scheme setting out how it proposes, in the exercise of its functions¹⁴, to promote sustainable development¹⁵. The Assembly must keep the scheme under review and in the year following each ordinary election¹⁶ must consider whether it should be remade or revised¹⁷. After each financial year¹⁸ the Assembly must publish a report of how its proposals as set out in the scheme were implemented in that financial year¹⁹; and in the year following each ordinary election²⁰ the Assembly must publish a report containing an assessment of how effective its proposals, as set out in the scheme and implemented, have been in promoting sustainable development²¹.

1 *Ie* under the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12): see PARAS 24-25, 72 et seq post.

2 For the meaning of 'regional spatial strategy' see PARA 72 post.

- 3 le under the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37): see PARA 89 et seq post.
- 4 For the meaning of 'local development documents' see PARA 92 note 7 post.
- 5 le under the Planning and Compulsory Purchase Act 2004 Pt 6 (ss 60-78): see PARAS 87-88, 133 et seq post.
- 6 As to the Wales Spatial plan see PARAS 87-88 post.
- 7 For the meaning of 'local development plan' see PARAS 91, 135 post.
- 8 Planning and Compulsory Purchase Act 2004 s 39(1), (2).
- 9 As to the Secretary of State see PARA 19 post.
- 10 See in particular *PPS1--Delivering Sustainable Development*. As to the government's objectives for the planning system see PARAS 1-12; as to the key principles for national policies see PARA 13; as to planning for sustainable development see PARAS 14-27; and as to delivering sustainable development see PARAS 28-44. The policies set out in PPS1 must also be taken into account by the Mayor of London in relation to the spatial development strategy in London. See also *PPS7--Sustainable Development in Rural Areas; Sustainable Communities--People, Places and Prosperity* (Cm 6425, 2005). Further information about policies for sustainable communities is available on the Office of the Deputy Prime Minister's website, accessible at the date at which this title states the law at www.odpm.gov.uk.
- 11 As to the Assembly see PARA 20 post.
- 12 Planning and Compulsory Purchase Act 2004 s 39(3).
- 13 See *PPS1--Delivering Sustainable Development* (ODPM, 2005) PARA 4, which cites the definition in the text, drawn up by the World Commission on Environment and Development (1987).
- 14 As to the planning functions of the Assembly see PARA 20 post.
- 15 See the Government of Wales Act 1998 s 121(1). The Assembly may not delegate this function: s 121(3).
- 16 le after the first such election. As to ordinary elections see *ibid* ss 2-4.
- 17 *Ibid* s 121(2). The Assembly may not delegate the function of remaking or revising the scheme: see s 121(3). As to publication of the scheme and of any revision see s 121(4); and as to consultation see s 121(5).
- 18 'Financial year' means the 12 months ending with 31 March: *ibid* s 155(3).
- 19 *Ibid* s 121(6).
- 20 See note 16 *supra*.
- 21 Government of Wales Act 1998 s 121(7).

UPDATE

6 Statutory requirements relating to sustainable development

TEXT AND NOTE 8--Planning and Compulsory Purchase Act 2004 s 39(1) amended: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

NOTE 8--For the purposes of the 2004 Act s 39(2), the person or body must (in particular) have regard to the desirability of achieving good design: Planning and Compulsory Purchase Act 2004 s 39(2A) (added by the Planning Act 2008 s 183 (in force in relation to England)).

PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/7. The Human Rights Act 1998.

7. The Human Rights Act 1998.

Under the Human Rights Act 1998, it is unlawful for a public authority¹ to act² in a way which is incompatible with a Convention right³, unless:

- 19 (1) as the result of one or more provisions of primary legislation, the authority could not have acted differently; or
- 20 (2) in the case of one or more provisions of, or made under, primary legislation which cannot be read or given effect in a way which is compatible with the Convention rights, the authority was acting so as to give effect to or enforce those provisions⁴.

Neither House of Parliament is a public authority for these purposes⁵. However, the National Assembly for Wales⁶ has no power to make, confirm or approve any subordinate legislation, or to do any other act, so far as the subordinate legislation or act is incompatible with any of the Convention rights⁷; but this does not:

- 21 (a) apply to an act which is not unlawful⁸ by virtue of head (1) or head (2) above⁹; and
- 22 (b) enable a court or tribunal to award in respect of an act any damages which it could not award on finding the act unlawful¹⁰ under the Human Rights Act 1998¹¹.

So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights¹².

The following Convention rights are particularly relevant in the context of town and country planning:

- 23 (i) in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law¹³;
- 24 (ii) everyone charged with a criminal offence must be presumed innocent until proved guilty according to law¹⁴ and has certain minimum rights¹⁵;
- 25 (iii) everyone has the right to respect for his private and family life, his home and his correspondence¹⁶; there must be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society for, inter alia, the protection of the rights and freedoms of others¹⁷;
- 26 (iv) every natural or legal person is entitled to the peaceful enjoyment of his possessions and no one must be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law¹⁸.

The Convention rights set out in head (i) above have been held not to be breached by the procedures whereby the Secretary of State or the Assembly calls in applications and appeals, or declines to call them in, since any procedural unfairness can be challenged by means of judicial review¹⁹. The lack of an oral hearing at a preliminary stage has been held to be compatible with those rights²⁰ as has the six-week time limit²¹ for questioning the validity of certain orders, decisions and directions²². Further, the mere fact that a claimant does not have

sufficient funds to obtain legal representation at a public inquiry does not result in unfairness sufficient to breach those rights²³.

The Convention rights set out in heads (iii) and (iv) above, together in some cases with the rights set out in head (ii) above, have been considered in many cases involving the enforcement of planning controls against gypsies and other travelling people²⁴. While in the majority of such cases the courts have decided that Convention rights are engaged, the interference with those individual rights in the interests of the community as a whole is not necessarily disproportionate²⁵. It may, however, be otherwise if the enforcement action taken involves possession proceedings brought by the local council in respect of the land on which caravans are stationed²⁶.

The rights set out in heads (iii) and (iv) above have also been considered in other contexts involving, for example, planning permission²⁷; the making of a tree preservation order²⁸; refusal of a certificate of lawful use or development²⁹; and enforcement involving the demolition of a building³⁰.

1 For these purposes, 'public authority' includes (1) a court or tribunal; and (2) any person certain of whose functions are functions of a public nature, but does not include either House of Parliament or a person exercising functions in connection with proceedings in Parliament: Human Rights Act 1998 s 6(3). In s 6(3), however, 'Parliament' does not include the House of Lords in its judicial capacity: s 6(4). In relation to a particular act, a person is not a public authority by virtue only of s 6(3)(b) (see head (2) supra) if the nature of the act is private: s 6(5).

2 For these purposes, 'an act' includes a failure to act but does not include a failure to (1) introduce in, or lay before, Parliament a proposal for legislation; or (2) make any primary legislation or remedial order: *ibid* s 6(6).

3 See *ibid* s 6(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to Convention rights see s 1(3), Sch 1. See also COURTS vol 10 (Reissue) PARA 316.

4 *Ibid* s 6(2).

5 See note 1 supra.

6 As to the Assembly see PARA 20 post.

7 Government of Wales Act 1998 s 107(1), (5). Section 107(1) does not, however, enable a person (1) to bring any proceedings in a court or tribunal; or (2) to rely on any of the Convention rights in any such proceedings, in respect of an act unless he would be a victim for the purposes of the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) (Cmd 8969)) art 34 if proceedings were brought in the European Court of Human Rights in respect of that act: Government of Wales Act 1998 s 107(2). Section 107(2) does not apply to the Attorney General, the Assembly, the Advocate General for Scotland, the Advocate General for Northern Ireland or the Attorney General for Northern Ireland: s 107(3) (amended by the Justice (Northern Ireland) Act 2002 s 28(2), Sch 7 para 6, as from day to be appointed under s 87(1)).

8 *Ie* under the Human Rights Act 1998 s 6(1): see the text and notes 1-3 supra.

9 Government of Wales Act 1998 s 107(4)(a).

10 See note 8 supra.

11 Government of Wales Act 1998 s 107(4)(b).

12 See the Human Rights Act 1998 s 3; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

13 *Ibid* Sch 1 Pt I art 6(1) (incorporating into domestic law the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(1)). For an example of a case involving planning permission where there was held to have been inordinate delay see Application 54039/00 *Morscher v Austria* [2004] ECHR 54039/00, ECt HR.

14 Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(2), now incorporated into domestic law by the Human Rights Act 1998 Sch 1 Pt I art 6(2).

15 See *ibid* Sch 1 Pt I art 6(3) (incorporating into domestic law the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6(3)).

16 Human Rights Act 1998 Sch 1 Pt I art 8(1) (incorporating into domestic law the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8(1)). For these purposes, a home is not limited to a property that is lawfully occupied or a home that is lawfully established: *Harrow London Borough Council v Qazi* [2003] UKHL 43, [2004] 1 AC 983, [2003] 4 All ER 461.

17 Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 8(2), now incorporated into domestic law by the Human Rights Act 1998 Sch 1 Pt I art 8(2).

18 Convention for the Protection of Human Rights and Fundamental Freedoms (1950), Protocol I art 1, now incorporated into domestic law by the Human Rights Act 1998 Sch 1 Pt II art 1. These provisions do not, however, in any way impair the right of a state to enforce such laws as it deems necessary to control the use of property in accordance with the general interest: see Sch 1 Pt II art 1.

19 See *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929; *R (on the application of Kathro) v Rhondda Cynon Taff County Borough Council* [2001] EWHC Admin 527, [2001] 4 PLR 83, [2001] All ER (D) 130 (Jul) (even though, in the latter case, the Assembly's failure to call in the application meant that the local authority decided its own application); and see eg *R (on the application of Friends Provident Life Office) v Secretary of State for Transport, Local Government and the Regions* [2001] EWHC Admin 820, [2002] 1 WLR 1450, [2001] All ER (D) 274 (Oct). Those Convention rights do not require full review of the facts in the specialised area of town planning law: Application 27238/95 *Chapman v United Kingdom* (2001) 10 BHRC 48, ECt HR; Application 25154/94 *Smith (Jane) v United Kingdom* (2001) 33 EHRR 30, [2001] ECHR 25154/94, ECt HR.

20 *R (on the application of Adlard) v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 735, [2002] 1 WLR 2515, [2002] All ER (D) 267 (May).

21 Is the six-week time limit under the Town and Country Planning Act 1990 s 288(3): see PARA 47 post.

22 See *Matthew v Secretary of State for Transport, Local Government and the Regions* [2001] EWHC Admin 815, [2002] 2 P & CR 558, [2001] All ER (D) 147 (Oct).

23 See *R (on the application of Hadfield) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1266 (Admin), [2002] All ER (D) 47 (Jun).

24 As to the licensing and control of caravan sites and the removal of unauthorised campers see further PARA 1032 et seq post; as to the circumstances in which the use of land as a caravan site is permitted development see PARAS 300-301 post; and as to the extent to which temporary stop notices may be used to restrict the stationing of caravans see PARA 574 post. As to the meaning of 'gypsy' see PARA 1053 note 9 post.

25 See eg *Chichester District Council v First Secretary of State* [2004] EWCA Civ 1248, [2005] 1 WLR 279, [2005] 1 FCR 231. See also *Clarke v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 819, [2002] All ER (D) 295 (May), CA (refusal of planning permission to Romany gypsies wishing to site caravan on land not normally regarded as appropriate for such use; whether appropriate balancing exercise had been carried out); *R v Clarke* [2002] EWCA Crim 753, [2002] All ER (D) 36 (Mar) (whether criminal conviction of gypsy who had breached enforcement notice and failed to remove caravan amounted to a breach of his Convention rights); *Brazil v Secretary of State for Transport, Local Government and the Regions* [2001] EWHC Admin 991, [2001] All ER (D) 192 (Oct) (refusal of planning permission to gypsy family wishing to retain caravans in rural area); *Chelmsford Borough Council v Steers* [2004] EWHC 3395 (QB), [2003] All ER (D) 315 (Dec) (issue of injunction against gypsies failing to comply with enforcement notices). As to consideration of these issues by the European Court of Human Rights see *Chapman v United Kingdom* (Application 27238/95) (2001) 10 BHRC 48, ECt HR; *Lee v United Kingdom* (Application 25289/94) (2001) 33 EHRR 29, (2001) Times, 30 January, [2001] ECHR 25289/94, ECt HR; *Smith (Jane) v United Kingdom* (Application 25154/94) (2001) 33 EHRR 30, [2001] ECHR 25154/94, ECt HR.

26 See *Price v Leeds City Council* [2005] EWCA Civ 289, [2005] 3 All ER 573, sub nom *Leeds City Council v Price* (2005) Times, 17 March. As to direct action to remove caravans see *R (on the application of Mitchell) v Horsham District Council* [2003] All ER (D) 195 (Feb); *Lock v Secretary of State for Local Government and the Regions* [2002] All ER (D) 318 (Jul) (where the local planning authority made a compulsory purchase order of land unlawfully occupied by gypsies so as to return it to agricultural use); *Epping Forest District Council v Mason* [2002] EWHC 1532 (QB), [2002] All ER (D) 110 (Jul) (interim and then permanent injunctions granted against gypsy families occupying site in breach of planning controls); *South Bucks District Council v Porter, Chichester District Council v Searle, Wrexham County Borough Council v Berry* [2003] UKHL 26, [2003] 2 AC 558, [2003] 3 All ER 1 (issue of injunctions against gypsy families, applied in eg *Tunbridge Wells Borough Council v Redford* [2004] All ER (D) 173 (Dec); *Surrey Heath County Council v Rooney* [2004] All ER (D) 96 (Nov); *Warwick District*

Council v West Midlands International Airport Ltd [2004] EWHC 1636 (QB), [2004] All ER (D) 362 (May)). See also *Tonbridge and Malling Borough Council v Davis* [2004] EWCA Civ 194, (2004) Times, 5 March, [2004] All ER (D) 426 (Feb) (group of travelling showpeople occupying a site on Green Belt land in breach of planning controls; held that the granting of the injunction was not disproportionate).

27 See eg *Young v First Secretary of State* [2004] EWHC 2167 (Admin), [2004] All ER (D) 13 (Oct) (refusal of planning permission for construction of a new building on the site of a building extensively damaged by fire); *Lough v First Secretary of State* [2004] EWCA Civ 905, [2004] 1 WLR 2557, [2004] All ER (D) 183 (Jul) (unsuccessful challenge by local residents to the granting of planning permission to a developer on the grounds that the proposed development would cause them loss of privacy, overlooking, loss of light, loss of a view, and interference with television reception amounting to an interference with Convention rights); *Sabi v Secretary of State for Local Government and the Regions* [2002] All ER (D) 103 (Jun) (refusal of planning permission for the installation and retention of gates to a property in a conservation area; the gates had had been installed because of the householder's fear of crime; held that the refusal of permission for retention of the gates engaged his Convention rights but interference with those rights was justified on the facts).

28 See *R (on the application of Brennan) v Bromsgrove District Council* [2003] EWHC 752 (Admin), [2003] 2 P & CR 430, [2003] All ER (D) 248 (Mar).

29 See *Massingham v Secretary of State for Local Government and the Regions* [2002] EWHC 1578 (Admin), [2002] All ER (D) 118 (Jun) (held that the applicant's Convention rights were not engaged as the issue of such a certificate was declaratory of rights rather than creating or removing rights). As to such certificates see PARA 586 et seq post.

30 See eg *R (on the application of Gosbee) v First Secretary of State* [2003] EWHC 770 (Admin), [2004] 1 P & CR 343, [2003] All ER (D) 301 (Mar) (enforcement of condition attached to planning permission which required the demolition of an existing building); *Salisbury District Council v Le Roi* [2001] EWCA Civ 1490, [2001] All ER (D) 30 (Oct) (demolition of empty property; held that Convention rights under head (iii) in the text were not engaged as the defendant and his family were not living in the property so would not be deprived of accommodation).

UPDATE

7 The Human Rights Act 1998

NOTE 1--Human Rights Act 1998 s 6(4) repealed: Constitutional Reform Act 2005 Sch 9 para 66(4), Sch 18 Pt 5 (in force 1 October 2009: SI 2009/1604).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/8. Other relevant domestic legislation.

8. Other relevant domestic legislation.

In addition to the statutory controls imposed by the planning Acts¹ the following are subject to special statutory planning control:

- 27 (1) ancient monuments²;
- 28 (2) building and use of buildings³;
- 29 (3) caravan sites⁴;
- 30 (4) highways⁵;
- 31 (5) historic buildings and their contents⁶;
- 32 (6) inner urban development⁷;
- 33 (7) mineral workings⁸;
- 34 (8) National Parks and the countryside⁹;
- 35 (9) new towns¹⁰;
- 36 (10) railways¹¹.

The above does not purport to be an exhaustive list.

- 1 For the meaning of 'the planning Acts' see PARA 2 ante.
- 2 See NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq.
- 3 Eg as to building regulations see BUILDING vol 4(2) (2002 Reissue) PARA 306 et seq.
- 4 See PARA 1032 et seq post.
- 5 See HIGHWAYS, STREETS AND BRIDGES.
- 6 See PARA 1060 et seq post.
- 7 See PARA 1410 et seq post.
- 8 See PARAS 16, 710 et seq post; and MINES, MINERALS AND QUARRIES.
- 9 See OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 636 et seq.
- 10 See PARA 1315 et seq post.
- 11 See RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(1) LEGISLATIVE FRAMEWORK/(ii) Domestic Legislation/9. Departmental circulars and policy guidance.

9. Departmental circulars and policy guidance.

General advice on legislation and procedures is given, in England, by departmental circulars and in Wales by Welsh Office or National Assembly for Wales circulars. The introduction of new secondary legislation is usually accompanied, in England, by the publication of a circular by the Secretary of State¹ which is published on the relevant departmental website².

Planning policy guidance notes ('PPGs')³, minerals planning guidance notes ('MPGs')⁴, and marine mineral guidance notes⁵ in England, and technical advice notes ('TANs') in Wales⁶, were previously the main sources of policy guidance on planning matters. Regional planning guidance has, however, assumed increasing importance and is now prescribed as the regional spatial strategy ('RSS') for the English regions outside Greater London⁷. Planning policy guidance notes are gradually being replaced by planning policy statements ('PPSs') and minerals planning guidance notes are gradually being replaced by mineral policy statements ('MPSs')⁸.

The main source of policy guidance in relation to Wales is now the planning policy document published by the Assembly⁹ which forms the basis of the Wales Spatial Plan¹⁰. This continues to be supplemented by technical advice notes.

1 As to the Secretary of State see PARA 19 post.

2 See eg ODPM Circular 02/2005 *Temporary Stop Notice*, giving guidance on the Town and Country Planning Act 1990 s 171E-171H (added by the Planning and Compulsory Purchase Act 2004 s 52) and the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, SI 2005/206. As to temporary stop notices see PARA 573 et seq post.

3 At the date at which this title states the law, the following were available on the planning policy pages of the Office of the Deputy Prime Minister's website at www.odpm.gov.uk: *PPG 2--Green belts*; *PPG 3--Housing*; *PPG 4--Industrial; commercial development and small firms*; *PPG 5--Simplified planning zones*; *PPG 8--Telecommunications*; *PPG 10--Planning and waste management*; *PPG 12--Development plans*; *PPG 13--Transport*; *PPG 14--Development on unstable land*; *PPG 15--Planning and the historic environment*; *PPG 16--Archaeology and planning*; *PPG 17--Planning for open space; sport and recreation*; *PPG 18--Enforcing planning control*; *PPG 19--Outdoor advertisement control*; *PPG 20--Coastal planning*; *PPG 21--Tourism*; *PPG 24--Planning and noise*; and *PPG 25--Development and flood risk* (due to be revised in 2005: see ODPM News Release 2005/0088 (24 March 2005)).

4 At the date at which this title states the law, the following were available on the planning policy pages of the Office of the Deputy Prime Minister's website: *MPG 1--General considerations*; *MPG 2--Applications, permissions and conditions*; *MPG 3--Coal mining and colliery spoil disposal*; *MPG 4--Revocation, modification, discontinuance, prohibition and suspension orders*; *MPG 5--Stability in surface mineral workings and tips*; *MPG 6--Guidelines for aggregates provision in England*; *MPG 7--Reclamation of mineral workings*; *MPG 8--Interim development order permissions (IDOS), statutory provisions and procedures*; *MPG 9--Planning and Compensation Act 1991, interim development order permissions (IDOS), conditions*; *MPG 10--Provision of raw material for the cement industry*; *MPG 11--Control of noise at surface mineral workings*; *MPG 13--Guidelines for peat provision in England*; *MPG14--Environment Act 1995, review of mineral planning permissions*; and *MPG 15--Provision of silica sand in England*.

5 See *Marine Mineral Guidance 1--Extraction by dredging from the English seabed*, available at the date at which this title states the law on the planning policy pages of the Office of the Deputy Prime Minister's website.

6 At the date at which this title states the law, there were 20 topic-based TANs available on the planning policy pages of the website of the National Assembly for Wales at www.wales.gov.uk as follows: *TAN 1--Joint Housing Land Availability Studies* (1997); *TAN 2--Planning and Affordable Housing* (1996); *TAN 3--Simplified Planning Zones* (1996); *TAN 4--Retailing and Town Centres* (1996); *TAN 5--Nature Conservation and Planning* (1996); *TAN 6--Agricultural and Rural Development* (June 2000); *TAN 7--Outdoor Advertisement Control* (1996); *TAN 8--Renewable Energy* (2005); *TAN 9--Enforcement of Planning Control* (1997); *TAN 10--Tree Preservation Orders* (1997); *TAN 11--Noise* (1997); *TAN 12--Design* (2002); *TAN 13--Tourism* (1997); *TAN 14--Coastal Planning* (1998); *TAN 15--Development and Flood Risk* (2004); *TAN 16--Sport and Recreation* (1998); *TAN 18--Transport* (1998); *TAN 19--Telecommunications* (2002); *TAN 20--The Welsh Language, Unitary Development Plans and Planning Control* (June 2000); and *TAN 21--Waste*. There was also one minerals technical advice note: *MTAN (Wales) 1--Aggregates* (2004).

7 As to the regional planning guidance so prescribed see PARA 72 post.

8 At the date at which this title states the law, the following planning policy statements were available on the planning policy pages of the Office of the Deputy Prime Minister's website: *PPS 1--Delivering Sustainable Development*; *PPS 6--Planning for Town Centres*; *PPS 7--Sustainable Development in Rural Areas*; *PPS 9--Biodiversity and Geological Conservation*; *PPS 10--Planning for Sustainable Waste Management*; *PPS 11--Regional Spatial Strategies*; *PPS 12--Local Development Frameworks*; *PPS 22--Renewable energy* (including the companion guide); and *PPS 23--Planning and Pollution Control*. There was also one mineral policy statement so available, ie *MPS 2--Controlling and mitigating the environmental effects of mineral extraction in England*.

9 See *Planning Policy Wales* (National Assembly for Wales, 2002) and the separate *Minerals Planning Policy for Wales* (National Assembly for Wales, 2000).

10 As to the Wales Spatial Plan (*People, Places, Futures* (November 2004)) see PARAS 87-88 post.

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(iii) European Union Legislation

10. European directives with regard to the environment; in general.

There are a number of European directives concerned with the environment which have an impact on town and country planning. In particular, the Environmental Impact Directive¹

introduced a system for prior assessment by the member states of the possible effects of public and private projects on the environment, which covers construction work and other installations or schemes, as well as other measures affecting the natural environment or landscape². This is now supplemented by the Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment ('the Strategic Environmental Assessment Directive')³ which introduces a system of prior environmental assessment at the planning stage⁴.

Directives such as the Habitats Directive⁵ and the Wild Birds Directive⁶ and the regulations which implement them⁷ ensure that consideration is given to the protection of the natural environment.

Under the directive on the control of major-accident hazards involving dangerous substances, known as the 'SEVESO II' Directive⁸, member states must ensure that the objectives of preventing major accidents⁹ and limiting the consequences of such accidents are taken into account in their land-use policies and/or other relevant policies¹⁰.

The Directive on Public Access to Environmental Information¹¹ has as its objectives:

- 37 (1) to guarantee the right of access to environmental information¹² held by or for public authorities and to set out the basic terms and conditions of, and practical arrangements for, its exercise; and
- 38 (2) to ensure that, as a matter of course, environmental information is progressively made available and disseminated to the public in order to achieve the widest possible systematic availability and dissemination to the public of environmental information¹³.

A further directive provides for public participation in respect of the drawing up of certain plans and programmes relating to the environment and amends earlier directives with regard to public participation and access to justice¹⁴. Member states must ensure that the public¹⁵ is given early and effective opportunities to participate in the preparation and modification or review of the plans or programmes required to be drawn up under specified provisions¹⁶ and must, to that, end, ensure that:

- 39 (a) the public is informed, whether by public notices or other appropriate means such as electronic media where available, about any proposals for such plans or programmes or for their modification or review and that relevant information about such proposals is made available to the public including inter alia information about the right to participate in decision-making and about the competent authority to which comments or questions may be submitted;
- 40 (b) the public is entitled to express comments and opinions when all options are open before decisions on the plans and programmes are made;
- 41 (c) in making those decisions, due account is to be taken of the results of the public participation;
- 42 (d) having examined the comments and opinions expressed by the public, the competent authority makes reasonable efforts to inform the public about the decisions taken and the reasons and considerations upon which those decisions are based, including information about the public participation process¹⁷.

Heads (a) to (d) above do not, however, apply to plans and programmes designed for the sole purpose of serving national defence or taken in case of civil emergencies¹⁸. Nor do they apply to specified plans and programmes¹⁹ set out in Annex I for which a public participation procedure is carried out²⁰ under the Directive on the Assessment of the Effects of Certain Plans and Programmes on the Environment²¹.

Member states are not prevented²² from maintaining or introducing more stringent protective measures than those adopted²³ under the Community policy on the environment²⁴. Such measures must be compatible with the EC Treaty and must be notified to the European Commission²⁵.

1 Ie EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) (as amended by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05) and by European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17)) on the assessment of the effects of certain public and private projects on the environment ('the EIA Directive').

2 The EIA Directive is implemented in domestic law with regard to town and country planning by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) (see PARA 488 et seq post) which do not, however, specifically implement the amendments made by EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17).

3 See European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30).

4 The directive cited in note 3 supra is implemented in domestic law by the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, and the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656: see PARA 60 et seq post. Government guidance on the directive has been issued to local authorities in England: see *A Practical Guide to the Strategic Environmental Assessment Directive* (ODPM, September 2005).

5 Ie EC Council Directive 92/43 (OJ L206, 22.07.92, p 07) (as amended) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728; and see eg Case C-117/03 *Societa Italiana Dragaggi SpA v Ministero delle Infrastrutture e dei Trasporti* [2005] All ER (D) 62 (Jan), ECJ.

6 Ie EC Council Directive 79/409 (OJ L103, 25.04.79, p 01) (as amended) of 2 April 1979 on the conservation of wild birds: see **ANIMALS** vol 2 (2008) PARAS 994, 1006; **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728.

7 See principally the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended); **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq; and **WATER AND WATERWAYS** vol 101 (2009) PARA 679.

8 Ie EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended): see PARA 1211 post. For the meaning of 'hazard' for these purposes see PARA 1211 note 1 post.

9 For the meaning of 'major accident' see PARA 1211 note 2 post.

10 The SEVESO II Directive is implemented in domestic law by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981 (as amended): see PARA 1211 note 12 post.

11 Ie European Parliament and EC Council Directive 2003/4 (OJ L41, 14.02.2003, p 26).

12 For the meaning of 'environmental information' for these purposes see **WATER AND WATERWAYS** vol 101 (2009) PARA 674.

13 See European Parliament and EC Council Directive 2003/4 (OJ L41, 14.02.2003, p 26) art 1. To this end the use, in particular, of computer telecommunication and/or electronic technology, where available, is to be promoted: art 1.

14 Ie European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17).

15 For these purposes, 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups: European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17), art 2(1). Member states must identify the public entitled to participate for these purposes, including relevant non-governmental organisations meeting any requirements imposed under national law, such as those promoting environmental protection: art 2(3). The detailed arrangements for such public participation must be determined by the member states so as to enable the public to prepare and participate effectively; and reasonable time-frames must be provided allowing sufficient time for each of the different stages of public participation so required: art 2(3).

16 Ie the provisions listed in European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17), Annex I (which lists a number of directives concerned with waste, batteries and accumulators containing certain dangerous substances, the protection of waters against pollution caused by nitrates from agricultural sources, hazardous waste, packaging and packaging waste and ambient air quality assessment and

management). Such environmental matters are discussed in more detail elsewhere in this work: see generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS.

17 European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17), art 2(2).

18 Ibid art 2(4).

19 Ie plans and programmes set out in ibid Annex I.

20 Ie under European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) (see the text and notes 3-4 supra) or under the Water Framework Directive (see WATER AND WATERWAYS vol 100 (2009) PARA 7).

21 European Parliament and EC Council Directive 2003/35 (OJ L156, 25.06.2003, p 17), art 2(5).

22 Ie by the protective measures adopted pursuant to EC Treaty art 175, which lays down the procedures for taking action to achieve the Community's environmental objectives set out in art 174.

23 Ie under ibid art 175.

24 Ibid art 176. As to the Community policy on the environment see also WATER AND WATERWAYS vol 100 (2009) PARA 7.

25 Ibid art 176.

UPDATE

10 European directives with regard to the environment; in general

NOTE 4--EC Council Directive 85/337 further amended: European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114).

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(2) APPLICATION OF PLANNING LEGISLATION TO THE CROWN

(i) The Position before Amendment by the 2004 Act

11. Crown land under the Town and Country Planning Act 1990.

At the date at which this title states the law, special statutory provisions apply to Crown land¹ in respect of:

- 43 (1) the control of development on Crown land²;
- 44 (2) agreements for securing the use of Crown land³;
- 45 (3) an application for planning permission in anticipation of the disposal of Crown land⁴;
- 46 (4) tree preservation orders in anticipation of the disposal of Crown land⁵;
- 47 (5) the requirement of planning permission for the continuance of a use instituted by the Crown⁶;
- 48 (6) enforcement in respect of war-time breaches of planning control by the Crown⁷; and
- 49 (7) Crown planning obligations⁸.

Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions:

- 50 (a) a specified document, plan or strategy⁹ may include proposals relating to the use of Crown land¹⁰;
- 51 (b) any power to acquire land compulsorily under Part IX of the Town and Country Planning Act 1990¹¹ may be exercised in relation to any interest in Crown land which is for the time being held otherwise than by or on behalf of the Crown¹²;
- 52 (c) any restrictions or powers imposed or conferred by Part III of that Act¹³, by Part VII¹⁴ (subject to certain exceptions relating to rights of entry¹⁵) or Part VIII¹⁶, by the provisions of Part VI of that Act relating to purchase notices¹⁷, or by any of the specified provisions relating to statutory undertakers¹⁸, apply and are exercisable in relation to Crown land, to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown¹⁹.

Except with the consent of the appropriate authority²⁰:

- 53 (i) in relation to land which for the time being is Crown land, a planning obligation²¹ may not be enforced by injunction and the power to enter land if there is a breach of a planning obligation²² may not be exercised²³;
- 54 (ii) no order or notice may be made, issued or served under specified provisions²⁴ in relation to land which for the time being is Crown land²⁵;
- 55 (iii) no interest in land which for the time being is Crown land may be acquired²⁶ compulsorily²⁷.

As from a day to be appointed, however²⁸, the Planning and Compulsory Purchase Act 2004 effectively removes Crown immunity in respect of town and country planning legislation²⁹. The provisions set out in heads (a) to (c) and (i) to (iii) above are repealed, together with the majority of those referred to in heads (1) to (5) and head (7) above³⁰, and other related changes are made. These changes are discussed below³¹.

1 For these purposes, 'Crown land' means land in which there is a Crown interest or a Duchy interest: Town and Country Planning Act 1990 s 293(1). Section 293(1) (as originally enacted) defines 'Crown interest' as meaning an interest belonging to Her Majesty in right of the Crown, or belonging to a government department or held in trust for Her Majesty for the purposes of a government department; and 'Duchy interest' as an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall. That definition of 'Crown interest' is, however, substituted by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 6(1), (2), partly as from a day to be appointed under s 121. For the new definition see PARA 14 post. For the meaning of 'land' see PARA 2 note 10 ante; and for the meaning of 'government department' see PARA 3 note 5 ante. The 1990 Act applies to land in which an interest is held by or on behalf of a visiting force or headquarters and which is used for the purposes of that force or headquarters to the extent that it applies to Crown land, and in its application to such land, the Act has effect as if any reference in the Act to: (1) 'Crown land' included a reference to such land; (2) 'the Crown' included a reference to the visiting force or headquarters; and (3) 'the appropriate authority' was a reference to the Ministry of Defence: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 11(1), (2). As to the application of Northern Ireland planning legislation see art 11(4).

2 See the Town and Country Planning Act 1990 s 294 (as prospectively repealed); and PARA 572 post.

3 See the Town and Country Planning Act 1990 s 297 (as prospectively repealed); and PARA 250 post.

4 See *ibid* s 299 (as amended; prospectively repealed with savings); and PARA 454 post. See also *R v Secretary of State for Defence, ex p Wilkins* [2000] 3 EGLR 11, [2000] 40 EG 180. As to the non-statutory rules governing the disposal of surplus government land ('the Crichton Down Rules') see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 908-909.

5 See the Town and Country Planning Act 1990 s 300 (as prospectively repealed); and PARA 854 post.

6 See *ibid* s 301 (as prospectively repealed); and PARA 240 post.

7 See *ibid* s 302, Sch 15 (as amended); and PARA 899 et seq post.

8 See the Town and Country Planning Act 1990 s 299A (as added and prospectively repealed); and PARA 251 post.

9 The following are the specified documents, plans and strategies: (1) the regional spatial strategy (or a revision of it) within the meaning of the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12) (see PARAS 24-25, 72 et seq post); (2) a local development document (or a revision of it) adopted or approved under Pt 2 (ss 13-37) (see PARA 89 et seq post); (3) a local development plan (or a revision of it) adopted or approved under Pt 6 (ss 60-78) (see PARA 133 et seq post); (4) the Mayor of London's spatial development strategy (or any alteration or replacement of it) published in pursuance of the Greater London Authority Act 1999 s 337 (as amended) (see PARA 86 post; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq); Town and Country Planning Act 1990 s 296(1A) (added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 10(1), (3)). The Town and Country Planning Act 1990 s 296 (as amended) is prospectively repealed by the Planning and Compulsory Purchase Act 2004 ss 84(1), 120, Sch 9, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed.

10 Town and Country Planning Act 1990 s 296(1)(a) (substituted by the Planning and Compulsory Purchase Act 2004 Sch 6 paras 1, 10(1), (2) (at the date at which this title states the law, that substitution was not in force for certain transitional purposes in relation to Wales (see PARAS 148 note 11, 979 note 8 post) and the Town and Country Planning Act 1990 s 296(1)(a) instead referred for those purposes to a plan approved, adopted or made under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended and prospectively repealed: see PARA 149 et seq post) or under the Town and Country Planning Act 1971 Pt II (ss 6-21) (repealed)). As to the prospective repeal of this provision see note 9 *supra*. For the meaning of 'use' see PARA 221 note 4 post.

11 *le* the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended): see PARA 934 et seq post.

12 *Ibid* s 296(1)(b) (prospectively repealed: see note 9 *supra*).

13 *le* *ibid* Pt III (ss 55-106B) (as amended): see PARA 217 et seq post.

14 *le* *ibid* Pt VII (ss 171A-196C) (as amended): see PARA 551 et seq post.

15 *le* except *ibid* s 196A (as added) (see PARA 556 post) and s 196B (as added) (see PARA 557 post).

16 *le* *ibid* Pt VIII (ss 197-225) (as amended): see PARA 769 et seq post.

17 *le* the provisions of *ibid* Pt VI (ss 137-171) (as amended): see PARA 966 et seq post. For the meaning of 'purchase notice' see PARA 966 post. As to purchase notices in relation to Crown land see further PARA 969 post.

18 *le* any of the provisions of *ibid* ss 266-270 (as amended): see PARAS 1013-1017 post. For the meaning of 'statutory undertakers' see PARA 1009 post.

19 *Ibid* s 296(1)(c) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 45(1); prospectively repealed (see note 9 *supra*)). A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for the purposes of the Town and Country Planning Act 1990 s 296(1)(c) (as so amended) so far as applicable to Pt III (ss 55-106B) (as amended) (see PARA 217 et seq post), Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq post) and Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq post), and s 294(2)-(7) (as prospectively repealed) (see PARA 572 post), s 295 (as prospectively repealed) (see PARAS 572, 612 post), s 299 (as amended and prospectively repealed) (see PARA 454 post) and s 300 (as prospectively repealed) (see PARA 854 post) as having an interest in land; and references in s 299 (as amended and prospectively repealed) to the disposal of an interest in Crown land, and in s 294(2) (as prospectively repealed), s 299 (as amended and prospectively repealed) and s 300 (as prospectively repealed) to a private interest, are to be construed accordingly: s 293(4) (prospectively repealed by the Planning and Compulsory Purchase Act 2004 ss 79(4), 120, Sch 3 para 22, Sch 9 as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). For these purposes, 'private interest' means an interest which is neither a Crown interest nor a Duchy interest: Town and Country Planning Act 1990 s 293(1).

20 For these purposes, 'the appropriate authority', in relation to any land (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of the land; (3) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy of Lancaster; (4) in relation to land

belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and (5) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department: *ibid* s 293(2) (as originally enacted). If any question arises as to what authority is the appropriate authority in relation to that land, that question must be referred to the Treasury, whose decision is final: s 293(3) (as originally enacted). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

For the purposes of the Town and Country Planning Act 1990 ('the Planning Act'): (a) the interest of a Corporate Officer or the Corporate Officers in any land is regarded as a Crown interest, within the meaning of Pt XIII (ss 293-302) (as amended); and (b) any development carried out by or on behalf of a Corporate Officer or the Corporate Officers is regarded as development carried out by or on behalf of the Crown and accordingly the use of the land for the purposes of the House of Lords, the House of Commons or both those Houses is regarded as use by or on behalf of the Crown; and, in relation to land which is Crown land, within the meaning of Pt XIII (ss 293-302) (as amended) by virtue only of head (a) *supra*, 'the appropriate authority' for the purposes of Pt XIII (ss 293-302) (as amended) is the Corporate Officer or, as the case may be, the Corporate Officers in whom is vested the interest in the land: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(1). If a Corporate Officer or the Corporate Officers is or are entitled to occupy Crown land, within the meaning of the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended), by virtue of a licence in writing, that licence is regarded as a Crown interest, rather than a private interest, for the purposes of Pt XIII (ss 292A-302) (as amended): Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(2).

Article 2(1), (2) applies in relation to the Planning (Listed Buildings and Conservation Areas) Act 1990 as if (i) references in the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(1), (2) to the Town and Country Planning Act 1990 or Pt XIII (ss 292A-302) (as amended) were references to the Planning (Listed Buildings and Conservation Areas) Act 1990 (see PARA 1072 et seq post) or, as the case may be, Pt III (ss 81-90) (as amended); and (ii) the references in the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(1)(b) (see head (b) *supra*) to development included references to works affecting a listed building and the demolition of a building in a conservation area: art 2(3).

To the extent that a Corporate Officer or the Corporate Officers has or have responsibility for the management of any land in which he or they has or have no interest but which forms part of the Palace of Westminster, the Corporate Officer or Corporate Officers is or are regarded as having the status of a government department for the purposes of the following enactments which define 'the appropriate authority' in relation to certain land belonging to Her Majesty in right of the Crown, namely the Town and Country Planning Act 1990 s 293(2)(b) (as originally enacted) (see head (2) *supra*) and the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(7)(b) (as prospectively repealed) (see PARA 1075 post): Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(4).

For these purposes, 'Corporate Officer' means either the Corporate Officer of the House of Lords or the Corporate Officer of the House of Commons and 'the Corporate Officers' means those two Corporate Officers acting jointly (art 1(2)); 'development' and 'land' have the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 10 ante, PARA 217 post) (Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(5)); and a licence is not to be regarded as an interest in land (art 1(3)). As to the Corporate Officers of the House of Lords and the House of Commons respectively see PARLIAMENT vol 78 (2010) PARA 990 et seq.

21 For the meaning of 'planning obligation' see PARA 244 post.

22 *Ie* the power to enter land conferred by the Town and Country Planning Act 1990 s 106(6) (as substituted and prospectively repealed): see PARA 246 post.

23 *Ibid* s 296(2)(aa) (added by the Planning and Compensation Act 1991 s 12(2); prospectively repealed (see note 9 *supra*)).

24 *Ie* the Town and Country Planning Act 1990 s 102 (as amended) (see PARAS 546-547 post), s 103 (see PARAS 548-549 post), s 171C (as added and amended) (see PARA 559 post), s 172 (as substituted) (see PARA 561 post), s 173A (as substituted) (see PARA 566 post), s 183 (as amended) (see PARAS 577-579 post), s 187A (as added) (see PARA 583 post), s 187B (as added) (see PARA 585 post), s 198 (as amended) (see PARA 850 post), s 199 (see PARAS 850, 856 post) or s 215 (see PARA 887 post) or s 102(8), Sch 9 (as amended) (see PARA 757 et seq post) or under any of those provisions as applied by any order or regulations made under Pt VIII (ss 197-225 (as amended): see PARA 769 et seq, 847 et seq, 887 et seq post).

25 *Ibid* s 296(2)(a) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 45(2); prospectively repealed (see note 9 *supra*)).

26 *Ie* under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended): see PARA 934 et seq post.

27 Ibid s 296(2)(b) (prospectively repealed: see note 9 supra).

28 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 ante, PARA 13 note 8 post.

29 See the Planning and Compulsory Purchase Act 2004 Pt 7 Ch 1 (ss 79-89, Schs 3, 4) and PARA 13 et seq post.

30 See notes 1-6, 8,-10, 19-20, 23, 25, 27 supra.

31 See PARA 13 post.

UPDATE

11-15 Application of Planning Legislation to the Crown

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

11 Crown land under the Town and Country Planning Act 1990

NOTE 1--See the National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4.

NOTE 20--For the purposes of the Town and Country Planning Act 1990 any development carried out by or on behalf of a Corporate Officer or the Corporate Officers is regarded as development carried out by or on behalf of the Crown and, accordingly, the use of the land for the purposes of the House of Lords, the House of Commons or both those Houses is regarded as use by or on behalf of the Crown: SI 1992/1732 art 2(1) (substituted by SI 2006/1457).

TEXT AND NOTE 28--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/ (2) APPLICATION OF PLANNING LEGISLATION TO THE CROWN/(i) The Position before Amendment by the 2004 Act/12. Crown land under the other planning Acts.

12. Crown land under the other planning Acts.

At the date at which this title states the law, special statutory provisions apply to Crown land in respect of:

- 56 (1) the exercise of powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to Crown land¹;
- 57 (2) application for listed building or conservation area consent in anticipation of the disposal of Crown land²;
- 58 (3) the exercise of powers under the Planning (Hazardous Substances) Act 1990 in relation to Crown land³;

- 59 (4) application for hazardous substances consent in anticipation of the disposal of Crown land⁴.

As from a day to be appointed, however⁵, the Planning and Compulsory Purchase Act 2004 effectively removes Crown immunity in respect of town and country planning legislation⁶. The provisions mentioned in heads (1) to (4) above are repealed⁷, and other related changes are made. These changes are discussed below⁸.

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83 (as prospectively repealed); and PARA 1075 post.

2 See *ibid* s 84 (as prospectively repealed); and PARA 1121 post.

3 See the Planning (Hazardous Substances) Act 1990 s 31(1), (2) (as prospectively repealed); and PARA 1214 post.

4 See *ibid* s 32 (as prospectively repealed); and PARA 1255 post.

5 *Ie* as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 ante, PARA 13 note 8 post.

6 See the Planning and Compulsory Purchase Act 2004 Pt 7, Ch 1 (ss 79-89, Schs 3, 4) and PARA 13 *et seq* post.

7 See notes 1-4 *supra*.

8 See PARA 14 post.

UPDATE

11-15 Application of Planning Legislation to the Crown

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

12 Crown land under the other planning Acts

TEXT AND NOTE 5--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/ (2) APPLICATION OF PLANNING LEGISLATION TO THE CROWN/(ii) The Prospective Ending of General Crown Immunity/13. Crown application of the planning Acts under the Planning and Compulsory Purchase Act 2004; in general.

(ii) The Prospective Ending of General Crown Immunity

13. Crown application of the planning Acts under the Planning and Compulsory Purchase Act 2004; in general.

The relevant provisions of Part 7 of the Planning and Compulsory Purchase Act 2004¹ end Crown immunity in the planning system and make special provision:

- 60 (1) in relation to certain planning applications by or on behalf of the Crown²; and
 61 (2) in respect of enforcement of planning control in relation to the Crown in England and Wales³.

Schedule 3 to that Act makes consequential amendments to the Town and Country Planning Act 1990⁴, the Planning (Listed Buildings and Conservation Areas) Act 1990⁵ and the Planning (Hazardous Substances) Act 1990⁶; and Schedule 4 to the 2004 Act makes transitional provision⁷. At the date at which this title states the law, those changes were in force for limited purposes only⁸.

The Secretary of State⁹ may by order provide that relevant subordinate legislation¹⁰ applies to the Crown¹¹. The order may modify such subordinate legislation to the extent that the Secretary of State thinks appropriate for the purposes of its application to the Crown¹².

With the exception of Part 8¹³, and as from a day to be appointed¹⁴, the Planning and Compulsory Purchase Act 2004 binds the Crown¹⁵. As from such a day, the planning Acts¹⁶ and that 2004 Act have effect despite any rule of law relating to Parliament or the law and practice of Parliament¹⁷.

1 le the Planning and Compulsory Purchase Act 2004 Pt 7 Ch 1 (ss 79-89): see PARAS 14-15 post.

2 See PARAS 455-456 post.

3 See PARA 555 post. The text to notes 1-3 is taken from the Explanatory Notes to the Planning and Compulsory Purchase Act 2004 (ODPM, 2004) PARA 16.

4 See the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 paras 1, 3, 4, 6, 9, 10, 13, 16, 17, 22-27; and PARAS 14, 53-54, 57, 250, 455, 572, 934, 939, 969 post.

5 See *ibid* Sch 3 paras 2, 5, 7, 11, 14, 18-19; and PARAS 1072, 1075-1076, 1084, 1121-1122, 1140, 1155 post.

6 See *ibid* Sch 3 paras 8, 12, 15, 20-21; and PARAS 1212, 1214-1215, 1227, 1263 post.

7 See *ibid* Sch 4 Pt 1 (paras 1-6); and PARA 457 post; Sch 4 Pt 2 (paras 7-12); and PARA 1124 post.

8 So much of *ibid* ss 79-83, 88, Sch 3 paras 6-8, 10-12 as confers on the Secretary of State, the Lord Chancellor or the National Assembly for Wales a power or imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty came into force on 6 August 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2. As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 2004 Act see the Constitutional Reform Act 2005 s 19.

9 As to the Secretary of State see PARA 19 post.

10 For these purposes, 'relevant subordinate legislation' is an instrument which (1) is made under or (wholly or in part) for the purposes of any of the planning Acts; (2) is made before the commencement of the Planning and Compulsory Purchase Act 2004 s 79; and (3) is specified in the order: s 88(3). See also note 8 *supra*.

11 *Ibid* s 88(1); and see note 8 *supra*.

12 *Ibid* s 88(2); and see note 8 *supra*.

13 le *ibid* Pt 8 (ss 99-110): see COMPULSORY ACQUISITION OF LAND.

14 le as from a day to be appointed under *ibid* s 121. At the date at which this title states the law, no such day had been appointed. As to the anticipated commencement date see ODPM News Release 2005/0196 issued on 25 September 2005.

15 Ibid s 111(1). However, the amendment of an enactment by or by virtue of Pt 8 applies to the Crown to the extent that the enactment amended so applies: s 111(2). Section 111(2) came into force on 31 October 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 3) Order 2004, SI 2004/2593, art 2(b); and PARA 4 ante.

16 For the meaning of 'the planning Acts' see PARA 2 ante.

17 Planning and Compulsory Purchase Act 2004 s 112. At the date at which this title states the law, s 112 was not in force.

UPDATE

11-15 Application of Planning Legislation to the Crown

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

13 Crown application of the planning Acts under the Planning and Compulsory Purchase Act 2004; in general

NOTE 8--2004 Act ss 79-83, 88, Sch 3 in force for remaining purposes: SI 2006/1281.

NOTES 9-12--See the Town and Country Planning (Application of Subordinate Legislation to the Crown) Order 2006, SI 2006/1282.

TEXT AND NOTE 14--Day now appointed: SI 2006/1281.

NOTE 17--2004 Act s 112 now in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/ (2) APPLICATION OF PLANNING LEGISLATION TO THE CROWN/(ii) The Prospective Ending of General Crown Immunity/14. Crown land etc; the new position under the Town and Country Planning Act 1990.

14. Crown land etc; the new position under the Town and Country Planning Act 1990.

As from a day to be appointed¹, and subject to any express provision made by Part XIII² of the Town and Country Planning Act 1990, that Act binds the Crown³.

Express provision is made by that Part with regard to:

- 62 (1) urgent Crown development⁴;
- 63 (2) enforcement in relation to the Crown⁵;
- 64 (3) references to an interest in land⁶;
- 65 (4) compensation⁷;
- 66 (5) applications for planning permission by the Crown⁸;
- 67 (6) enforcement in respect of war-time breaches of planning control by the Crown⁹.

For the purposes of that Part, 'Crown land' means land in which there is a Crown interest or a Duchy interest¹⁰; and 'Crown interest' means any of the following:

- 68 (a) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates¹¹;
- 69 (b) an interest belonging to a government department¹² or held in trust for Her Majesty for the purposes of a government department;
- 70 (c) such other interest as the Secretary of State¹³ specifies by order¹⁴.

If any question arises as to what authority is the appropriate authority¹⁵ in relation to any land, that question must be referred to the Treasury, whose decision is final¹⁶. For the purposes of an application for planning permission¹⁷ made by or on behalf of the Crown¹⁸ in respect of land which does not belong to the Crown or in respect of which it has no interest, a reference to the appropriate authority must be construed as a reference to the person who makes the application¹⁹.

Transitional provision is made by Part 1 of Schedule 4 to the Planning and Compulsory Purchase Act 2004²⁰. Additionally, provision is made with regard to rights of entry on Crown land²¹.

1 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 3 infra.

2 le made by the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended): see the text and notes 4-19 infra.

3 Ibid s 292A(1), (2) (added by the Planning and Compulsory Purchase Act 2004 s 79(1), partly as from a day to be appointed: see note 1 supra). At the date at which this title states the law, s 79(1) was in force for limited purposes only: see PARA 13 note 8 ante.

4 See the Town and Country Planning Act 1990 s 293A (as prospectively added); and PARA 456 post.

5 See ibid s 296A (as prospectively added); and PARA 555 post.

6 See ibid s 296B (as prospectively added); and PARA 555 note 14 post.

7 See ibid s 298(3) (as prospectively amended); and PARA 922 post.

8 See ibid s 298A (as prospectively added); and PARA 455 post.

9 See ibid s 302; and PARAS 899-901 post.

10 See ibid s 293(1); and PARA 11 note 1 ante. For the meaning of 'Duchy interest' see PARA 11 note 1 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

11 For these purposes, references to Her Majesty's private estates must be construed in accordance with the Crown Private Estates Act 1862 s 1 (see CROWN PROPERTY vol 12(1) (Reissue) PARA 358): Town and Country Planning Act 1990 s 293(3A) (s 293(2)(ba), (f), (g), (2A), (3A), (3B), (5), (6) added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 6(1), (3)-(7), as from a day to be appointed under s 121; at the date at which this title states the law, Sch 3 para 6 was in force for limited purposes only: see PARA 13 note 8 ante).

12 For the meaning of 'government department' see PARA 3 note 5 ante.

13 As to the Secretary of State see PARA 19 ante.

14 Town and Country Planning Act 1990 s 293(1) (definition substituted by the Planning and Compulsory Purchase Act 2004 Sch 3 para 6(1), (2), partly as from a day to be appointed: see note 11 supra). An order made for the purposes of head (c) in the text must be made by statutory instrument, but no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: Town and Country Planning Act 1990 s 293(5), (6) (as added: see note 11 supra). In relation to Wales, however, it is apprehended that the function of making an order under s 293(1) is transferred to the National Assembly for

Wales and that therefore s 293(5), (6) does not apply: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

15 For these purposes, 'the appropriate authority' in relation to any land: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (3) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State; (4) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (5) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (6) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department; (7) in relation to Westminster Hall and the Chapel of St Mary Undercroft, means the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly; (8) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, means the Lord Great Chamberlain: *ibid* s 293(2) (as amended: see note 11 *supra*). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

16 *Ibid* s 293(3).

17 For the meaning of 'planning permission' see PARA 43 note 6 post.

18 For these purposes, 'Crown' includes (1) the Duchy of Lancaster; (2) the Duchy of Cornwall; (3) a person who is an appropriate authority by virtue of the Town and Country Planning Act 1990 s 293(2)(f) and (g) (as added) (see note 15 heads (7), (8) *supra*): s 293(3B) (as added: see note 11 *supra*).

19 *Ibid* s 293(2A) (as added: see note 11 *supra*).

20 See the Planning and Compulsory Purchase Act 2004 s 89, Sch 4 Pt 1 (paras 1-6); and PARA 457 post.

21 See the Town and Country Planning Act 1990 s 325A (as prospectively added); and PARA 57 post.

UPDATE

11-15 Application of Planning Legislation to the Crown

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

14 Crown land etc; the new position under the Town and Country Planning Act 1990

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

TEXT AND NOTES 14, 15--See the Planning (Application to the Houses of Parliament) Order 2006, SI 2006/1469, specifying (1) as Crown interests, (a) various interests of the Speakers of the two Houses of Parliament in parts of the Palace of Westminster, and (b) interests in any land held by the Corporate Officers of the two Houses; (2) the two Corporate Officers as the appropriate authority in relation to the land.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/ (2) APPLICATION OF PLANNING LEGISLATION TO THE CROWN/(ii) The Prospective Ending of General Crown Immunity/15. Crown land etc; the new position under the other planning Acts.

15. Crown land etc; the new position under the other planning Acts.

As from a day to be appointed¹, and subject to specified exceptions², the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 bind the Crown³. The particular provision made is discussed in later parts of this title⁴.

¹ As from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARAS 1076 note 2, 1215 note 2 post.

² As to the excepted provisions under the Planning (Listed Buildings and Conservation Areas) Act 1990 see PARA 1076 note 2 post; and as to the excepted provisions under the Planning (Hazardous Substances) Act 1990 see PARA 1215 note 2 post.

³ See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82A(1) (as prospectively added); and PARA 1076 post; the Planning (Hazardous Substances) Act 1990 s 30A(1) (as prospectively added); and PARA 1215 post.

⁴ See (1) in relation to the Planning (Listed Buildings and Conservation Areas) Act 1990, PARAS 1076, 1122-1124, 1140, 1153 post; (2) in relation to the Planning (Hazardous Substances) Act 1990, PARAS 1215, 1227, 1284 post.

UPDATE

11-15 Application of Planning Legislation to the Crown

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

15 Crown land etc; the new position under the other planning Acts

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(3) OTHER SPECIAL CASES/16. Power to modify statutory provisions in relation to minerals.

(3) OTHER SPECIAL CASES

16. Power to modify statutory provisions in relation to minerals.

In relation to development¹ consisting of the winning and working of minerals² or involving the depositing of mineral waste³, specified provisions⁴ of the Town and Country Planning Act 1990 have effect subject to such adaptations and modifications as may be prescribed⁵. Any regulations so made do not apply to the winning and working, on land held or occupied with land used for the purposes of agriculture⁶, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings⁷ or works on it which are occupied or used for those purposes⁸.

In relation to interests in land consisting of or comprising minerals, being either the fee simple or tenancies⁹ of such land, other specified provisions¹⁰ of the Town and Country Planning Act 1990 also have effect subject to such adaptations and modifications as may be prescribed¹¹.

Regulations made for these purposes may, if made by the Secretary of State¹², only be so made with the consent of the Treasury and are of no effect unless they are approved by resolution of each House of Parliament¹³.

1 For the meaning of 'development' see PARA 217 post.

2 For these purposes, except in so far as the context otherwise requires, 'the winning and working of minerals' includes the extraction of minerals from a mineral working deposit; 'minerals' includes all substances of a kind ordinarily worked for removal by underground or surface working, except that it does not include peat cut for purposes other than sale; and 'mineral-working deposit' means any deposit of material remaining after minerals have been extracted from land or otherwise deriving from the carrying out of operations for the winning and working of minerals in, on or under land: Town and Country Planning Act 1990 s 336(1) (amended for these purposes by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 12(c), (e)). For the meaning of 'land' see PARA 2 note 10 ante.

3 For these purposes, except in so far as the context otherwise requires 'depositing of mineral waste' means any process whereby a mineral-working deposit is created or enlarged: Town and Country Planning Act 1990 s 336(1) (definition added by the Planning and Compensation Act 1991 Sch 1 paras 1, 12(a)).

4 The provisions specified in the Town and Country Planning Act 1990 s 315(1), Sch 16 Pts I, II (as amended). The provisions specified in Sch 16 Pt I (amended by the Planning and Compensation Act 1991 ss 31, 32, 84(6), Sch 6 paras 8, 41(a), Sch 7 paras 8, 57(1), (2), Sch 19 Pt I; and by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(18)) are:

- 9 (1) the following provisions relating to planning authorities, ie the Town and Country Planning Act 1990 s 1(1)-(3), (5), (6) (as amended) (see PARAS 28-29 post), s 2 (as amended) (see PARA 30 post), s 9 (see PARAS 28, 30 post);
- 10 (2) the following provisions relating to the control of development and appeals against planning decisions, ie s 55 (as amended) (see PARA 217 et seq post), s 57 (as amended) (see PARAS 236-237 post), s 59 (see PARA 252 post), s 60 (except s 60(4)) (see PARA 254 post), s 61 (see PARA 252 post), s 62 (as originally enacted and as prospectively substituted) (see PARA 448 post), s 69(1), (2), (5) (as amended) (see PARA 466 post), s 70 (as amended) (see PARA 486 post), s 70A (as originally added and as prospectively substituted) (see PARA 516 post), s 72(1)-(4) (see PARA 522 post), s 73A (as added) (see PARA 525 post), s 74 (as amended) (see PARA 452 post), s 75 (see PARA 536 post), s 77 (as amended), with the omission in s 77(4) (as amended) of the reference to s 65 (as substituted and amended) (see PARA 483 post), s 78 (as amended) (see PARA 598 post), s 79(1)-(5) (as amended) (see PARA 601 post), s 90(1), (3), (4) (as amended) (see PARA 238 post), ss 96-98 (as amended), except s 97(5) (as amended) (see PARAS 540-542 post), s 100 (as amended) (see PARA 544 post), ss 102-104 (as amended) (except s 102(8) (as amended)) (see PARA 546 et seq post), ss 106-106B (as substituted; prospectively repealed) (planning obligations: see PARAS 244 et seq, 616 post);
- 11 (3) the following provisions relating to compensation, ie s 107 (as amended) (see PARA 914 post), s 108 (as amended) (see PARA 915 post), s 115 (see PARA 923 post), s 117 (as amended) (see PARA 930 post), s 118 (see PARA 931 post);
- 12 (4) the following provisions relating to owners' rights to require the purchase of certain interests, ie s 137 (as amended), except s 137(6), (7) (see PARA 966 post), s 138 (as amended) (see PARA 968 post), s 139(1)-(4) (see PARA 970 post), s 140 (as amended) (see PARA 971 post), s 141 (see PARA 972 post), s 143 (see PARA 974 post), s 144 (as amended) (see PARA 977 post), s 148 (as amended) (see PARAS 966, 970 post);
- 13 (5) the following provisions relating to the enforcement of planning controls and appeals against enforcement notices etc, ie s 175(5), (7) (see PARA 603 post), ss 178-182 (as amended) (see PARA 568 et seq post), s 185 (see PARA 580 post), s 186(6), (7), (see PARA 581 post), 188 (as amended) (see PARA 553 post), s 189 (as amended) (see PARA 596 post), s 190 (as amended), in so far as it applies to orders under s 102 (as amended) (see PARA 597 post), s 192 (as substituted) (see PARA 587 post), ss 196A-196C (as added) (see PARAS 556-558 post);
- 14 (6) the following provisions relating to tree preservation orders, ie ss 198-200 (as amended) (see PARAS 850, 855 post), s 202 (see PARA 851 post), s 203 (see PARA 864 post), s 205 (see PARA

867 post), s 208(10), (11) (see PARA 886 post), s 209(6) (as substituted) (see PARA 875 post), s 210 (as amended) (see PARA 876 post), s 211(4) (see PARA 877 post), ss 214A-214D (as added) (see PARAS 876, 877, 880-882 post);

- 15 (7) the following provisions relating to land adversely affecting the amenity of a neighbourhood and the control of advertisements, ie ss 215-224 (as amended) (see PARAS 774 et seq, 887 et seq post);
- 16 (8) the following provisions relating to the acquisition or appropriation of land, ie s 227 (as amended) (see PARA 937 post), ss 229-233 (as amended) (see PARA 947 et seq post), ss 235-246 (as amended) (see PARA 952 et seq post);
- 17 (9) the following provisions relating to highways, ie ss 247, 251, 252, 254-256, 260 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq);
- 18 (10) the following provisions relating to statutory undertakers, ie s 263 (as amended) (see PARA 1013 et seq post), ss 274-278 (as amended) (see PARA 1021 et seq post), s 279 (as amended), except s 279(4) (see PARA 1027 post), s 280 (as amended), except s 280(6), (8)(b) (see PARA 1028 post), ss 281-283 (see PARAS 1013 et seq, 1029-1030 post);
- 19 (11) the following provisions relating to challenging the validity of decisions, orders etc and appeals, ie s 284(1) (as amended), except s 284(1)(e), (f) (see PARA 43 post), s 285 (as amended) (see PARA 44 post), s 287 (as amended) (see PARA 46 post), s 289 (as amended) (see PARA 648 post), s 292 (with the omission in s 292(2) of the reference to s 288 (as amended)) (see PARA 43 note 26 post);
- 20 (12) the following provisions relating to the Crown, ie s 293(1)-(3) (as originally enacted and as amended) (see PARAS 11, 14 ante), s 294(1) (prospectively repealed) (see PARA 572 post), s 296(1) (as amended and prospectively repealed), the reference in s 296(1)(c) (as amended) to Sch 16 Pt III (as amended) not being construed as referring to s 65 (as substituted) (see PARA 11 ante), s 296(2)-(4) (as amended and prospectively repealed) (see PARA 11 ante, PARA 969 post), s 297 (prospectively repealed) (see PARA 250 post);
- 21 (13) the following financial provisions, ie s 305 (as amended) (see PARA 913 post), s 306 (as amended) (see PARA 50 post), s 314 (see PARA 52 post);
- 22 (14) the following miscellaneous provisions, ie s 315 (as amended) (see the text and notes 1-4 supra; this note; and the text and notes 6-13 infra), s 316 (as substituted) (see PARA 891 post), s 316A (as added) (see PARA 898 post), s 318 (as amended), except s 318(2)(a), (4), (5) (as amended) (see PARAS 57-58 post), s 325 (as amended) (see PARAS 57-58 post), s 330 (as amended) (see PARA 53 post), s 334 (as prospectively repealed) (see PARA 30 post), Sch 1 para 13 (as amended) (see PARAS 850-852 post), Sch 1 para 20(3) (as substituted) (see PARAS 244, 251 post), Sch 3 (as amended) (see PARA 920 post), Sch 4 paras 1-3 (see PARA 237 post), Sch 17 (as amended) (see PARA 3 note 18 ante); and
- 23 (15) any other provisions of the planning Acts in so far as they apply, or have effect for the purposes of any of the provisions specified in heads (1)-(14) supra.

The provisions specified in Sch 16 Pt II (amended by the Planning and Compensation Act 1991 s 32, Sch 7 para 57(3)) are:

- 24 (a) the following provisions relating to development plans under the 1990 Act, ie the Town and Country Planning Act 1990 ss 30-49 (as amended; repealed with savings) (see PARA 178 et seq post), s 50(5) (as amended; repealed with savings) (see PARA 185 post), s 51 (as amended; repealed with savings) (see PARA 179 post), s 53 (as amended; repealed with savings) (see PARA 177 post), s 54 (as amended; repealed with savings) (see PARA 151 post);
- 25 (b) the following provisions relating to the control of development and appeals against planning decisions, ie s 56(2)-(6) (as amended), with the omission in s 56(3) (as amended) of the references to s 85 (as amended), s 86(6) and s 87(4) (see PARA 221 post), s 65 (as substituted and amended) (see PARA 468 post), s 69(3), (4) (as amended; prospectively substituted) (see PARA 466 post), s 79(6)-(7) (as amended) (see PARA 601 post), ss 91-93 (as amended) (see PARAS 519, 537 post), s 94(1)(a), (2)-(6) (see PARA 538 post), s 95 (see PARA 539 post), s 99 (see PARA 543 post), s 101 (as amended) (see PARA 704 post);
- 26 (c) the following provisions relating to owners' rights to require the purchase of certain interests, ie s 137(6), (7) (see PARA 966 post), s 142 (see PARA 973 post), s 157(1), (2) (see PARA 1008 post), s 162 (as amended) (see PARA 1004 post), s 163 (see PARA 1005 post), s 166 (see PARA 993 post);

- 27 (d) the following provisions relating to the enforcement of planning controls and appeals against enforcement notices etc, ie ss 171A-171D (as added and amended) (see PARA 551 et seq post), ss 172-174 (as amended) (see PARA 561 et seq post), s 175(1)-(4), (6) (as amended) (see PARAS 603-604 post), s 176 (as amended) (see PARA 609 post), s 177 (as amended) (see PARA 610 post), s 183 (as amended) (see PARAS 577-579 post), s 184 (as amended) (see PARAS 577-579 post), s 186(1)-(5) (as amended) (see PARA 581 post), ss 187-187B (as amended) (see PARA 582 et seq post), ss 191-196 (as amended) (see PARA 586 et seq post);
- 28 (e) the following provision relating to tree preservation orders, ie s 208(9) (see PARA 886 post);
- 29 (f) the following provisions relating to the acquisition and appropriation of land, ie s 226 (as amended) (see PARAS 934-935 post), s 228(1), (3), (4), (7) (as amended) (see PARA 939 post);
- 30 (g) the following provisions relating to highways, ie ss 248-250, 253, 257 258(1), 259, 261 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq);
- 31 (h) the following provisions relating to statutory undertakers, ie s 264(1)-(6) (as amended) (see PARA 1011 post), s 273 (as amended) (see PARA 1022 post), s 279(4) (see PARA 1027 post), s 280(6), (8)(b) (see PARA 1028 post);
- 32 (i) the following financial provisions, ie s 304 (see PARA 48 post), s 307 (as amended) (see PARA 994 post); and
- 33 (j) the following miscellaneous provisions, ie s 331 (see PARA 55 post), Sch 2 Pt II paras 3-12 (repealed), Sch 2 Pt III (see PARA 212 post), Sch 6 (as amended) (see PARA 621 et seq post), Sch 14 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 802 et seq).

5 Town and Country Planning Act 1990 s 315(1) (amended by Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 11). For these purposes, 'prescribed', except in relation to matters expressly required or authorised by the Town and Country Planning Act 1990 to be prescribed in some other way, means prescribed by regulations under that Act: s 336(1). As to the making of regulations generally see PARA 3 ante.

As to the exercise of the power to make regulations under s 315(1) (as amended) see the Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863. Regulation 2 modifies the definition of 'use' for the purposes of the provisions set out in note 4 supra (see PARA 221 note 4 post); and reg 3, Schedule makes specific modifications to the Town and Country Planning Act 1990 s 56 (as amended) (see PARA 221 post) and s 107 (as amended) (see PARA 914 post).

6 For these purposes, except in so far as the context otherwise requires, 'agriculture' includes horticulture, fruit growing, seed growing, dairy farming, the breeding and keeping of livestock (including any creature kept for the production of food, wool, skins or fur, or for the purpose of its use in the farming of land), the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds, and the use of land for woodlands where that use is ancillary to the farming of land for other agricultural purposes; and 'agricultural' is to be construed accordingly: Town and Country Planning Act 1990 s 336(1). The breeding and keeping of livestock does not extend to the breeding and keeping of horses except for their use in the farming of land: *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 60 LGR 319, DC. 'Grazing land' includes land used for grazing racehorses and ponies and point-to-point horses (*Sykes v Secretary of State for the Environment* (1980) 42 P & CR 19, DC) and for fox farming (*North Warwickshire Borough Council v Secretary of State for the Environment and Gill* [1984] JPL 434). 'Agriculture' includes the use of land as allotments (*Crowborough Parish Council v Secretary of State for the Environment and Wealden District Council* (1980) 43 P & CR 229, DC) but not for the installation of an egg-vending machine (*Hidderley v Warwickshire County Council* (1963) 14 P & CR 134, DC) or as lairage (*Warnock v Secretary of State for the Environment and Dover District Council* [1980] JPL 590, DC). See also *Wealden District Council v Secretary of State for the Environment and Colin Day* [1988] JPL 268, CA (cited in PARA 222 note 5 post). As to the factors to be taken into account when determining whether land is being used for the purposes of agriculture see *Millington v Secretary of State for the Environment, Transport and the Regions* (1999) Times, 29 June, [1999] All ER (D) 675, CA.

7 For the meaning of 'building' para 2 note 10 ante.

8 Town and Country Planning Act 1990 s 315(4) (amended by the Coal Industry Act 1994 s 67(1), (8), Sch 9 para 39(2), Sch 11 Pt III). Nothing in the Town and Country Planning Act 1990 s 315(1)-(4) (as amended) is to be construed as affecting the prerogative right of Her Majesty, whether in right of the Crown or of the Duchy of Lancaster, or of the Duke of Cornwall to any gold or silver mine: s 315(5).

9 For these purposes, except in so far as the context otherwise requires, 'tenancy' has the same meaning as in the Landlord and Tenant Act 1954: Town and Country Planning Act 1990 s 336(1).

10 le the provisions specified in *ibid* Sch 16 Pt III (as amended). The provisions so specified are ss 109-112 (as amended) (see PARA 916 et seq post), s 298 (as amended) (see PARA 922 post), ss 308-310 (as amended) (see PARA 933 post); (2) the following miscellaneous provisions, ie s 318(4), (5) (as amended) (see PARA 17 post), s 328 (as amended) (see PARA 918 post) and any other provisions of the planning Acts in so far as they apply, or have effect for the purposes of, any of the provisions so specified: Town and Country Planning Act 1990 Sch 16 Pt III (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 57(1), (4), Sch 19 Pts 1, II).

11 Town and Country Planning Act 1990 s 315(2) (amended by the Planning and Compensation Act 1991 Sch 6 paras 8, 32, Sch 19 Pt II). At the date at which this title states the law, no regulations had been made for these purposes and none had effect as if so made.

12 As to the Secretary of State see PARA 19 post.

13 Town and Country Planning Act 1990 s 315(3). As to the transfer of functions under s 315 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 post. As to Parliamentary procedure in connection with regulations made by the Assembly see PARA 20 post; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; PARLIAMENT VOL 34 (Reissue) PARA 912 et seq.

UPDATE

16 Power to modify statutory provisions in relation to minerals

NOTE 5--SI 1995/2863 Schedule amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(3) OTHER SPECIAL CASES/17. Ecclesiastical property.

17. Ecclesiastical property.

Where, under any of the provisions of the Town and Country Planning Act 1990, a notice or copy of a notice is required to be served on an owner¹ of land, and the land is ecclesiastical property², a similar notice or copy must be served³ on the Church Commissioners⁴.

Where the fee simple of any ecclesiastical property is in abeyance:

- 71 (1) if the property is situated elsewhere than in Wales, the fee simple is treated for the purposes of specified provisions of the 1990 Act⁵ as being vested in the Church Commissioners;
- 72 (2) in any case, the fee simple is treated, for the purposes of a compulsory acquisition⁶, as being vested in the Church Commissioners, and any notice to treat must be served, or is deemed to have been served, accordingly⁷.

Any compensation payable⁸ in respect of land which is ecclesiastical property:

- 73 (a) must, in the case of land which is not diocesan glebe land, be paid to the Church Commissioners; and
- 74 (b) must, in the case of diocesan glebe land, be paid to the Diocesan Board of Finance⁹ in which the land is vested,

and must, in either case, be applied by them for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment¹⁰ or Measure authorising or disposing of the proceeds of such a sale¹¹.

Any sum which under any of the specified provisions¹² is payable in relation to land which is, or on 1 July 1948 was, ecclesiastical property, and would otherwise be payable to an incumbent must be paid to the Church Commissioners and must be applied¹³ by them for the above purposes¹⁴.

Where any sum paid by way of compensation in respect of any such land is recoverable¹⁵ on a subsequent development, the Church Commissioners may apply any money or securities held by them in the payment of that sum¹⁶.

1 For these purposes, except in so far as the context otherwise requires, 'owner', in relation to any land, means a person, other than a mortgagee not in possession, who, whether in his own right or as trustee for any other person, is entitled to receive the rack rent of the land or, where the land is not let at a rack rent, would be so entitled if it were so let: Town and Country Planning Act 1990 s 336(1) (definition amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 52(1), (2)(e), Sch 19 Pt I). For the meaning of 'land' para 2 note 10 ante.

2 For these purposes, 'ecclesiastical property' means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction or being diocesan glebe land: Town and Country Planning Act 1990 s 318(6) (s 318(3), (4), (6) amended by the Planning and Compensation Act 1991 s 70, Sch 15 para 30(1)-(3)). 'Diocesan glebe land' has the same meaning as in the Endowments and Glebe Measure 1976 (see ECCLESIASTICAL LAW): Town and Country Planning Act 1990 s 318(6) (as so amended).

3 Ie without prejudice to the provisions of the Acquisition of Land Act 1981 with respect to notices served under that Act: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 561, 618.

4 Town and Country Planning Act 1990 s 318(1). As to the Church Commissioners see ECCLESIASTICAL LAW vol 14 para 363 et seq; and as to the service of notices generally see PARA 54 post.

5 Ie for the purposes of the provisions specified in ibid Sch 16 Pt VI (as amended). The provisions so specified are: (1) the following provisions relating to the control of development, ie s 60(4) (see PARA 254 post), s 65 (as substituted and amended) (see PARA 468 post), s 71(1), (2), (2A) (as substituted) (see PARA 473 post); (2) the following provisions relating to owners' rights to require the purchase of certain interests, ie ss 149-151 (as amended) (see PARAS 987, 990, 992-993 post), s 153(1)-(7) (see PARA 996 post), ss 154-156 (see PARAS 997-999 post), s 161(1), in so far as it relates to provisions mentioned in Sch 16 Pt VI (as amended) (see PARA 992 post), s 164 (see PARA 1006 post), ss 168-171 (as amended) (see PARA 987 et seq post); (3) the following miscellaneous provisions, ie s 284 (as amended), except s 284(1)(a)-(d) (as amended) (see PARA 43 post), s 285(5), (6) (repealed), s 288 (as amended) (see PARA 47 post), s 291 (see PARA 43 note 26 post), s 292(2) (see PARA 43 post), s 296(1) (as amended; prospectively repealed) (see PARA 11 ante), construed as if the reference to Pt III (ss 55-106B) (as amended) were a reference only to s 65 (as substituted), s 296(5) (prospectively repealed) (see PARA 989 post), s 318(2), except s 318(2)(b) (see the text and notes 1-4 supra, this note, and the text and notes 6-16 infra), Sch 13 paras 1-4 (as amended) (see PARA 978 et seq post), Sch 13 paras 12-16 (as amended) (see PARAS 982-983 post), Sch 13 paras 20-22 (see PARAS 985-986 post); and (4) any other provisions of the Town and Country Planning Act 1990 in so far as they apply, or have effect for the purpose of, any of the provisions so specified: Sch 16 Pt VI (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 57(1), (6), Sch 19 Pt II).

6 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended): see PARA 934 et seq post. For the meaning of 'compulsory acquisition' see PARA 930 note 4 post.

7 Ibid s 318(2).

8 Ie under ibid Pt IV (ss 107-118) (as amended) (see PARA 914 et seq post), s 186 (as amended) (see PARA 581 post), Pt VIII (ss 197-225) (as amended) (except s 204) (see PARAS 769 et seq, 847 et seq, 887 et seq post) or s 250 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 794).

9 For these purposes, 'Diocesan Board of Finance' has the same meaning as in the Endowments and Glebe Measure 1976 (see ECCLESIASTICAL LAW): Town and Country Planning Act 1990 s 318(6) (as amended: see note 2 supra).

10 For the meaning of 'enactment' see PARA 2 note 11 ante.

11 Town and Country Planning Act 1990 s 318(3) (as amended: see note 2 supra).

12 Ie the provisions specified in ibid Sch 16 Pt III (as amended): see PARA 16 note 10 ante.

- 13 le applied for the purposes mentioned in *ibid* s 318(3) (as amended: see note 2 *supra*).
- 14 *Ibid* s 318(4) (as amended: see note 2 *supra*).
- 15 le under *ibid* s 111 (as amended) (see PARA 918 post) or s 112 (as amended) (see PARA 919 post).
- 16 *Ibid* s 318(5) (amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 33).

UPDATE

17 Ecclesiastical property

TEXT AND NOTES--Town and Country Planning Act 1990 s 318 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 26.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(3) OTHER SPECIAL CASES/18. Special provisions applying to certain major developments; the Channel Tunnel Rail Link and the Cardiff Bay Barrage.

18. Special provisions applying to certain major developments; the Channel Tunnel Rail Link and the Cardiff Bay Barrage.

Subject to certain specific conditions¹, planning permission² is deemed to be granted under Part III of the Town and Country Planning Act 1990³ for the carrying out of development⁴ authorised by Part I⁵ of the Channel Tunnel Rail Link Act 1996⁶. That deemed permission is, however, subject to conditions set out in Schedule 6 to the Act⁷ and requests for approval under that Schedule must be made to the local planning authority⁸. The Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999⁹, which apply to development consisting of the carrying out of certain work authorised by the 1996 Act¹⁰, disapply this deemed permission where the 1994 environmental statement for the rail link¹¹ does not contain all the required information¹² and other specified circumstances apply¹³. The Channel Tunnel Rail Link (Planning Appeals) Regulations 1997¹⁴ make provision with regard to appeals by the nominated undertaker against a decision on a request for approval made under Schedule 6 to the 1996 Act¹⁵ which is to be dealt with by written representations¹⁶.

Planning permission is, similarly, deemed to have been granted under Part III of the Town and Country Planning Act 1990 for any development of land consisting in the carrying out of any works or other operations authorised by the Cardiff Bay Barrage Act 1993 or the making of any change in the use of land by the carrying out of any such operations¹⁷.

1 le subject to the Channel Tunnel Rail Link Act 1996 s 9(2) (which sets out conditions relating to parking at St Pancras station in London) and s 9(4) (which sets out conditions relating to the provision of a combined international and domestic passenger station and parking at Ebbsfleet in Kent).

2 For the meaning of 'planning permission' see PARA 43 note 6 post.

3 le under the Town and Country Planning Act 1990 Pt II (ss 55-106B) (as amended): see PARA 213 et seq post.

4 The Channel Tunnel Rail Link Act 1996 s 9(5), Sch 6 (as amended), which makes provision about planning conditions, has effect in relation to development for which planning permission is so deemed to be granted, other than development to which s 9(2) or (4) applies: s 9(5).

5 le by *ibid* Pt I (ss 1-43) (as amended).

6 Ibid s 9(1). As to the Channel Tunnel and the Channel Tunnel Rail Link see further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324.

7 See ibid Sch 6 Pts I-III (paras 1-25) (as amended).

8 The conditions differ according to whether the local planning authority is a 'qualifying' or 'non-qualifying' authority. As to qualifying authorities see ibid Sch 6 para 1; and the Channel Tunnel Rail Link (Qualifying Authorities) Order 1997, SI 1997/8; the Channel Tunnel Rail Link (Qualifying Authorities) Order 1998, SI 1998/1445.

9 Ie the Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999, SI 1999/107.

10 See ibid reg 2.

11 Ie the document called the *Environmental Statement for the Channel Tunnel Rail Link* deposited with the Bill for the 1996 Act pursuant to H of C Standing Order 27A upon the Bill's introduction in the House of Commons on 23 November 1994, including the supplements to that document deposited on 7 November 1995 and 5 December 1995: see the Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999, SI 1999/107, reg 1(2).

12 Ie the information specified in the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, SI 1988/1199, Sch 3 para 2 (now revoked and replaced; as to the assessment of environmental effects see PARAS 60 et seq, 487 et seq post).

13 See the Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999, SI 1999/107, reg 3.

14 Ie the Channel Tunnel Rail Link (Planning Appeals) Regulations 1997, SI 1997/821.

15 Ie appeals under the Channel Tunnel Rail Link Act 1996 Sch 6 para 32 (as amended) (appeals against a decision of the qualifying planning authority for approval under Sch 6 Pt II or Pt III (as amended)) which are not the subject of a direction made pursuant to Sch 6 para 36(1): see the Channel Tunnel Rail Link (Planning Appeals) Regulations 1997, SI 1997/821, reg 3.

16 See ibid regs 1-10, Schedule. As to appeals dealt with by written representations generally see PARA 627 et seq post.

17 See the Cardiff Bay Barrage Act 1993 s 24(1). Nothing in the Town and Country Planning Act 1990 s 91 (as amended) (limit on duration of planning permission: see PARA 537 post) applies to the planning permission deemed to have been so granted: Cardiff Bay Barrage Act 1993 s 24(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(i) Central Administration/19. The Secretary of State.

(4) ADMINISTRATION

(i) Central Administration

19. The Secretary of State.

The central authority for the purposes of the Town and Country Planning Act 1990 and related legislation is, in England, the Secretary of State. The Secretary of State is a general term comprising all the Secretaries of State each of whom may perform the duties of all or any of them except where a statute specifically allocates a function to a particular Secretary of State¹. At the date at which this title states the law, most functions of the Secretary of State under the Town and Country Planning Act 1990 and related legislation were performed² in England³ by the

Deputy Prime Minister⁴. Certain matters relating to the historic environment and listed buildings were, however, the responsibility of the Secretary of State for Culture, Media and Sport⁵.

The functions of the Secretary of State in the regions outside London are carried out on a day to day basis by officials based in regional government offices. These regional offices are distinct from the regional planning bodies discussed below⁶.

In relation to Wales⁷, most of the Secretary of State's town and country planning functions have been transferred to the National Assembly for Wales⁸. Functions not transferred are exercisable⁹ by the Secretary of State for Wales¹⁰.

Any sums received by the Secretary of State under any provision of the Town and Country Planning Act 1990 must¹¹ be paid into the Consolidated Fund¹².

1 See the Interpretation Act 1978 ss 5, 22(1), Sch 1, Sch 2 para 4(1)(b); and CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 355. For current titles and responsibilities see the most recent edition of the Civil Service Yearbook.

2 Certain functions may, however, be exercised by 'the appropriate minister': see PARA 1012 post.

3 In any Act passed on or after 1 April 1974, or any subordinate legislation, unless the contrary intention appears, 'England' means, subject to any alteration of boundaries under the Local Government Act 1972 Pt IV (ss 53-78) (as amended) or the Local Government Act 1992 Pt II (ss 12-27) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 56 et seq), the area consisting of the counties established by the Local Government Act 1972 s 1 (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 24, 27), Greater London and the Isles of Scilly, unless the contrary intention appears: Interpretation Act 1978 ss 5, 17, 23, Sch 1, Sch 2 para 6. As to the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36; and as to the application of the Town and Country Planning Act 1990 to those Isles see PARA 2 note 1 ante; and as to the application of the Planning and Compulsory Purchase Act 2004 to those Isles see PARA 4 note 3 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 As to the Deputy Prime Minister (also known as the 'First Secretary of State') see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Office of the Deputy Prime Minister ('ODPM') maintains an internet site on the World Wide Web where information about planning policy and legislation may be found. At the date at which this title states the law, that site was accessible at www.odpm.gov.uk.

5 As to the Secretary of State for Culture, Media and Sport see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Department for Culture, Media and Sport ('DCMS') maintains an internet site on the World Wide Web; at the date at which this title states the law, that site was accessible at www.culture.gov.uk and set out that department's responsibilities as covering the identification, conservation and enhancement of the historic built environment in England, including listing and scheduling of historic buildings and ancient monuments, protection of conservation areas and management of the DCMS historic buildings estate together with state ceremonial duties; also carrying out European and International work on the historic environment including the selection and arrangements for care of World Heritage Sites under the World Heritage Convention.

6 As to regional planning bodies see PARA 24 post.

7 In any Act passed on or after 1 April 1974, or any subordinate legislation, unless the contrary intention appears, 'Wales' means the combined area of the counties which were created by the Local Government Act 1972 s 20 (as substituted) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 5, 37), but subject to any alteration made under s 73 (as amended) (consequential alteration of boundary following alteration of watercourse) (see LOCAL GOVERNMENT vol 69 (2009) PARA 90): Interpretation Act 1978 ss 5, 23, Sch 1 (definition substituted by the Local Government (Wales) Act 1994 s 1(3), Sch 2 para 9).

8 See PARA 20 post.

9 See note 2 supra.

10 As to the Secretary of State for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 520. The Wales Office (formerly known as 'the Welsh office') maintains an internet site on the World Wide Web where details of the Secretary of State's functions may be found; at the date at which this title states the law, that site was accessible at www.walesoffice.gov.uk.

11 Ie subject to the Town and Country Planning Act 1990 s 112 (as amended): see PARAS 918-919 post.

12 Ibid s 313 (amended by the Planning and Compensation Act 1991 ss 31, 84(6), Sch 6 paras 8, 31, Sch 19 Pt II). As to the Consolidated Fund see PARLIAMENT vol 78 (2010) PARAS 1028-1031. As to the extent to which this provision applies to the Assembly see PARA 20 note 2 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(i) Central Administration/20. The National Assembly for Wales.

20. The National Assembly for Wales.

Under the arrangements for devolved government in Wales¹, ministerial functions relating to town and country planning are transferred, subject to prescribed exceptions and qualifications, to the National Assembly for Wales². In certain cases, such functions are exercisable by the Assembly concurrently with the Secretary of State³.

Certain functions are exercisable by the Secretary of State only after consultation with the Assembly⁴.

Where a function to make subordinate legislation⁵ has been transferred to, or made exercisable by, the Assembly⁶, then, subject to certain exceptions⁷, any relevant Parliamentary procedural provision⁸ relating to the function does not have effect in relation to the exercise of the function by the Assembly⁹.

The Assembly's duty to promote sustainable development has already been discussed¹⁰.

1 For these purposes, 'Wales' includes the sea adjacent to Wales out as far as the seaward boundary of the territorial sea: Government of Wales Act 1998 s 155(1). The Secretary of State may by order determine, or make provision for determining, for the purposes of the definition of 'Wales' any boundary between (1) the parts of the sea which are to be treated as adjacent to Wales; and (2) those which are not, and may make different determinations or provision for different purposes; and an Order in Council under s 22 (transfer of functions) may include any provision that may be included in such an order: s 155(2). For the purposes of the definition of 'Wales' in the 1998 Act the boundary between those parts of the sea within the Severn and Dee Estuaries which are to be treated as adjacent to Wales and those which are not is to be, in each case, a line drawn between the co-ordinates set out in the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 6, Sch 3: see art 6.

2 See ibid art 2, Sch 1 (as amended). As to the establishment, constitution and functions of the National Assembly for Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS. The Assembly maintains an internet site on the World Wide Web where details of its policies and functions may be found; at the date at which this title states the law, that site was accessible at www.wales.gov.uk.

The 1999 Order has been extensively amended; relevant amendments to Sch 1 for the purposes of town and country planning have been made by SI 2000/253. An indication as to whether or not a function has been so transferred, and any qualification to which any such transfer is subject, is given in the text and notes to the paragraph of this title discussing the function in question.

A reference in the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, Sch 1 (as amended) to an enactment amended by the Planning and Compulsory Purchase Act 2004 must be taken to be a reference to the enactment as so amended; but this does not affect such an enactment to the extent that the amendment makes express provision in connection with the exercise of a function in relation to Wales: s 118(3), (4).

As to restrictions on the Assembly's powers see eg the Government of Wales Act 1998 s 106 (Community obligations); and CONSTITUTIONAL LAW AND HUMAN RIGHTS; s 107 (Assembly must act in accordance with Convention rights under the Human Rights Act 1998); and PARA 7 ante; the Government of Wales Act 1998 s 108 (international obligations); and CONSTITUTIONAL LAW AND HUMAN RIGHTS. In general, sums received by the Assembly are to be paid into the Consolidated Fund (see s 84(1)); but for the exceptions to this see s 84(2)-(6); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

3 Eg the functions under the Town and Country Planning Act 1990 s 321 (as amended): see PARA 652 post. As to the Secretary of State see PARA 19 ante.

4 Eg the functions under the Planning and Compulsory Purchase Act 2004 s 121(2) (making of certain commencement orders): see PARA 4 ante.

5 Ie including a function conferred or imposed by, or after the passing of, the Government of Wales Act 1998: s 44(1). For these purposes, 'make' includes confirm or approve and related expressions (except 'made exercisable') are to be construed accordingly; but an instrument (or draft) does not fall within s 44(4)(a) (see note 7 head (1) infra) just because it contains subordinate legislation made (or to be made) by the Assembly with the agreement of a Minister of the Crown or government department: s 44(6).

6 Ie by an Order in Council under *ibid* s 22.

7 Ie subject to *ibid* s 44(4), (5). Section 44(2) (see the text and notes 8-9 infra) does not apply in the case of any instrument made in the exercise of the function, or a draft of any such instrument, if it (1) contains subordinate legislation made or to be made by a Minister of the Crown or government department (whether or not jointly with the Assembly); (2) contains (or confirms or approves) subordinate legislation relating to an English border area; or (3) contains (or confirms or approves) subordinate legislation relating to a cross-border body (and not relating only to the exercise of functions, or the carrying on of activities, by the body in or with respect to Wales or a part of Wales): s 44(4). Where a function transferred to, or made exercisable by, the Assembly by an Order in Council under s 22 is subject to a provision of the description specified in s 44(3)(e) (see note 8 head (5) infra, the Order in Council may provide that (a) any order made by the Assembly in the exercise of the function; or (b) any order so made in circumstances specified in the Order in Council, is to be subject to special parliamentary procedure: s 44(5).

8 For these purposes, 'relevant Parliamentary procedural provision' means provision (1) requiring any instrument made in the exercise of the function, or a draft of any such instrument, to be laid before Parliament or either House of Parliament; (2) for the annulment or approval of any such instrument or draft by or in pursuance of a resolution of either House of Parliament or of both Houses; (3) prohibiting the making of any such instrument without that approval; (4) for any such instrument to be a provisional order (that is, an order which requires to be confirmed by Act of Parliament); or (5) requiring any order (within the meaning of the Statutory Orders (Special Procedure) Act 1945) to be subject to special parliamentary procedure: Government of Wales Act 1998 s 44(3).

9 *Ibid* s 44(1), (2).

10 See *ibid* s 121; and PARA 6 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(i) Central Administration/21. The Planning Inspectorate and the Planning Portal.

21. The Planning Inspectorate and the Planning Portal.

The Planning Inspectorate is a government executive agency¹ based in Bristol and Cardiff². The main work of the inspectorate is the processing of planning and enforcement appeals³ and holding inquiries into local development plans⁴. The inspectorate also deals with a wide variety of other planning related casework including listed building consent appeals⁵, advertisement appeals⁶ and reporting on planning applications called in for decision by the Office of the Deputy Prime Minister, or, in Wales, by the Welsh Assembly Government⁷. Performance targets for the inspectorate are set by the Office of the Deputy Prime Minister or, in Wales, by the National Assembly for Wales⁸.

The Planning Portal, an information site on the World Wide Web, was originally developed by the Planning Inspectorate and launched in 2002⁹. That site now incorporates an electronic planning casework service¹⁰.

1 Executive agencies are more or less autonomous units, operating within a framework document and business plan. Key performance targets are set annually by the appropriate minister and are announced to Parliament. See further CONSTITUTIONAL LAW AND HUMAN RIGHTS.

2 The postal addresses of the Planning Inspectorate are (1) in England, Temple Quay House, 2 The Square, Temple Quay, Bristol, BS1 6PN; (2) in Wales, Crown Buildings, Cathays Park, Cardiff, CF10 3NQ. The Planning Inspectorate maintains in internet site on the World Wide Web; at the date at which this title states the law, that site was accessible at www.planning-inspectorate.gov.uk.

3 As to planning appeals see PARA 598 et seq.

4 As to local development plans under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (repealed with savings) see PARA 148 et seq post; and as to local development schemes and plans under the Planning and Compulsory Purchase Act 2004 see PARA 91 et seq post.

5 As to listed building consent appeals see PARAS 1186-1189 post.

6 As to advertisement appeals see PARAS 833-836 post.

7 As to called-in applications see PARAS 444-446 post.

8 As to the ODPM see PARA 19 ante; and as to the Assembly see PARA 20 ante.

9 Responsibility for the operation of the Planning Portal was subsequently passed to the Office of the Deputy Prime Minister. At the date at which this title states the law, the Planning Portal was accessible at www.planningportal.gov.uk.

10 The Planning Casework Service ('PCS') was launched in England in November 2004 to enable certain enforcement appeals to be lodged electronically and was extended during 2005 to other casework in England and also to casework in Wales.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(i) Central Administration/22. Other government agencies and services.

22. Other government agencies and services.

There are a number of government services and agencies offering advice to local planning authorities¹. In some cases these agencies are entitled to be consulted before certain planning decisions are taken². Among such services and agencies are:

- 75 (1) the Planning Advisory Service, launched in November 2004 and funded by the Office of the Deputy Prime Minister³;
- 76 (2) the Environment Agency⁴;
- 77 (3) English Partnerships⁵;
- 78 (4) English Heritage⁶;
- 79 (5) the Highways Agency⁷;
- 80 (6) the Health and Safety Executive⁸;
- 81 (7) English Nature and the Countryside Council for Wales⁹; and
- 82 (8) the Commission for Architecture and the Built Environment ('CABE')¹⁰.

The above does not purport to be an exhaustive list.

The National Assembly for Wales¹¹ has a statutory duty to make a scheme for promoting and sustaining local government in Wales¹². The Partnership Council for Wales may give advice to those involved in local government in Wales¹³.

1 As to local planning authorities see PARA 28 et seq post.

- 2 As to statutory consultees see further PARA 70 post.
- 3 The Planning Advisory Service is hosted by Improvement & Development Agency (IDeA) Knowledge, which provides examples of good practice to local authorities in England and Wales. At the date at which this title states the law, information about the Planning Advisory Service ('PAS') was accessible at www.idea-knowledge.gov.uk.
- 4 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 5 As to English Partnerships see PARA 1308 post. As to the circumstances in which the Urban Regeneration Agency, one of the constituent bodies of English Partnerships, may act as the local planning authority for an area see PARA 37 post; and as to the town and country planning functions of the Commission for the New Towns, the other constituent body of English Partnerships, see PARA 1384 post.
- 6 As to English Heritage see PARA 1058 post.
- 7 As to the Highways Agency see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 52.
- 8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 9 As to English Nature and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq. See also PARA 70 post.
- 10 CABE is an executive non-departmental public body funded by both the Department for Culture, Media and Sport (DCMS) and the Office of the Deputy Prime Minister (ODPM). Its Board members are appointed by the Secretary of State; he may, with the consent of the Treasury, give financial assistance to, or for, the purposes of CABE in respect of its activities in England relating to the protection, improvement or better understanding of the environment: see the Financial Assistance for Environmental Purposes (England) Order 2003, SI 2003/714. CABE has been incorporated as a company limited by guarantee; at the date at which this title states the law, it was awaiting establishment as a statutory body. CABE maintains an internet site on the World Wide Web where details of its constitution and functions may be found; at the date at which this title states the law, that site was accessible at www.cabe.org.uk.
- 11 As to the Assembly see PARA 20 ante.
- 12 See the Government of Wales Act 1998 s 113(1); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.
- 13 See *ibid* s 113(4)(c). As to the Partnership Council see s 113(2)-(8), Sch 11; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

22 Other government agencies and services

NOTE 10--CABE has been established as a statutory body: see BUILDING CONTRACTS, ARCHITECTS, ENGINEERS, VALUERS AND SURVEYORS vol 4(3) (Reissue) PARAS 225A-225D.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(i) Central Administration/23. Investigation by the relevant ombudsman.

23. Investigation by the relevant ombudsman.

The Parliamentary Commissioner for Administration¹ may investigate, on reference being duly made to him, any actions² taken by or on behalf of specified government departments, corporations or unincorporated bodies³, being actions taken in the exercise of administrative functions⁴ of that department or authority, other than those actions he is expressly precluded from investigating⁵.

At the date at which this title states the law, the Welsh Administration Ombudsman⁶ has similar powers with regard to actions taken in the exercise of administrative functions of the National Assembly for Wales⁷ and certain other bodies⁸. As from a day to be appointed⁹, however, the office of Welsh Administration Ombudsman is abolished and replaced by the office of Public Services Ombudsman for Wales¹⁰.

The respective ombudsmen may also investigate the refusal of access to information under the relevant codes of practice adopted by the departments or bodies in question, or by the Assembly¹¹.

The ombudsmen publish annual reports with details of the investigations undertaken¹².

1 As to the Parliamentary Commissioner for Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

2 'Action' includes failure to act: see the Parliamentary Commissioner Act 1967 s 12(1).

3 See ibid s 4(1), Sch 2 (as substituted and amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

4 As to the meaning of 'administrative functions' see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 note 4.

5 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41. As to matters excluded from investigation see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. As to the matters concerning urban development and regeneration which may be investigated by the Parliamentary Commissioner see PARA 1508 post.

6 As to the Welsh Administration Ombudsman see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45.

7 As to the Assembly see PARA 20 ante.

8 See the Government of Wales Act 1998 s 111(2), Sch 9 (as amended; prospectively repealed); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45. Note that he may not investigate any action in respect of the town and country planning functions of an urban development corporation established for an area wholly in Wales; such investigations are conducted by the Commissioners for Local Administration: see PARAS 41, 1508 post. He may, however, investigate actions taken by the Welsh Development Agency: see PARA 1508 post.

9 I.e a day to be appointed under the Public Services Ombudsman (Wales) Act 2005 s 40. At the date at which this title states the law, no such day had been appointed.

10 See ibid ss 1, 36, Sch 1.

11 See further ADMINISTRATIVE LAW; CONSTITUTIONAL LAW AND HUMAN RIGHTS.

12 At the date at which this title states the law, those reports were accessible at www.ombudsman.org.uk.

UPDATE

23 Investigation by the relevant ombudsman

TEXT AND NOTE 9--Day now appointed: SI 2005/2800.

NOTE 10--2005 Act Sch 1 amended: Government of Wales Act 2006 Sch 10 para 86.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(ii) Regional Planning Bodies/24. Recognition of bodies as regional planning bodies.

(ii) Regional Planning Bodies

24. Recognition of bodies as regional planning bodies.

The Secretary of State¹ may give a direction recognising a body², whether or not incorporated, which satisfies such criteria as are prescribed³, as the regional planning body for a region⁴. Such a body is referred to⁵ as the 'RPB'⁶. The Secretary of State must not, however, give such a direction in relation to a body unless not less than 60% of the persons who are members of the body fall within the relevant statutory provision⁷. A person falls within that provision if he is a member of any of the following councils or authorities and any part of the area of the council or authority, as the case may be, falls within the region to which the direction, if given, will relate:

- 83 (1) a district council;
- 84 (2) a county council;
- 85 (3) a metropolitan district council;
- 86 (4) a National Park authority;
- 87 (5) the Broads Authority⁸.

A change in the membership of a body which is not incorporated does not, by itself, affect the validity of the recognition of the body⁹.

Regional planning bodies have functions relating to the regional spatial strategy for their regions¹⁰.

1 For the purposes of the Planning and Compulsory Purchase Act 2004 Pt I (ss 1-12) (see the text and notes 1-13 *infra*; para 25 *post*; and PARA 72 *et seq post*), the Secretary of State is the Secretary of State for the time being having general responsibility for policy in relation to the development and use of land: s 12(4). See further PARA 19 *ante*. For the meaning of 'use' see PARA 221 note 4 *post* (definition applied by virtue of s 117(1), (5)).

2 I.e a body to which *ibid* s 2(2) applies: see the text to note 3 *infra*.

3 I.e by regulations made by the Secretary of State: see *ibid* s 122; and PARA 5 *ante*. The criteria prescribed for these purposes are that (1) at least 30% of the members of the RPB (as to which see the text and notes 5-6 *infra*) are not also members of a relevant authority; (2) all the members of the RPB are entitled to vote when any decision relating to the exercise by the RPB of its functions under the Planning and Compulsory Purchase Act 2004 is taken by the RPB; and (3) the membership of the RPB includes at least one member from each type of relevant authority, if such an authority exists within the region concerned: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 4(1). In heads (1) and (3) *supra*, 'relevant authority' means (a) a district council; (b) a county council; (c) a metropolitan district council; (d) a National Park authority; (e) the Broads Authority; (f) the Council of the Isles of Scilly: reg 4(2). As to county, metropolitan district and district councils see PARA 28 *post*; as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36; as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 *et seq*; and as to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

4 Planning and Compulsory Purchase Act 2004 s 2(1), (2). A region is a region (except London) specified in the Regional Development Agencies Act 1998 s 1, Sch 1 (ie East Midlands, Eastern, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber: see PARA 27 note 1 *post*; and TRADE AND INDUSTRY vol 97 (2010) PARA 988); Planning and Compulsory Purchase Act 2004 s 12(1). The Secretary of State may, however, by order direct that if the area of a National Park falls within more than one region it is treated as falling wholly within such region as is specified in the order: s 12(2). In the exercise of this power the Secretary of State has made the Town and Country Planning (Regions) (National Parks) (England) Order 2004, SI 2004/2207, directing that: (i) the area of the North York Moors National Park (which falls within Yorkshire and Humber region and North East region) and the area of the Yorkshire Dales National Park (which falls within Yorkshire and Humber region and North West region) are treated as falling wholly within Yorkshire and Humber region; and (ii) the area of the Peak District National Park (which falls within East Midlands region, West Midlands region, North West region and Yorkshire and Humber region) is treated as falling wholly within East Midlands region: see art 2.

The Barker Review Report (*Delivering stability--securing our future housing needs* (HM Treasury, 2004)) proposes the merger of Regional Planning Bodies and Regional Housing Bodies and the issuing of government guidance as to the composition of the proposed merged bodies (see Ch 2, recommendations 6, 8).

5 le in the Planning and Compulsory Purchase Act 2004 Pt 1.

6 Ibid s 2(1).

7 Ibid s 2(3). The reference in the text to the relevant statutory provision is a reference to s 2(4): see heads (1)-(5) in the text.

8 Ibid s 2(4).

9 Ibid s 2(8).

10 See PARA 72 et seq post.

UPDATE

24 Recognition of bodies as regional planning bodies

TEXT AND NOTES--Replaced: see Local Democracy, Economic Development and Construction Act 2009 Sch 7; and PARAS 72-85.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(ii) Regional Planning Bodies/25. Failure to direct, or withdrawal of, recognition as a regional planning body.

25. Failure to direct, or withdrawal of, recognition as a regional planning body.

The Secretary of State¹ may give a direction withdrawing recognition of a body as a regional planning body (an 'RPB')².

If the Secretary of State:

- 88 (1) does not give a direction³ recognising a body as the RPB for a region⁴; or
- 89 (2) gives a direction⁵ withdrawing recognition of a body and does not give a direction⁶ recognising any other body,

then in such a case the Secretary of State may exercise such of the functions of the RPB as he thinks appropriate⁷.

1 For the meaning of 'the Secretary of State' for these purposes see PARA 24 note 1 ante. As to the Secretary of State see further PARA 19 ante.

2 Planning and Compulsory Purchase Act 2004 s 2(5). As to recognition of a body as an RPB see PARA 24 ante.

3 le under ibid s 2(1): see PARA 24 ante.

4 For the meaning of 'region' see PARA 24 note 4 ante.

5 le under the Planning and Compulsory Purchase Act 2004 s 2(5): see the text and notes 1-2 supra.

6 See note 3 supra.

7 Planning and Compulsory Purchase Act 2004 s 2(6), (7).

UPDATE

25 Failure to direct, or withdrawal of, recognition as a regional planning body

TEXT AND NOTES--Replaced: see Local Democracy, Economic Development and Construction Act 2009 Sch 7; and PARAS 72-85.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(ii) Regional Planning Bodies/26. Arrangements in Greater London and in Wales.

26. Arrangements in Greater London and in Wales.

In Greater London¹, the Mayor of London² is responsible for preparing and keeping under review the spatial development strategy³. He must keep under review the matters which may be expected to affect the development of Greater London or the planning of its development or which are otherwise relevant to the content of the spatial development strategy⁴.

The Mayor must inform:

- 90 (1) the local planning authorities⁵ for areas in the vicinity of Greater London;
- 91 (2) any body on which those authorities are represented; or
- 92 (3) any other body which the Mayor considers should be informed,

of his views concerning any matters of common interest, whether general or specific, relating to the planning or development of Greater London or those areas⁶. He may also inform those authorities, or any such body, of his views concerning any other matters, whether general or specific, relating to the planning or development of those areas⁷.

The town and country planning functions of the Mayor of London are discussed in detail elsewhere in this work⁸.

In Wales, there are no separate regional planning bodies and the National Assembly for Wales⁹ prepares and reviews the Wales Spatial Plan¹⁰.

1 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

3 See PARA 86 post.

4 See the Greater London Authority Act 1999 s 339; para 86 post; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 194.

5 As to local planning authorities see PARA 28 et seq post.

6 Greater London Authority Act 1999 s 348(1). The Mayor must from time to time consult the London borough councils about the exercise of his functions under s 348; and may make contributions towards defraying the expenses of any body on which the Great London Authority is represented for the purpose of facilitating the discharge of the Mayor's functions under s 348: s 348(3), (4).

- 7 Ibid s 348(2).
- 8 See LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.
- 9 As to the Assembly see PARA 20 ante.
- 10 See PARAS 87-88 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(ii) Regional Planning Bodies/27. Regional development agencies.

27. Regional development agencies.

The Regional Development Agencies Act 1998 established regional development agencies for each of nine regions in England¹. The functions and powers of these agencies are discussed in detail elsewhere in this work².

The regional development agencies are distinct from the regional planning bodies established under the Planning and Compulsory Purchase Act 2004³ but the areas of responsibility of those bodies are defined with reference to the regions specified in the 1998 Act⁴.

1 See the Regional Development Agencies Act 1998 s 1(1); and TRADE AND INDUSTRY vol 97 (2010) PARA 988. The nine regions are the East Midlands, Eastern, London, North East, North West, South East, South West, West Midlands and Yorkshire and the Humber: Sch 1, which also specifies all the counties, metropolitan and non-metropolitan districts comprised in each region. References in Sch 1 to a local government or administrative area are to that area as it is for the time being: s 1(3). Subject to conditions, and in accordance with the specified procedure, the Secretary of State may by order make alterations in the extent of the regions in Sch 1: see further s 25 (amended by the Greater London Authority Act 1999 s 309, Sch 25 para 14).

2 See TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq.

3 See PARA 24 ante.

4 See PARA 24 note 4 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/28. Local planning authorities; in general.

(iii) Local Planning Authorities

28. Local planning authorities; in general.

In England, in a non-metropolitan county¹:

- 93 (1) the council of the county is the county planning authority for the county; and
- 94 (2) the council of a district² is the district planning authority for the district;

and references in the planning Acts³ to a local planning authority⁴ in relation to a non-metropolitan county are to be construed, subject to any express provision to the contrary, as references to both the county planning authority and the district planning authorities⁵.

The council of a metropolitan district⁶ is the local planning authority for the district; and the council of a London borough⁷ is the local planning authority for the borough⁸. In England, exclusive of the metropolitan counties, Greater London⁹ and the Isles of Scilly¹⁰, all functions¹¹ conferred on local planning authorities by or under the planning Acts are exercisable both by county planning authorities and district planning authorities¹².

In Wales:

- 95 (a) the local planning authority for a county is the county council; and
- 96 (b) the local planning authority for a county borough is the county borough council¹³.

The above provisions, however, have effect subject to any express provision to the contrary in the planning Acts¹⁴. Furthermore, regulations under the Town and Country Planning Act 1990 may make such provision consequential upon or supplementary to the above provisions as appears to the Secretary of State¹⁵ or, in relation to Wales, to the National Assembly for Wales¹⁶ to be necessary or expedient¹⁷.

When determining planning applications the elected members of a local planning authority must take into account planning considerations only¹⁸. There is no general principle that if there is a real issue as to the meaning or application of a planning policy then the exercise of delegated powers is rendered unlawful¹⁹.

1 'Non-metropolitan county' means any county other than a metropolitan county: Local Government Act 1972 s 270(2). As to the non-metropolitan counties in England and the counties and county boroughs in Wales (none of which is metropolitan) see LOCAL GOVERNMENT vol 69 (2009) PARAS 24 et seq, 37 et seq. The metropolitan county councils ceased to exist on 1 April 1986 and their functions were transferred mainly to the metropolitan district councils: see the Local Government Act 1985 s 1(1)(b), (2), Pt II (ss 2-17) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 17. The metropolitan counties themselves did not, however, cease to exist.

2 'Non-metropolitan district' means any district other than a metropolitan district: Local Government Act 1972 s 270(2). As to non-metropolitan districts in England and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24.

3 For the meaning of 'the planning Acts' see PARA 2 ante.

4 For the meaning of 'local planning authority' see PARA 2 note 1 ante.

5 Town and Country Planning Act 1990 s 1(1), (1A) (s 1(1A), (1B), (6) added, and s 1(3), (5) amended, by the Local Government (Wales) Act 1994 ss 18, 66(8), Sch 18). The exercise, in relation to Wales, of functions conferred on local planning authorities is subject to the Town and Country Planning Act 1990 Sch 1A (as added: see PARA 39 post): s 1(6) (as so added; amended by the Environment Act 1995 s 120(3), Sch 24).

6 As to the metropolitan districts and their councils see LOCAL GOVERNMENT vol 69 (2009) PARA 24.

7 For these purposes, except in so far as the context otherwise requires, 'London borough' includes the City of London, references to the council of a London borough or the clerk to such a council being construed, in relation to the City, as references to the Common Council of the City and the town clerk of the City respectively: Town and Country Planning Act 1990 s 336(1). As to London boroughs and the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 31 et seq.

8 Ibid s 1(2).

9 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

10 As to the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36. Subject to the following provision, the Council of the Isles of Scilly exercises for those Isles all functions under the Town and Country Planning Act 1990 and the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see PARA 89 et seq post) exercisable

by a local planning authority or a mineral planning authority for their respective areas in England: Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085, art 3. The following exceptions from, and adaptations and modifications of, those Acts have effect: (1) any reference to a local planning authority, except in the Town and Country Planning Act 1990 Sch 1 para 7(1) (as substituted) (see PARA 477 post), or to a mineral planning authority, includes a reference to the Council of the Isles of Scilly; (2) any reference to the council of a county includes a reference to that Council; (3) any reference to a district includes a reference to the Isles of Scilly, and any reference to the council of a district includes a reference to that Council; (4) any requirement as to (a) consultation between a local planning authority or a mineral planning authority or the council of a county, and the council of a district; (b) consultation between the council of a county, and a local planning authority; or (c) the giving of notice by any body mentioned in head (a) or head (b) supra to any other such body, does not apply: Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085, art 4(1). See also art 4(2), cited in PARA 73 post. For the meaning of 'mineral planning authority' see PARA 29 post.

11 For the meaning of 'functions' see PARA 2 note 1 ante.

12 Town and Country Planning Act 1990 s 1(3). This is subject to Sch 1 (as amended): see note 14 infra.

13 Town and Country Planning Act 1990 s 1(1B) (as added: see note 5 supra). As to relations between local authorities in Wales and the National Assembly for Wales see generally the Government of Wales Act 1998 s 113, Sch 11; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

14 Town and Country Planning Act 1990 s 1(5). Section 1 (as amended) has effect subject to any express provision to the contrary in the planning Acts and, in particular (1) the Town and Country Planning Act 1990 s 1 (as amended) has effect subject to ss 4A-8A (as amended) (see PARAS 32-37 post); (2) s 1(1)-(2) (as amended) has effect subject to s 2 (as amended) (see PARA 30 post) and s 9 (see the text and notes 14-17 infra); and (3) s 1(3) (as amended) has effect subject to Sch 1 (as amended) (distribution of functions: see PARA 39 post): s 1(5) (as amended (see note 5 supra); further amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 28; and by the Environment Act 1995 ss 78, 120, Sch 10 para 32(1), Sch 24).

15 As to the Secretary of State see PARA 19 ante.

16 As to the transfer of functions under the Town and Country Planning Act 1990 s 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

17 Town and Country Planning Act 1990 s 9. As to the making of regulations generally see PARA 3 ante. At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Transfer of Property and Officers and Compensation to Officers) Regulations 1948, SI 1948/1236, have effect as if so made.

18 See *The Planning System--General Principles* (ODPM, January 2005) PARA 27. As to standards of propriety see PARA 28; and see also *Slough Estates plc v Welwyn Hatfield District Council* [1996] 2 PLR 50, [1996] 2 EGLR 219 (council knowingly misrepresenting its intentions as to the enforcement of a tenancy mix agreement as an inducement to a developer). As to the importance of avoiding any possibility of bias see eg *Georgiou v Enfield London Borough Council* [2004] EWHC 779 (Admin), [2004] LGR 497, [2004] All ER (D) 135 (Apr) (applying *Porter v Magill* [2001] UKHL 67, [2002] 1 All ER 465). See also *Ghadami v Harlow District Council* [2004] EWHC 1883 (Admin), [2004] All ER (D) 609 (Jul). Where there are no statutory or procedural rules governing a planning control committee meeting, the court is entitled to quash the decision where the facts disclose a procedural unfairness: see eg *R (on the application of Tromans) v Cannock Chase District Council* [2004] EWCA Civ 1036, [2004] LGR 735, [2004] All ER (D) 504 (Jul).

As to whether a local planning authority may be liable in negligence if it permits or requires the construction of a foreseeably dangerous footpath or if it fails when granting the relevant planning permission, or requiring the work, to impose a condition forbidding the opening of the footpath to the public until the sightlines have been cleared see *Kane v New Forest District Council* [2001] EWCA Civ 878, [2001] 3 All ER 914, [2002] 1 WLR 312; and for the substantive proceedings in that case see *Kane v New Forest District Council* [2001] All ER (D) 397 (Nov). As to liability for the negligent misstatement of a senior planning officer of the local planning authority see *Lambert v West Devon Borough Council* [1997] 1 PLR 103.

19 See *R (on the application of Springhall) v Richmond upon Thames London Borough Council* [2005] EWHC 52 (Admin) at [30], [2005] All ER (D) 117 (Jan) per Richards J, considering *R (on the application of Carlton-Conway) v Harrow London Borough Council* [2002] EWCA Civ 927, [2002] All ER (D) 79 (Jun), [2002] JPL 1216 at [21]-[25] per Pill LJ. As to statutory restrictions on the exercise of functions by local authority executives see PARA 40 post.

UPDATE

28 Local planning authorities; in general

NOTE 17--SI 1948/1236 amended: Lord Chancellor (Transfer of Functions and Supplementary Provisions) Order 2006, SI 2006/680.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/29. Mineral planning authorities.

29. Mineral planning authorities.

For the purposes of the Town and Country Planning Act 1990, 'mineral planning authority' means, in England:

- 97 (1) in respect of a site in a non-metropolitan county¹, the county planning authority²; and
- 98 (2) in respect of a site in a metropolitan district³ or London borough⁴, the local planning authority⁵.

For those purposes, as to any site in Wales the local planning authority is also the mineral planning authority⁶.

The above provisions have effect subject to any express provision to the contrary in the planning Acts⁷.

1 For the meaning of 'non-metropolitan county' see PARA 28 note 1 ante.

2 As to county planning authorities see PARA 28 ante.

3 As to metropolitan districts see PARA 28 note 6 ante.

4 For the meaning of 'London borough' see PARA 28 note 7 ante.

5 Town and Country Planning Act 1990 s 1(4), (4A) (s 1(4A), (4B) added by the Local Government (Wales) Act 1994 ss 18, 66(8), Sch 18). For the meaning of 'local planning authority' see PARA 2 note 1 ante.

6 Town and Country Planning Act 1990 s 1(4B) (as added: see note 5 supra). The exercise, in relation to Wales, of functions conferred on local planning authorities is subject to the Town and Country Planning Act 1990 Sch 1A (as added: see PARA 39 post): s 1(6) (as so added; amended by the Environment Act 1995 s 120(3), Sch 24). For the meaning of 'the planning Acts' see PARA 2 ante.

7 See the Town and Country Planning Act 1990 s 1(5) (as amended); and PARA 28 note 14 ante. See also s 9; and PARA 28 the text and notes 15-17 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/30. Joint planning boards.

30. Joint planning boards.

If it appears to the Secretary of State¹ that it is expedient that a joint board should be established as the county planning authority² for the areas or parts of the areas of any two or more county councils³ in England or as the district planning authority⁴ for the areas or parts of the areas of any two or more district councils⁵, he may by order⁶:

- 99 (1) constitute those areas or parts as a united district⁷ for the purposes of the Town and Country Planning Act 1990; and
- 100 (2) constitute a joint board (a 'joint planning board') as the county planning authority or, as the case may be, the district planning authority for that united district⁸.

Similarly, if it appears to the National Assembly for Wales⁹ that it is expedient that a joint board should be established as the local planning authority for two or more areas, each of which is the whole or part of a Welsh county or county borough¹⁰, it may by order¹¹:

- 101 (a) constitute those areas or parts as a united district¹² for the purposes of the 1990 Act; and
- 102 (b) constitute a joint board (a 'joint planning board') as the local planning authority¹³ for that united district¹⁴.

The Secretary of State or the Assembly may not, however, make such an order except after holding a local inquiry¹⁵ unless all the councils concerned have consented to the making of the order¹⁶.

A joint planning board constituted by such an order must consist of such number of members as may be determined by the order, to be appointed by the constituent councils¹⁷; and a joint planning board so constituted is a body corporate, with perpetual succession and a common seal¹⁸.

Where a joint planning board is constituted for a united district, references in the planning Acts¹⁹ to the area of a local planning authority:

- 103 (i) in relation to the board, are to be construed as references to that district;
- 104 (ii) in relation to any local planning authority being the council of a county or county borough or district of which part, but not the whole, is included in the united district, are to be construed as references to so much of the county or county borough or district as is not so included²⁰.

Regulations²¹ may make such provision consequential upon or supplementary to the above provisions as appears to the Secretary of State or the Assembly to be necessary or expedient²².

1 As to the Secretary of State see PARA 19 ante.

2 As to county planning authorities see PARA 28 ante.

3 As to county councils see PARA 28 note 1 ante.

4 As to district planning authorities see PARA 28 ante.

5 As to district councils see PARA 28 note 2 ante.

6 An order constituting a joint planning board and any order amending or revoking an order constituting a joint planning board (1) may, without prejudice to the provisions of the Local Government Act 1972 s 241 (which authorises the application of the provisions of that Act to joint boards: see LOCAL GOVERNMENT vol 69 (2009) PARA 99), provide for regulating the appointment, tenure of office and vacation of office of members of the board, for regulating the meetings and proceedings of the board, and for the payment of the expenses of

the board by the constituent councils; (2) may provide for the transfer and compensation of officers, the transfer of property and liabilities, and the adjustment of accounts and apportionment of liabilities; (3) may contain such other provisions as appear to the Secretary of State (or, in relation to Wales, the National Assembly for Wales: see the text and notes 9-14 *infra*) to be expedient for enabling the board to exercise its functions; and (4) may apply to the board, with any necessary modifications and adaptations, any of the provisions of ss 102, 103 (as amended) (appointment of committees and expenses of such committees: see LOCAL GOVERNMENT vol 69 (2009) PARAS 371, 380): Town and Country Planning Act 1990 s 2(6). For the meaning of 'functions' see PARA 2 note 1 *ante*.

The Local Government Act 1972 s 241 is to be taken to authorise the application to a joint planning board, by such an order as is mentioned in the Town and Country Planning Act 1990 s 2(6), of any provisions mentioned in s 2(6B) (as prospectively substituted), as well as any provisions of the Local Government Act 1972, subject to any necessary modifications: Town and Country Planning Act 1990 s 2(6A) (s 2(6A), (6B) substituted by the Public Audit (Wales) Act 2004 s 66, Sch 2 para 13). The provisions referred to in the Town and Country Planning Act 1990 s 2(6A) (as so substituted) are (1) the Audit Commission Act 1998, except ss 11, 12, 44-47 and 51 (as amended); (2) the Public Audit (Wales) Act 2004 Pt 2 (ss 12-59), except ss 25, 26, 46-49 and 56: Town and Country Planning Act 1990 s 2(6B) (as so substituted).

7 The areas that may be constituted as a united district for the purposes of *ibid* s 2 (as amended) do not include the whole or any part of an area which is comprised in a National Park for which there is a National Park authority: s 2(1D) (added by the Environment Act 1995 s 78, Sch 10 para 32(2)). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 *et seq*; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 *et seq*.

8 Town and Country Planning Act 1990 s 2(1), (1A), (1C) (s 2(1) amended, and s 2(1A)-1C) added, by the Local Government (Wales) Act 1994 ss 19, 66(8), Sch 18). The Town and Country Planning Act 1990 s 2 (as amended) has effect subject to ss 5-9 (as amended) (see the text and notes 21-24 *infra*; and PARAS 33-36 *post*): s 2(7) (amended by the Environment Act 1995 s 120(3), Sch 24). In the Town and Country Planning Act 1990, except in so far as the context otherwise requires, 'joint planning board' has the meaning given in s 2 (as amended): s 336(1).

Where the united district for which, by an order under s 2 (as amended), a joint planning board is constituted comprises a licensing planning area, or the whole or part of such a united district is included in a licensing planning area, the Secretary of State may by order revoke or vary any order in force under the Licensing Act 1964 Pt VII (ss 118-130) (as amended and prospectively repealed) so far as may be necessary or expedient in consequence of the order under the Town and Country Planning Act 1990 s 2 (as amended): s 334(1) (prospectively repealed by the Licensing Act 2003 ss 198(1), 199, Sch 6 para 109, Sch 7, as from a day to be appointed under s 201(2): at the date at which this title states the law, those repeals were not in force). Subject to the Town and Country Planning Act 1990 s 334(1) (as so repealed), nothing in any order made under s 2 (as amended) affects the validity of any order in force under the Licensing Act 1964 Pt VII (as amended and prospectively repealed) if made before the date of the order under the Town and Country Planning Act 1990 s 2 (as amended): s 334(2) (as so repealed).

9 As to the transfer of functions under *ibid* s 2 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

10 As to Welsh counties and county boroughs see PARA 28 note 1 *ante*.

11 See note 6 *supra*.

12 See note 7 *supra*.

13 For the meaning of 'local planning authority' see PARA 2 note 1 *ante*.

14 Town and Country Planning Act 1990 s 2(1B), (1C) (as added: see note 8 *supra*).

15 As to local inquiries see PARA 651 *et seq post*.

16 Town and Country Planning Act 1990 s 2(2) (s 2(2), (3), (4) amended by the Local Government (Wales) Act 1994 s 19(4); for transitional provisions see s 19(3)).

17 Town and Country Planning Act 1990 s 2(4) (as amended: see note 16 *supra*).

18 *Ibid* s 2(5) (as amended: see note 16 *supra*).

19 For the meaning of 'the planning Acts' see PARA 2 *ante*.

20 Town and Country Planning Act 1990 s 2(3).

21 le under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante.

22 Ibid s 9. See also PARA 28 note 17 ante.

UPDATE

30 Joint planning boards

NOTE 6--1990 Act s 2(6B) amended: Local Government and Public Involvement in Health Act 2007 Sch 18 Pt 11.

NOTE 8--Repeals now in force: SI 2005/3056.

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31. Arrangements in Greater London.

The former joint planning committee for Greater London¹ was abolished with effect from 1 April 2000². The planning functions of the Mayor of London³ are discussed elsewhere in this title and this work⁴.

1 le the joint planning committee for Greater London which was established under the Local Government Act 1985 s 5 (repealed) and continued to exercise functions under the Town and Country Planning Act 1990 s 3 (prospectively repealed). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

2 Greater London Authority Act 1999 s 349; Greater London Authority Act 1999 (Commencement No 4 and Adaptation) Order 2000, SI 2000/801, art 2(2)(a), Schedule Pt 1). However, at the date at which this title states the law the repeal of the Town and Country Planning Act 1990 s 3 (which makes provision for the exercise of functions by that committee) by the Greater London Authority Act 1999 s 423, Sch 34 Pt IX had not been brought into force.

3 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

4 See PARA 86 post; and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 177, 188 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/32. National Parks with National Park authorities.

32. National Parks with National Park authorities.

Where a National Park authority¹ has been established for any area, the following provisions apply, as from such time as may be specified for these purposes in the order establishing that authority, in relation to the Park for which it is the authority². Subject to certain exceptions³, the National Park authority for the Park is to be the sole local planning authority⁴ for the area of the Park and, accordingly:

- 105 (1) functions⁵ conferred by or under the planning Acts⁶ on a planning authority of any description, including the functions of a mineral planning authority⁷ under those Acts and under the Planning and Compensation Act 1991⁸ are, in relation to the Park, to be functions of the National Park authority, and not of any other authority; and
- 106 (2) so much of the area of any other authority as is included in the Park is to be treated as excluded from any area for which that other authority is a planning authority of any description⁹.

For the purposes of heads (1) and (2) above, functions under the planning Acts which otherwise are conferred:

- 107 (a) in relation to some areas on the county or district planning authorities¹⁰ for those areas; and
- 108 (b) in relation to other areas on the councils for those areas,

are to be treated, in relation to those other areas, as conferred on each of those councils as the local planning authority for its area¹¹.

Certain functions of a local planning authority¹² so far as they are functions of a National Park authority by virtue of the above provisions are, however, to be exercisable as respects any area which is or is included in an area for which there is a district council¹³, concurrently with the National Park authority, by that council¹⁴.

1 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. A new National Park authority for the New Forest was established with effect from 1 April 2005: see the New Forest National Park Authority (Establishment) Order 2005, SI 2005/421, arts 2, 3. That authority becomes the sole local planning authority for the New Forest National Park with effect from 1 April 2006: see art 15.

2 Town and Country Planning Act 1990 s 4A(1) (s 4A added by the Environment Act 1995 s 67(1); the Town and Country Planning Act 1990 s 4A(1) (as so added) amended by the Environment Act 1995 s 120(3), Sch 24). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

3 Ie subject to the Town and Country Planning Act 1990 s 4A(4), (5) (as added): see the text and notes 12-14 infra.

4 For the meaning of 'local planning authority' see PARA 2 note 1 ante.

5 For the meaning of 'functions' see PARA 2 note 1 ante.

6 For the meaning of 'the planning Acts' see PARA 2 ante.

7 As to mineral planning authorities see PARA 29 ante.

8 As to the functions of mineral planning authorities under the Planning and Compensation Act 1991 see PARA 718 et seq post.

9 Town and Country Planning Act 1990 s 4A(2) (as added: see note 2 supra). Where land straddles the border of a National Park, the appropriate planning authority to deal with an application for planning permission in respect of such land is the National Park authority in respect of land inside the Park, and the county council in respect of land outside the Park: *R v Northumberland National Park Authority, ex p Secretary of State for Defence* (1998) 77 P & CR 120, [1998] EGCS 120.

10 As to county and district planning authorities see PARA 28 ante.

11 Town and Country Planning Act 1990 s 4A(3) (as added: see note 2 supra).

12 Ie functions by virtue of ibid ss 198-201, 206-209 and 211-215 (as amended) (tree preservation orders and powers to require proper maintenance of land): see PARA 850 et seq post.

13 As to district councils see PARA 28 note 2 ante.

14 Town and Country Planning Act 1990 s 4A(4) (as added: see note 2 *supra*). For the purposes of any enactment relating to the functions of a district planning authority, the functions of a district council by virtue of s 4A(4) (as so added) are to be deemed to be conferred on it as a district planning authority and as if the district were the area for which it is such an authority: s 4A(5) (as so added). For the meaning of 'enactment' see PARA 2 note 11 *ante*.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/33. The Broads.

33. The Broads.

For the purposes of specified provisions¹ of the Town and Country Planning Act 1990 and any other provision of that Act so far as it has effect for the purposes of those provisions, 'local planning authority', in relation to land² in the Broads³, includes the Broads Authority⁴; and for the purposes of other specified provisions⁵ of that Act the Broads Authority is the sole district planning authority for the Broads⁶.

1 ie the Town and Country Planning Act 1990 Pt VIII Ch I (ss 197-214) (as amended): see PARA 847 *et seq post*, ss 249, 250 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 794), and s 300 (as prospectively repealed) (see PARA 854 *post*).

2 For the meaning of 'land' see PARA 2 note 10 *ante*.

3 For the meaning of 'the Broads' see PARA 3 note 3 *ante*.

4 Town and Country Planning Act 1990 s 5(1) (s 5(1), (3) amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, (9)). As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

5 The specified provisions are:

34 (1) the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings) (see PARA 149 *et seq post*);

35 (2) the following provisions relating to control of development, ie s 62 (as originally enacted and as prospectively substituted) (see PARA 448 *post*), s 65 (as substituted and amended) (see PARA 468 *post*), ss 69-72 (as amended) (see PARAS 466, 473, 486-487, 516, 522 *post*), ss 76-79 (as amended) (see PARAS 483, 535, 598, 601 *post*), ss 91-95 (as amended) (see PARAS 519, 537 *et seq post*), ss 97-99 (as amended) (see PARAS 541-543 *post*), s 102 (as amended) (see PARAS 546-547 *post*), s 103 (see PARAS 548-549 *post*), ss 106-106B (as substituted and prospectively repealed) (see PARA 244 *et seq post*);

36 (3) the following provisions relating to enforcement, ie s 171C (as added and amended) (see PARA 559 *post*), ss 172-173A (as substituted) (see PARA 561 *et seq post*), s 178 (as amended) (see PARA 568 *post*), ss 183, 184 (as amended) (see PARAS 577-579 *post*), s 187A (as added) (see PARA 583 *post*), s 187B (as added) (see PARA 585 *post*), s 188 (as amended) (see PARA 553 *post*), ss 191-196C (as amended) (see PARAS 556 *et seq*, 586 *et seq*, 613-614 *post*);

37 (4) the following provisions relating to trees, ie s 197 (see PARA 847 *post*), ss 211-214 (as amended) (see PARAS 877-879 *post*);

38 (5) the following provisions relating to other special controls, ie s 215 (see PARA 887 *post*), ss 219-221 (as amended) (see PARAS 769, 771, 889 *post*), s 224 (as amended) (see PARA 830 *post*);

39 (6) the following provisions relating to Crown land, ie ss 294, 295 (prospectively repealed) (see PARA 572 *post*), s 297 (prospectively repealed) (see PARA 250 *post*), s 299 (as amended; prospectively repealed) (see PARA 454 *post*), s 299A (as added; prospectively repealed) (see PARA 251 *post*), s 301 (prospectively repealed) (see PARA 240 *post*); and

40 (7) the following miscellaneous provisions, ie s 316 (as substituted) (see PARA 891 post) and s 324(1), (7) (as amended) (see PARA 57 post).

6 Ibid s 5(2), (3) (as amended: see note 4 supra).

UPDATE

33 The Broads

TEXT AND NOTES--Town and Country Planning Act 1990 s 5(3) further amended: Planning Act 2008 s 190(1), (3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/34. Enterprise zones.

34. Enterprise zones.

An order¹ designating an enterprise zone may provide that the enterprise zone authority is to be the local planning authority² for the zone for such purposes of the planning Acts³ and in relation to such kinds of development⁴ as may be specified in the order⁵. Furthermore, an order⁶ by the Secretary of State or, in relation to Wales, by the National Assembly for Wales modifying an order designating an enterprise zone may⁷ provide that the enterprise zone authority is to be the local planning authority for the zone for different purposes of the planning Acts or in relation to different kinds of development⁸.

Where such provision is made by an order designating an enterprise zone or, as the case may be, an order modifying such an order, while the zone subsists, the enterprise zone authority is:

- 109 (1) to the extent mentioned in the order, as it has effect subject to any such modifications; and
- 110 (2) to the extent that it is not already,

the local planning authority for the zone in place of any authority which would otherwise be the local planning authority for the zone⁹.

1 ie an order under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 post.

2 For the meaning of 'local planning authority' para 2 note 1 ante.

3 For the meaning of 'the planning Acts' see PARA 2 ante.

4 For the meaning of 'development' see PARA 217 post.

5 Town and Country Planning Act 1990 s 6(1). The Secretary of State or, in relation to Wales, the National Assembly for Wales may by regulations make transitional and supplementary provision in relation to a provision of an order under the Local Government, Planning and Land Act 1980 Sch 32 para 5 (as amended) made by virtue of the Town and Country Planning Act 1990 s 6(1): s 6(4). Such regulations may modify any provision of the planning Acts or any instrument made under any of them or may apply any such enactment or instrument, with or without modification, in making such transitional or supplementary provision: Town and Country Planning Act 1990 s 6(5). At the date at which this title states the law no such regulations had been made and none have effect as if so made. As to the making of regulations generally see PARA 3 ante. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under s 6, so far as exercisable in relation to Wales, to the

Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. For the meaning of 'enactment' see PARA 2 note 11 ante.

6 le an order under the Local Government, Planning and Land Act 1980 Sch 32 para 15(1): see PARA 1500 post.

7 le without prejudice to the generality of ibid Sch 32 para 15(1).

8 Town and Country Planning Act 1990 s 6(2).

9 Ibid s 6(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/35. Urban development areas.

35. Urban development areas.

Where an order is made¹ designating an urban development corporation² as the local planning authority³, the urban development corporation specified in the order is the local planning authority for such area as may be so specified in place of any authority which would otherwise be the local planning authority for that area for such purposes and in relation to such kinds of development⁴ as may be so specified⁵.

Where such an order⁶ confers any functions⁷ on an urban development corporation in relation to any area, the corporation has those functions in place of any authority, except the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ which would otherwise have them in that area¹⁰.

1 le under the Local Government Planning and Land Act 1980 s 149(1) (as amended): see PARA 1464 post.

2 For these purposes, 'urban development corporation' has the same meaning as in ibid Pt XVI (ss 134-172) (as amended) (see PARA 1426 et seq post): Town and Country Planning Act 1990 s 336(1).

3 For the meaning of 'local planning authority' see PARA 2 note 1 ante.

4 For the meaning of 'development' see PARA 217 post.

5 Town and Country Planning Act 1990 s 7(1).

6 le under the Local Government, Planning and Land Act 1980 s 149(3)(a) (as amended): see PARA 1464 post.

7 For the meaning of 'functions' see PARA 2 note 1 ante.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of the functions mentioned in the text, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 Town and Country Planning Act 1990 s 7(2).

UPDATE

35 Urban development areas

NOTES--In the application of the 1990 Act s 7 a reference to an urban development corporation is to be taken as a reference to the Olympic Delivery Authority (see THEATRES AND OTHER FORMS OF ENTERTAINMENT vol 45(2) (Reissue) PARA 125A); (2) a reference to a corporation's area is to be taken as a reference to an area specified in an order made under the Local Government, Planning and Land Act 1980 s 149 (modified by the London Olympic Games and Paralympic Games Act 2006 s 5(1)(a)); (3) a reference to the 1980 Act s 142 must be disregarded; and (4) a reference to a London borough is to be taken as a reference to an area in respect of which an order is made under s 149 (as modified): 2006 Act s 5(2), (3)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/36. Housing action areas.

36. Housing action areas.

Where an order¹ is made designating a housing action trust as the local planning authority², the housing action trust specified in the order is the local planning authority for such area as may be so specified in place of any authority which would otherwise be the local planning authority for that area for such purposes and in relation to such kinds of development³ as may be so specified⁴.

Where such an order⁵ confers any functions⁶ on a housing action trust in relation to any area, the trust has those functions in place of any authority, except the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸, which would otherwise have them in that area⁹.

1 le under the Housing Act 1988 s 67(1) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 332.

2 For the meaning of 'local planning authority' see PARA 2 note 1 ante.

3 For the meaning of 'development' see PARA 217 post.

4 Town and Country Planning Act 1990 s 8(1).

5 le under the Housing Act 1988 s 67(3)(a) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 332.

6 For the meaning of 'functions' see PARA 2 note 1 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of the functions mentioned in the text, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 8(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/37. The Urban Regeneration Agency.

37. The Urban Regeneration Agency.

Where a designation order¹ makes provision for the Urban Regeneration Agency² to be the local planning authority³, the Agency is to be the local planning authority for such area as may be specified in the order in place of any authority which would otherwise be the local planning authority for that area for such purposes and in relation to such kinds of development⁴ as may be so specified⁵.

Where such an order confers specified functions on the Agency⁶, the Agency is to have the functions specified in the order for such area as may be so specified in place of any authority, except the Secretary of State⁷, which would otherwise have them in that area⁸.

1 le an order under the Leasehold Reform, Housing and Urban Development Act 1993 s 170 (power to make designation orders): see PARA 1306 post.

2 As to the Urban Regeneration Agency (now part of English Partnerships) see PARA 1306 post.

3 le such provision as is mentioned in the Leasehold Reform, Housing and Urban Development Act 1993 s 171(1): see PARA 1306 post.

4 For the meaning of 'development' see PARA 217 post.

5 Town and Country Planning Act 1990 s 8A(1) (s 8A added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 29).

6 le the order makes such provision as is mentioned in the Leasehold Reform, Housing and Urban Development Act 1993 s 171(3)(a): see PARA 1306 post.

7 As to the Secretary of State see PARA 19 ante.

8 Town and Country Planning Act 1990 s 8A(2) (as added: see note 5 supra).

UPDATE

37 The [Homes and Communities] Agency

TEXT AND NOTES--Town and Country Planning Act 1990 s 8A(1) amended, s 8A(2) repealed: Housing and Regeneration Act 2008 Sch 8 para 52, Sch 16. For transitional provision see SI 2008/3068.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/38. Meaning of 'county matter'.

38. Meaning of 'county matter'.

For the purposes of the distribution of functions between local planning authorities¹, 'county matter' means, in relation to any application, order or notice:

- 111 (1) the winning and working of minerals² in, on or under land³, whether by surface or underground working, or the erection⁴ of any building⁵, plant or machinery:

1

1. (a) which it is proposed to use in connection with the winning and working of minerals or with their treatment or disposal⁶ in or on land adjoining the site of the working; or
2. (b) which a person engaged in mining operations proposes to use in connection with the grading, washing, grinding or crushing of minerals;
- 2
- 112 (2) the use⁷ of land, or the erection of any building, plant or machinery on land, for the carrying out of any process for the preparation or adaptation for sale of any mineral or the manufacture of any article from a mineral where:
- 3
3. (a) the land forms part of or adjoins a site used or proposed to be used for the winning and working of minerals; or
4. (b) the mineral is, or is proposed to be, brought to the land from a site used, or proposed to be used, for the winning and working of minerals by means of a pipeline, conveyor belt, aerial ropeway, or similar plant or machinery, or by private road, private waterway or private railway;
- 4
- 113 (3) the carrying out of searches and tests of mineral deposits or the erection of any building, plant or machinery which it is proposed to use in connection with them;
- 114 (4) the depositing of mineral waste⁸;
- 115 (5) the use of land for any purpose required in connection with the transport by rail or water of aggregates, that is to say, any of the following namely:
- 5
5. (a) sand and gravel;
6. (b) crushed rock;
7. (c) artificial materials of appearance similar to sand, gravel or crushed rock and manufactured or otherwise derived from iron or steel slags, pulverised fuel, ash clay or mineral waste,
- 6
- 116 or the erection of any building, plant or machinery which it is proposed to use in connection with them;
- 117 (6) the erection of any building, plant or machinery which it is proposed to use for the coating of roadstone or the production of concrete or of concrete products or artificial aggregates, where the building, plant or machinery is to be erected in or on land which forms part of or adjoins a site used or proposed to be used:
- 7
8. (a) for the winning and working of minerals; or
9. (b) for any of the purposes mentioned in head (5) above;
- 8
- 118 (7) the erection of any building, plant or machinery which it is proposed to use for the manufacture of cement;
- 119 (8) the carrying out of operations in, on, over or under land, or a use of land, where the land is or forms part of a site used or formerly used for the winning and working of minerals and where the operations or use would conflict with or prejudice compliance with a restoration condition⁹ or an aftercare condition¹⁰;
- 120 (9) the carrying out of operations in, on, over or under land, or any use of land, which is situated partly in and partly outside a National Park¹¹;
- 121 (10) the carrying out of any operation which is, as respects the area in question, a prescribed¹² operation or an operation of a prescribed class or any use which is, as respects that area, a prescribed use or use of a prescribed class¹³.

In relation to England only, the following classes of operations and uses of land are prescribed for the purposes of head (10) above:

- 122 (i) the use of land, the carrying out of building, engineering or other operations or the erection of plant or machinery used, or proposed to be used, wholly or mainly for the purposes of recovering, treating, storing, processing, sorting, transferring or depositing of waste;
- 123 (ii) the use of land or the carrying out of operations for any purposes ancillary to any use or operations specified in head (i) above, including the formation, laying out, construction or alteration of a vehicular access to any public highway¹⁴.

- 1 le in the Town and Country Planning Act 1990 s 1(5)(a), Sch 1 (as amended): see PARA 39 post.
- 2 For the meanings of 'the winning and working of minerals' and 'minerals' para 16 note 2 ante.
- 3 For the meaning of 'land' see PARA 2 note 10 ante.
- 4 For the meaning of 'erection' see PARA 2 note 10 ante.
- 5 For the meaning of 'building' see PARA 2 note 10 ante.
- 6 For these purposes, except in so far as the context otherwise requires, 'disposal' means disposal by way of sale, exchange or lease, or by way of the creation of any easement, right or privilege, or in any other manner, except by way of appropriation, gift or mortgage; and 'dispose of' is to be construed accordingly; 'mortgage' includes any charge or lien on any property for securing money or money's worth; and 'lease' includes an underlease and an agreement for a lease or underlease but does not include an option to take a lease or a mortgage, and 'leasehold interest' means the interest of the tenant under the lease as so defined: Town and Country Planning Act 1990 s 336(1).
- 7 For the meaning of 'use' see PARA 221 note 4 post.
- 8 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.
- 9 For these purposes, except in so far as the context otherwise requires, 'restoration condition' has the meaning given in the Town and Country Planning Act 1990 s 72(5) (as amended), Sch 5 para 2(2) (see PARA 712 post): s 336(1).
- 10 For these purposes, except in so far as the context otherwise requires, 'aftercare condition' has the meaning given in ibid Sch 5 para 2(2) (see PARA 712 post): s 336(1).
- 11 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 12 For the meaning of 'prescribed' see PARA 16 note 5 ante.
- 13 Town and Country Planning Act 1990 Sch 1 para 1(1) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 13(a)). The Town and Country Planning Act 1990 Sch 1 para 1(1) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see **LONDON GOVERNMENT** vol 29(2) (Reissue) PARA 29.
- 14 Town and Country Planning (Prescription of County Matters) (England) Regulations 2003, SI 2003/1033, regs 1(2), (2). For transitional provisions see reg 3.

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39. Distribution of functions between local planning authorities.

The Town and Country Planning Act 1990 makes provision¹ with regard to the distribution between local planning authorities² of certain functions³ and also with regard to the exercise of planning functions in Wales⁴.

The functions⁵ of a local planning authority of determining applications for planning permission⁶ and applications for a certificate of lawfulness of an existing or proposed use or development⁷ must, unless the application relates to a county matter⁸, be exercised by the district planning authority in England⁹. Where, however, the application relates to land¹⁰ in a National Park¹¹, that does not apply¹². Instead, where any such application, as well as any application for consent to the display of advertisements¹³, relating in each case to land in a National Park, or an application so relating for approval of a matter reserved under an outline planning permission¹⁴ falls to be determined by a National Park authority¹⁵, that authority must, before determining it, consult with any authority which would otherwise¹⁶ be the district planning authority for the area in which the land to which the application relates is situated¹⁷.

The Secretary of State¹⁸ or, in relation to Wales, the National Assembly for Wales¹⁹, may include provision in a development order²⁰:

- 124 (1) enabling a local highway authority²¹ to impose restrictions on the grant by the local planning authority of planning permission for certain kinds of development²²;
- 125 (2) enabling a local highway authority to impose similar restrictions on the grant of planning permission by an urban development corporation²³;
- 126 (3) requiring liaison between county planning authorities and district planning authorities in England²⁴ or between local planning authorities and parish councils²⁵, or, in Wales, between local planning authorities and community councils²⁶, about specified matters²⁷.

A local planning authority which has the function of determining applications for planning permission must, if requested to do so by the council of any parish (or, in Wales, the council of any community or group of communities), notify the council of any relevant planning application²⁸ and of any alteration to that application accepted by the authority²⁹.

As from 24 August 2005³⁰, a local planning authority in England must not determine certain applications for planning permission³¹ unless it has complied with the statutory requirement to consult either the regional planning body (the 'RPB')³² or the county planning authority, as appropriate³³.

Further provision is made with regard to:

- 127 (a) the exercise of specific planning and special control functions by the appropriate planning authorities³⁴;
- 128 (b) claims for payment of compensation to, and payment of compensation by, the appropriate authorities³⁵; and
- 129 (c) the exercise of miscellaneous functions³⁶.

The Planning (Listed Buildings and Conservation Areas) Act 1990 makes further provision as to the exercise of functions under that Act by different authorities³⁷.

1 le the Town and Country Planning Act 1990 s 1(5), (6), Sch 1 (paras 1-21) (as amended), Sch 1A (paras 1-11) (as added): see PARA 38 ante (county matters); and the text and notes 2-36 infra.

2 As to local planning authorities see PARA 28 et seq ante. The functions of a local planning authority (1) under ibid ss 30-35B, 38(2), 50(1), (4), (5), (7) (as amended; repealed with savings) (structure plans: see PARA 178 et seq post) are exercisable by the county planning authority and not by the district planning authority; (2) under ss 36, 39, 40, 42-44, 50(6), (7A), (8) (as amended; repealed with savings) (local plans: see PARA 195 et seq post) are exercisable by the district planning authority and not by the county planning authority; and

references to a local planning authority in those sections are to be construed accordingly: Sch 1 para 2 (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 Pt II para 35(1); repealed with savings by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 16(1), (2), Sch 9).

3 See the Town and Country Planning Act 1990 Sch 1 paras 3-15 (as amended); and the text and notes 5-36 *infra*.

4 See *ibid* Sch 1A paras 1-11 (added by the Local Government (Wales) Act 1994 s 18(7), Sch 4); and the text and notes 18-36 *infra*.

5 For the meaning of 'functions' see PARA 2 note 1 *ante*.

6 For the meaning of 'planning permission' see PARA 43 note 6 *post*.

7 *Ie* a certificate under the Town and Country Planning Act 1990 s 191 or s 192 (each as substituted): see PARAS 586-587 *post*.

8 For the meaning of 'county matter' see PARA 38 *ante*.

9 Town and Country Planning Act 1990 Sch 1 para 3(1), (2) (amended by the Planning and Compensation Act 1991 ss 19(2)(a), 32, Sch 7 para 53). There are no district planning authorities in Wales: see PARA 28 *ante*.

10 For the meaning of 'land' see PARA 2 note 10 *ante*.

11 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 *et seq*.

12 Town and Country Planning Act 1990 Sch 1 para 3(7) (amended by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 16(1), (3), Sch 9, partly as from a day to be appointed under s 121). See further PARA 213 *post*. The Town and Country Planning Act 1990 Sch 1 para 3 (as amended) does not apply in Greater London: see PARA 213 *post*.

13 *Ie* under *ibid* s 220 (as amended): see PARA 769 *post*.

14 *Ie* within the meaning of *ibid* s 92 (as amended): see PARA 519 *post*.

15 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 *et seq*; and as to such authorities as local planning authorities see PARA 32 *ante*.

16 *Ie* but for the Town and Country Planning Act 1990 s 8A (as added and amended): see PARA 32 *ante*.

17 *Ibid* Sch 1 para 4(2) (amended by the Planning and Compensation Act 1991 ss 19(2), 32, 84, Sch 7 para 53, Sch 19 Pt I; the Environment Act 1995 ss 78, 120, Sch 10 para 32(14)(a), Sch 24).

18 As to the Secretary of State see PARA 19 *ante*.

19 As to the Assembly see PARA 20 *ante*.

20 For the meaning of 'development order' see PARA 252 *post*.

21 For these purposes, except in so far as the context otherwise requires, 'local highway authority' means a highway authority other than the Secretary of State (or, in Wales, the National Assembly for Wales): see the Town and Country Planning Act 1990 s 336(1). As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (Reissue) PARA 49 *et seq*.

22 See the Town and Country Planning Act 1990 Sch 1 para 5(1), (2); Sch 1A para 1(1), (2) (as added); and PARA 253 *post*.

23 See *ibid* Sch 1 para 5(3); Sch 1A para 1(3) (as added); and PARA 253 *post*.

24 See *ibid* Sch 1 para 6(1), (2) (as amended); and PARA 253 *post*.

25 See *ibid* Sch 1 para 8(6) (as substituted); and PARA 253 *post*.

26 See *ibid* Sch 1A para 2(6) (as added); and PARA 253 *post*.

27 See the text and notes 24-26 *supra*.

28 For the meaning of 'relevant planning application' for these purposes see PARA 253 note 21 *post*.

29 See the Town and Country Planning Act 1990 Sch 1 para 8(1)-(5) (as substituted); Sch 1A para 2(1)-(5) (as added); and PARA 253 note 21 post.

30 See the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, arts 2(d)(ii), 4(4); and PARA 4 ante.

31 Is an application to which the consultation requirements apply: see PARA 477 post.

32 As to regional planning bodies see PARA 24 ante.

33 See the Town and Country Planning Act 1990 Sch 1 para 7 (as substituted); and PARA 477 post. See also Sch 1 para 7 (as originally enacted and as amended); and PARA 484 post.

34 See *ibid* Sch 1 paras 9-15 (as amended); Sch 1A paras 4-7 (as added). As to the provision so made with regard to functions:

- 41 (1) under the provisions of the Town and Country Planning Act 1990 relating to simplified planning zone schemes in England see Sch 1 para 9(1); and PARA 215 post;
- 42 (2) exercisable under s 94 in England and elsewhere than in a National Park, see Sch 1 para 10; and PARA 215 post;
- 43 (3) in England of (a) making orders under s 97 (as amended) revoking or modifying planning permission, or under s 102 (as amended) requiring discontinuance of use, imposing conditions on continuance of use or requiring the alteration or removal of buildings or works; or (b) issuing enforcement notices under s 172 (as substituted) or serving planning contravention notices under section 171C (as added or amended) or stop notices under s 183 (as amended) or breach of condition notices under s 187A (as added) see Sch 1 para 11(1)-(4); and PARA 214 post;
- 44 (4) in relation to enforcement under s 178(1) (as substituted), s 181(4)(b) (as amended) and s 190(2)-(5) (as amended) see Sch 1 para 12; Sch 1A paras 3, 4 (as added); and PARAS 568 note 3, 571 note 6, 597 note 9 post;
- 45 (5) under s 187B (as added) (injunctions) see Sch 1 para 12A, Sch 1A paras 3, 5 (as added); and PARA 585 note 5 post;
- 46 (6) relating to tree preservation orders in the case of any area in England for which there is both a district and a county planning authority see Sch 1 para 13(1) (as amended); and PARA 852 note 6 post;
- 47 (7) of varying or revoking certain tree preservation orders made under s 198 (as amended) or made by virtue of s 202, and the powers of dispensing with s 206 or serving, or appearing on an appeal relating to, a notice under s 207 (as amended) see Sch 1 para 13(2); Sch 1A paras 3, 6 (as added); and PARA 850 note 20 post;
- 48 (8) in England under s 69 (as originally enacted or as substituted) s 211 (as amended), s 214, s 220 (as amended), s 221 (as amended), s 224 (as amended) and s 225, and in non-metropolitan counties under s 215, see Sch 1 para 14; and PARAS 466 note 2, 769 note 6, 771 note 4, 830 note 5, 831 note 4, 877 note 5, 887 note 6 post; and
- 49 (9) relating to the receipt of a notice required to be served by s 101(4), Sch 8 para 4(5) (as amended) in certain cases see Sch 1 para 15(1), (2); Sch 1A paras 3, 7 (as added); and PARA 708 note 22 post.

35 See *ibid* Sch 1 paras 16-18 (as amended); Sch 1A paras 3, 8-10 (as added). For the provision so made as to compensation:

- 50 (1) under s 107 (as amended) (including s 107 (as amended) as applied by s 108 (as amended)) and ss 115(1)-(4), 186 (as amended) and 223 see Sch 1 para 16(1)-(3) (as amended); Sch 1A paras 3, 8(1)-(3) (as added); and PARA 912 post;
- 51 (2) under s 144(2) (as amended) in England see Sch 1 para 16(4); and PARA 912 post;
- 52 (3) under a tree preservation order by virtue of s 203, and claims for payment of compensation under s 204 by virtue of directions given in pursuance of such an order, see Sch 1 para 17; Sch 1A paras 3, 9 (as added); and PARA 866 post;

- 53 (4) to statutory undertakers under s 279(1)(a) see Sch 1 para 18; Sch 1A para 10 (as added); and PARA 1027 note 10 post.
- 36 See *ibid* Sch 1 paras 19-20 (as amended); Sch 1A para 11 (as added). As to:
- 54 (1) the enforcement of a planning obligation in relation to land in the area of a joint planning board see Sch 1 para 20(3), Sch 1A para 11 (both as added); and PARAS 244 note 9, 251 note 9 post;
- 55 (2) the exercise in England of functions conferred by s 302, Sch 15 (as amended) see Sch 1 para 19(1)-(5) (as amended); and PARA 900 post;
- 56 (3) the local planning authority in England which the Secretary of State is required to consult under s 100(3), s 104(3), s 196A(3) (as added), s 202(1) or s 214B(6) (as added) or serve with a notice of his proposals under s 100(4) or s 104(4) see Sch 1 para 20(1) (as amended); and PARAS 544 note 6, 550 note 6, 851 note 4, 880 note 8, 556 note 6 post;
- 57 (4) references in ss 96, 182 and 185 to the local planning authority in England see Sch 1 para 20(2); and PARAS 540 note 7, 562 note 5, 580 note 7 post; and
- 58 (5) the reference to the local planning authority in England in Sch 13 para 16 (as substituted) see Sch 1 para 20(4) (as amended); and PARA 983 note 13 post.
- 37 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81, Sch 4 (as amended); and PARA 1073 post.

UPDATE

39-40 Distribution of functions between local planning authorities, Restrictions on the exercise of functions by local authority executives

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

39 Distribution of functions between local planning authorities

TEXT AND NOTES 5-9--Town and Country Planning Act 1990 Sch 1 para 3(1) further amended: Planning Act 2008 s 190(1), (6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/40. Restrictions on the exercise of functions by local authority executives.

40. Restrictions on the exercise of functions by local authority executives.

Local authorities may arrange for the discharge of their functions, including those as local planning authority¹, by committees and sub-committees, officers, joint committees and executives². Where a local authority in England has an executive, however, the functions of the authority under certain provisions of the Town and Country Planning Act 1990³, the Planning (Listed Buildings and Conservation Areas) Act 1990⁴ and the Planning (Hazardous Substances) Act 1990⁵ and under certain other relevant statutory provisions⁶, are not the responsibility of the executive⁷. It is not the responsibility of an executive of the authority:

- 130 (1) to impose any condition, limitation or other restriction on an approval, consent, licence, permission or registration granted in the exercise of the functions mentioned above⁸, or to determine any other terms to which any such approval, consent, licence, permission or registration is subject⁹;
- 131 (2) to determine whether, and in what manner, to enforce:
- 9
10. (a) any failure to comply with any such approval, consent, licence, permission or registration;
11. (b) any failure to comply with a condition, limitation or term to which any such approval, consent, licence, permission or registration is subject; or
12. (c) any other contravention relating thereto¹⁰;
- 10
- 132 (3) to amend, modify or vary any such approval, consent, licence, permission or registration, or any condition, limitation or term to which it is subject, or to revoke any such approval, consent, licence, permission or registration¹¹;
- 133 (4) to determine whether a charge should be made for any approval, consent, licence, permit or registration the issue of which is not the responsibility of an executive of the authority, or to determine, where a charge is made for any such approval, consent, licence, permit or registration, the amount of the charge¹².

The obtaining of information under the specified provision of the Town and Country Planning Act 1990¹³ as to interests in land may, but need not, be a function of the executive¹⁴.

Responsibility for other specified functions relating to the development plan¹⁵ is to be shared between the full authority and the executive, as follows:

- 134 (i) in connection with the discharge of the function of formulating or preparing plans and alterations which together comprise the development plan under Part II of the Town and Country Planning Act 1990, so far as continuing in force¹⁶, certain designated actions¹⁷ are not to be the responsibility of an executive of the authority¹⁸; and except to the extent of those designated actions, any such function is to be the responsibility of such an executive¹⁹;
- 135 (ii) the function of amending, modifying, revising, varying, withdrawing or revoking any such plan, whenever approved or adopted, is to be the responsibility of an executive of the authority to the extent that the making of the amendment, modification, revision, variation, withdrawal or revocation is:
- 11
13. (A) required for giving effect to requirements of the Secretary of State²⁰ or a Minister of the Crown in relation to a plan submitted for his approval, or to any part so submitted; or
14. (B) is recommended by the person carrying out²¹ an independent examination of a development plan document; or
15. (C) is authorised by a determination made by the authority when approving or adopting the plan, as the case may be;
- 12
- 136 and is not be the responsibility of such an executive to any other extent²²;
- 137 (iii) in connection with the discharge of specified functions under the Planning and Compulsory Purchase Act 2004 relating to joint local development documents and joint committees²³, certain designated actions²⁴ are not to be the responsibility of an executive of the authority²⁵; and except to the extent of those designated actions, any such function is to be the responsibility of such an executive²⁶.

Separate provisions apply to Wales²⁷.

1 See PARA 28 et seq ante.

2 See the Local Government Act 1972 s 102 (as amended); the Local Government Act 2000 Pt II (ss 10-48) (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARAS 303, 369 et seq.

3 le the following functions:

- 59 (1) the power to determine applications for planning permission under the Town and Country Planning Act 1990 ss 70(1)(a), (b), 72 (as amended) (see PARAS 486, 519 post);
- 60 (2) the power to determine applications to develop land without compliance with conditions previously attached under s 73 (as amended) (see PARA 524 post);
- 61 (3) the power to grant planning permission for development already carried out under s 73A (as added) (see PARA 525 post);
- 62 (4) the power to decline to determine applications for planning permission under s 70A (as added or as substituted) (see PARA 516 post);
- 63 (5) duties relating to the making of determinations of planning applications under ss 69, 76 and 92 (as amended) (see PARAS 466, 535, 519 post) and under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, arts 8, 10-13, 15-22 and 25-26 (as amended) and directions made thereunder;
- 64 (6) the power to determine applications for planning permission made by a local authority, alone or jointly with another person under the Town and Country Planning Act 1990 s 316 (as substituted) and under the Town and Country Planning General Regulations 1992, SI 1992/1492 (see PARA 891 post);
- 65 (7) the power to enter into an agreement regulating development or use of land under the Town and Country Planning Act 1990 s 106 (as substituted; prospectively repealed) (see PARA 244 post);
- 66 (8) the power to issue a certificate of existing or proposed lawful use or development under ss 191(4) and 192(2) (as amended) (see PARAS 586-587 post);
- 67 (9) the power to serve a completion notice under s 94(2) (see PARA 538 post);
- 68 (10) the power to grant consent for the display of advertisements under s 220 (as amended) and the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended) (see PARA 769 et seq post);
- 69 (11) the power to authorise entry onto land under s 196A (as added) (see PARA 556 post);
- 70 (12) the power to require the discontinuance of a use of land under s 102 (as amended) (see PARAS 548-549 post);
- 71 (13) the power to serve a planning contravention notice, breach of condition notice or stop notice under ss 171C, 187A (as added) and s 183(1) (as substituted) (see PARAS 559, 583, 577 respectively post);
- 72 (14) the power to issue an enforcement notice under s 172 (as substituted) (see PARA 561 post);
- 73 (15) the power to apply for an injunction restraining a breach of planning control under s 187B (as added) (see PARA 585 post);
- 74 (16) the power to require proper maintenance of land under s 215(1) (see PARA 887 post); and
- 75 (17) the power to issue a temporary stop notice under s 171E (as added) (see PARA 573 post).

4 le the following functions:

- 76 (1) the power to determine applications for listed building consent, and related powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 16(1),(2), 17, and 33(1) (see PARA 1127 et seq post);

- 77 (2) the power to determine applications for conservation area consent under s 16(1) as applied by s 74(3) (see PARAS 1174-1176 post);
 - 78 (3) duties relating to applications for listed building consent and conservation area consent under ss 13(1), 14(1), (4) and the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, regs 3-6, 13 (as amended) (see PARAS 1116-1117, 1174-1176 post);
 - 79 (4) the power to serve a building preservation notice, and related powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(1) (as amended) and s 4(1) (see PARAS 1098-1099 post);
 - 80 (5) the power to issue an enforcement notice in relation to the demolition of an unlisted building in a conservation area under s 38 (as amended) (see PARA 1180 post);
 - 81 (6) the powers to acquire a listed building in need of repair and to serve a repairs notice under s 47 (as amended) and s 48 (see PARAS 1154-1157 post);
 - 82 (7) the power to apply for an injunction in relation to a listed building under s 44A (as added) (see PARA 1151 post); and
 - 83 (8) the power to execute urgent works under s 54 (see PARA 1163 post).
- 5 le the power to determine applications for hazardous substances consent, and related powers under the Planning (Hazardous Substances) Act 1990 ss 9(1), 10 (as amended): see PARAS 1244-1245 post.
- 6 le the following functions:
- 84 (1) the power to make determinations, give approvals and agree certain other matters relating to the exercise of permitted development rights under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 6, 7, 11, 17, 19, 20, 21-24, 26, 30 and 31 (as amended) (see PARA 302 et seq post);
 - 85 (2) the duty to determine conditions to which old mining permissions, relevant planning permissions relating to dormant sites or active Phase I or II sites, or mineral permissions relating to mining sites, as the case may be, are to be subject under the Planning and Compensation Act 1991 Sch 2 para 2(6)(a), the Environment Act 1995 Sch 13 para 9(6) and Sch 14 para 6(5) (see PARAS 720, 734, 750 post);
 - 86 (3) the power to issue site licences under the Caravan Sites and Control of Development Act 1960 s 3(3) (see PARA 1039 post); and
 - 87 (4) the functions under the regulations and orders referred to in notes 3-4 supra.
- 7 See the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 2(1), Sch 1 Table, PARA A, PARA B item 1 (Sch 1 Table, PARA A substituted by SI 2004/2211; amended by SI 2005/929). As to local authority executives see LOCAL GOVERNMENT vol 69 (2009) PARA 327 et seq.
- 8 See the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 2(2)(a)(i).
- 9 See *ibid* reg 2(2)(b).
- 10 See *ibid* reg 2(3).
- 11 See *ibid* reg 2(4).
- 12 See *ibid* reg 2(6)(d), (e).
- 13 le under the Town and Country Planning Act 1990 s 330 (as amended): see PARA 53 post.
- 14 See the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 3(1), Sch 2 para 16.
- 15 For the meaning of 'development plan' see PARA 91 post.
- 16 le for Greater London and the metropolitan counties, the function under the Town and Country Planning Act 1990 s 27 (repealed with savings) (see PARA 149 post) and for districts outside Greater London and the metropolitan counties, the function under s 54 (repealed with savings) (see PARA 151 post).

17 Ie the 'paragraph (3) actions'. The actions so designated are (1) the giving of instructions requiring the executive to reconsider any draft plan or strategy submitted by the executive for the authority's consideration; (2) the amendment of any draft plan or strategy submitted by the executive for the authority's consideration; (3) the approval, for the purposes of public consultation in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 10 (as amended) (see PARA 186 post) or reg 22 (see PARA 163 post), of draft proposals associated with the preparation of alterations to, or the replacement of, a development plan; (4) the approval, for the purpose of its submission to the Secretary of State or any Minister of the Crown for his approval, of any plan or strategy (whether or not in the form of a draft) of which any part is required to be so submitted; (5) the approval, for the purpose of its submission to the Secretary of State for independent examination under the Planning and Compulsory Purchase Act 2004 s 20 of a development plan document (see PARA 108 post); and (6) the adoption (with or without modification) of the plan or strategy: Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(3) (amended by SI 2001/2212; SI 2005/929).

18 See the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(1)(a), Sch 3.

19 Ibid reg 4(2).

20 As to the Secretary of State see PARA 19 ante.

21 Ie under the Planning and Compulsory Purchase Act 2004 s 20: see PARA 108 post.

22 Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(4) (amended by SI 2005/929). The Local Government Act 1972 s 101 (as amended) (arrangements for discharge of functions by local authorities: see LOCAL GOVERNMENT vol 69 (2009) PARA 370) does not apply with respect to the discharge of functions specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(4) (as so amended) or reg 4(4A) (as added) (see head (iii) in the text) to the extent that they are not the responsibility of an executive of the authority: reg 4(8)(b) (substituted by SI 2005/929).

23 Ie functions under any of the Planning and Compulsory Purchase Act 2004 ss 28-31: see PARAS 94-95, 106-107 post.

24 Ie 'the paragraph (4C) actions'. The actions so designated are: (1) the making of an agreement to prepare one or more joint development plan documents; (2) the making of an agreement to establish a joint committee to be, for the purposes of ibid Pt 2 (ss 13-37) (local development: see PARA 89 et seq post), the local planning authority; (3) where the authority is a constituent authority to a joint committee, the making of an agreement that the joint committee is to be, for the purposes of Pt 2, the local planning authority for any area or matter which is not the subject of an order under s 29 or an earlier agreement under s 30 (see PARA 94 post); and (4) the making of a request to the Secretary of State for the revocation of an order constituting a joint committee as the local planning authority for any area or in respect of any matter: Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(4C) (reg 4(4A)-(4C) added by SI 2005/929).

25 Local Authorities (Functions and Responsibilities) (England) Regulations 2000, SI 2000/2853, reg 4(4A) (as added: see note 24 supra). See also note 22 supra.

26 Ibid reg 4(4B) (as added: see note 24 supra).

27 See the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001, SI 2001/2291 (as amended). See further LOCAL GOVERNMENT vol 69 (2009) PARAS 324.

UPDATE

39-40 Distribution of functions between local planning authorities, Restrictions on the exercise of functions by local authority executives

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

40 Restrictions on the exercise of functions by local authority executives

NOTE 7--SI 2000/2853 Sch 1 para A further amended: SI 2007/2593. SI 2001/2291 now replaced by Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007, SI 2007/399 (amended by SI 2008/1430, SI 2009/2983).

NOTE 18--SI 2000/2853 Sch 3 amended: SI 2001/2212, SI 2005/929, SI 2006/2886, SI 2008/516, SI 2008/744.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iii) Local Planning Authorities/41. Investigation by Local Government Commissions.

41. Investigation by Local Government Commissions.

The Local Government Act 1974 established the Commissions for Local Administration in England and in Wales¹. At the date at which this title states the law, the following provisions apply. The Welsh Administration Ombudsman² may be appointed as a local commissioner in Wales³. If not so appointed, he is a member of the Commission for Local Administration in Wales by virtue of his office⁴, and the Parliamentary Commissioner is a member of each of the Commissions⁵; but neither of them is a local commissioner by virtue of such membership⁶. A local commissioner may investigate, on complaint being made to him, administrative actions⁷ taken by or on behalf of local authorities or certain similar bodies⁸, other than those actions he is expressly precluded from investigating⁹. Details of the investigations undertaken, the findings as to whether or not there has been maladministration, and any recommendations for compensation to be paid, or remedial action taken, by the body in question are set out in the commissioners' annual reports¹⁰. Examples of matters investigated where maladministration has been found are:

- 138 (1) inconsistency in dealing with applications for planning permission from neighbours¹¹;
- 139 (2) failure to take adequately into account the risk of flooding to the complainants' land when granting planning permission for a new development¹²;
- 140 (3) failures of communication between the local council and the Environment Agency over development in a flood plain¹³;
- 141 (4) failure to deal with an application for prior approval to site a mobile telephone mast close to the complainants' homes within the correct time scales, leading to the granting of permission by default with a loss of amenity to the complainants¹⁴;
- 142 (5) failure to implement the settlement to which the local council had agreed following initial complaints about the siting of a telephone mast¹⁵;
- 143 (6) failure by the local planning authority, when considering an application for a new residential development on heavily contaminated former industrial land, to have appropriate regard to the difference in levels between the development site and existing properties¹⁶;
- 144 (7) failure to define an acceptable noise level in the specification for a skate park¹⁷ or to seek expert advice on potential noise nuisance before opening such a park¹⁸;
- 145 (8) a decision to grant planning permission taken in ignorance of the fact that the council had proposed, or would inevitably be proposing, to make up and adopt the street at issue, because of an absence of proper communication within the highways department¹⁹;

- 146 (9) failure by the council to notify the complainant of a planning application submitted by her neighbour for consent to build an extension to the neighbour's house²⁰;
- 147 (10) failure by one of the council's planning enforcement officers to deal with allegations of breaches of planning control and also the making of false claims about the actions that he had taken²¹;
- 148 (11) failure to observe the statutory duty to consult English Heritage when handling a planning application for a residential development which affected listed buildings and a conservation area at the rear of the complainant's property²²;
- 149 (12) failure to consider or investigate traffic generation issues properly when determining a planning application for a large extension to the community, sports and youth centre almost opposite the complainant's house; and failure to enforce one of the planning conditions attached to the permission²³;
- 150 (13) failure to give proper consideration to the complainant's objections before imposing a tree preservation order on all the trees in her garden²⁴;
- 151 (14) failure to investigate adequately the disturbance from an agricultural machinery company next door to the complainants' home to see if this amounted to a change of use of the premises²⁵; and
- 152 (15) failure to publicise properly an application for a new house adjacent to a conservation area²⁶.

Heads (1) to (15) are by way of illustration only and do not purport to be an exhaustive list.

As from a day to be appointed²⁷, however, the office of Welsh Administration Ombudsman is abolished and replaced by the office of Public Services Ombudsman for Wales²⁸.

1 See the Local Government Act 1974 s 23(1) (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 49. At the date at which this title states the law, there were three commissioners for England and one for Wales.

2 As to the Welsh Administration Ombudsman see PARA 23 ante.

3 As to appointments to the Commissions see the Local Government Act 1974 s 23(4) (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 49.

4 See *ibid* s 23(3A)(a) (added by the Regulatory Reform (Local Commissioner for Wales) Order 2004, SI 2004/2359, art 2(1), (2)(c)).

5 See the Local Government Act 1974 s 23(2); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 49.

6 See *ibid* s 23(3) (as amended), s 23(3A)(b) (as added: see note 4 *supra*); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 49.

7 'Action' includes failure to act: see *ibid* s 34(1); and see further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 note 2.

8 See *ibid* s 25(1) (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 47.

9 See *ibid* s 26(6), (8), Sch 5 (as amended); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 46 the text and note 21. As to the matters excluded from investigation see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 46 at heads (a)-(g) in the text. As to the matters concerning urban development and regeneration which may be investigated by the local commissioners see PARA 1508 post.

10 At the date at which this title states the law, summaries from the annual reports of the local commissioners for England were accessible at www.lgo.org.uk; and summaries from the annual reports of the local commissioner for Wales were accessible at www.ombudsman-wales.org.

11 See eg Bradford Metropolitan District Council (00/C/4470) (31 January 2002).

12 See eg Derwentside District Council (02/C/10019) and The Environment Agency (02/C/15789) (18 August 2004); Bury Metropolitan Borough Council (02/C/4996) (12 February 2004).

13 See eg Spelthorne Borough Council (02/A/15513, 03/A/6043, 7087, 7712, 7904, 9981 & 10289) and the Environment Agency (03/A/10284) (26 October 2004).

14 See eg Swindon Borough Council (01/B/13212 and 13214 & 02/B/1321 & 1324) (15 July 2002); Broadland District Council (03/B/4965) (20 May 2004); City of York Council (03/B/12008) (20 May 2004); Suffolk Coastal District Council (03/A/7447, 7472, 7510, 8863, 9493 & 12108) (15 November 2004). See also *R (on the application of Nunn) v First Secretary of State* [2005] EWCA Civ 101, [2005] 2 All ER 987, (2005) Times, 23 February, where the court discussed the claimant's potential remedies against the local planning authority.

15 Leeds City Council (03/C/7976) (20 October 2004).

16 Sandwell Metropolitan Borough Council (00/B/12415, 01/B/3842 and 4422) (25 March 2002).

17 North Wiltshire District Council (01/B/9371 and 12606) (20 June 2002).

18 Oxford City Council (02/B/13266) (22 April 2004).

19 Leeds City Council (01/C/8649) (12 August 2002).

20 Gwynedd Council (2001/0285/CN/237) (13 February 2002).

21 Caerphilly County Borough Council (2001/0703/CY/278) (9 August 2002).

22 East Northamptonshire District Council (02/B/16418) (20 May 2004).

23 Hartlepool Borough Council (03/C/4038) (30 June 2004).

24 Vale Royal Borough Council (03/C/9398) (25 August 2004).

25 New Forest District Council (01/B/11562) (12 February 2004).

26 Wychavon District Council (04/B/87, 1739, 2076) (8 November 2004).

27 See as from a day to be appointed under the Public Services Ombudsman (Wales) Act 2005 s 40. At the date at which this title states the law, no such day had been appointed.

28 See *ibid* ss 1, 36, Sch 1.

UPDATE

41 Investigation by Local Government Commissions

TEXT AND NOTE 27--Day now appointed: SI 2005/2800.

NOTE 28--2005 Act Sch 1 amended: Government of Wales Act 2006 Sch 10 para 86.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/42. Validity of strategies, plans and documents.

(iv) Validity of Strategies, Plans, Orders, Notices etc

42. Validity of strategies, plans and documents.

A relevant document must not be questioned in any legal proceedings except in so far as is provided by the following provisions¹; and for these purposes a relevant document is:

153 (1) a revision of the regional spatial strategy²;

- 154 (2) the Wales Spatial Plan³;
- 155 (3) a development plan document⁴;
- 156 (4) a local development plan⁵;
- 157 (5) a revision of a document mentioned in head (2), (3) or (4) above;
- 158 (6) the Mayor of London's spatial development strategy⁶;
- 159 (7) an alteration or replacement of the spatial development strategy⁷.

A person aggrieved⁸ by a relevant document may make an application to the High Court on the ground that:

- 160 (a) the document is not within the appropriate power⁹;
- 161 (b) a procedural requirement¹⁰ has not been complied with¹¹;

but the application must be made not later than the end of the period of six weeks starting with the relevant date¹². The High Court may make an interim order suspending the operation of the relevant document either wholly or in part and either generally or as it affects the property of the applicant¹³. An interim order has effect until the proceedings are finally determined¹⁴.

If the High Court is satisfied:

- 162 (i) that a relevant document is to any extent outside the appropriate power;
- 163 (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with a procedural requirement,

the High Court may quash the relevant document either wholly or in part and either generally or as it affects the property of the applicant¹⁵.

1 Planning and Compulsory Purchase Act 2004 s 113(2).

2 As to the regional spatial strategy (the 'RSS') see PARA 72 et seq post.

3 As to the Wales Spatial Plan see PARAS 87-88 post.

4 For the meaning of 'development plan document' see PARA 96 note 4 post.

5 For the meaning of 'local development plan' see PARAS 91, 135 post.

6 As to the Mayor of London's spatial development strategy see PARA 86 post.

7 Planning and Compulsory Purchase Act 2004 s 113(1).

8 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

9 The appropriate power is (1) the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12) (see PARA 72 et seq post) in the case of a revision of the regional spatial strategy; (2) s 60 (see PARAS 86-87 post) in the case of the Wales Spatial Plan or any revision of it; (3) Pt 2 (ss 13-37) (see PARA 89 et seq post) in the case of a development plan document or any revision of it; (4) ss 62-78 (see PARA 133 et seq post) in the case of a local development plan or any revision of it; (5) the Greater London Authority Act 1999 ss 334-343 (as amended) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq) in the case of the spatial development strategy or any alteration or replacement of it: Planning and Compulsory Purchase Act 2004 s 113(9).

10 A procedural requirement is a requirement under the appropriate power or contained in regulations or an order made under that power which relates to the adoption, publication or approval of a relevant document: *ibid* s 113(10).

11 *Ibid* s 113(3). The application must be made by claim form which must state the grounds of the application: CPR Sch 1 RSC Ord 94 r 1(2). As to filing and service of the claim form see CPR Sch 1 RSC Ord 94 r 2. The jurisdiction of the High Court under the Planning and Compulsory Purchase Act 2004 s 113 is exercisable by a single judge of the Queen's Bench Division: see CPR Sch 1 RSC Ord 94 r 1(1).

12 Planning and Compulsory Purchase Act 2004 s 113(4). For these purposes, references to the relevant date must be construed as follows: (1) for the purposes of a revision of the regional spatial strategy, the date when the Secretary of State publishes the revised strategy under s 9(6) (see PARA 81 post); (2) for the purposes of the Wales Spatial Plan (or a revision of it), the date when it is approved by the National Assembly for Wales; (3) for the purposes of a development plan document (or a revision of it), the date when it is adopted by the local planning authority or approved by the Secretary of State (as the case may be); (4) for the purposes of a local development plan (or a revision of it), the date when it is adopted by a local planning authority in Wales or approved by the National Assembly for Wales (as the case may be); (5) for the purposes of the spatial development strategy (or an alteration or replacement of it), the date when the Mayor of London publishes it: s 113(11). As to the Secretary of State and the Assembly see PARAS 19-20 ante; as to local planning authorities see PARA 28 et seq ante; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

13 Ibid s 113(5). Evidence at the hearing of the application is by witness statement or affidavit: see CPR Sch 1 RSC Ord 94 r 3.

14 Planning and Compulsory Purchase Act 2004 s 113(8).

15 Ibid s 113(6), (7). As to 'substantial prejudice' see PARA 46 note 13 post.

UPDATE

42 Validity of strategies, plans and documents

TEXT AND NOTE 15--Planning and Compulsory Purchase Act 2004 s 113(7), (7A)-(7C) substituted for s 113(7): Planning Act 2008 s 185 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/43. Validity of certain orders, decisions, directions etc.

43. Validity of certain orders, decisions, directions etc.

Except in so far as may be provided by Part XII of the Town and Country Planning Act 1990¹, the validity of:

- 164 (1) a simplified planning zone scheme² or an alteration of such a scheme, whether before or after the adoption or approval of the scheme or alteration; or
- 165 (2) an order under the provisions of that Act relating to highways³, whether before or after the order has been made; or
- 166 (3) an order relieving statutory undertakers from obligations rendered impracticable⁴, whether before or after the order has been made,

may not be questioned in any legal proceedings whatsoever⁵.

Similarly, the validity of any of the following orders may not be so questioned, whether before or after it has been confirmed:

- 167 (a) any order revoking or modifying planning permission⁶;
- 168 (b) any order⁷ requiring the discontinuance of a use⁸ or the alteration or removal of buildings or works⁹;
- 169 (c) any tree preservation order¹⁰;
- 170 (d) any order defining areas of special control for the purposes of advertisement regulations¹¹;

171 (e) any order¹² relating to the discontinuance of mineral working¹³.

Nor may the validity of any action on the part of the Secretary of State¹⁴ or, in relation to Wales, of the National Assembly for Wales¹⁵ of any of the following descriptions be so questioned:

172 (i) any decision on an application for planning permission referred¹⁶ to him or to it;

173 (ii) any decision on an appeal against planning decisions or failure to take such decisions¹⁷;

174 (iii) any decision to confirm a completion notice¹⁸;

175 (iv) any decision to grant planning permission on an appeal against an enforcement notice¹⁹ or to discharge a condition or limitation²⁰ subject to which planning permission was granted;

176 (v) any decision to confirm or not to confirm a purchase notice²¹ including:
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16. (A) any decision not to confirm such a notice in respect of part of the land²² to which it relates; or

17. (B) any decision to grant any permission, or give any direction, instead of confirming such a notice, either wholly or in part;

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177 (vi) any decision on an appeal against a refusal or failure to give a decision on an application for a certificate of lawfulness of existing or proposed use or development²³;

178 (vii) any decision relating to:

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18. (A) an application for consent under a tree preservation order;

19. (B) an application for consent under any regulations made in respect of the control of advertisements²⁴;

20. (C) any certificate or direction under any such order or regulations,

16

179 whether it is a decision on appeal or a decision on an application referred to the Secretary of State or the Assembly for determination in the first instance;

180 (viii) any decision on an application for planning permission²⁵ for urgent Crown development²⁶.

Nothing in the above provisions, however, affects the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State or the Assembly to take any such action as is mentioned in heads (i) to (viii) above²⁷.

1 Ie by the Town and Country Planning Act 1990 Pt XII (ss 284-292) (as amended): see the text and notes 2-26 infra; and PARAS 44 et seq, 648 post.

2 For these purposes, except in so far as the context otherwise requires, 'simplified planning zone scheme' is to be construed in accordance with the Town and Country Planning Act 1990 s 83 (as prospectively repealed) (see PARA 428 post): s 336(1). As to simplified planning zones see PARA 426 et seq post.

3 Ie the provisions of *ibid* Pt X (ss 247-261) (as amended) except s 251(1): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq.

4 Ie an order under *ibid* s 277: see PARA 1025 post.

5 Town and Country Planning Act 1990 s 284(1)(b)-(d). Section 284(1)(a) (amended by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 Pt III para 30, Sch 19 Pt I) provided that the validity of a structure plan, local plan, minerals local plan, waste local plan or unitary development plan or any alteration or replacement of any such plan, whether before or after the plan, had been approved or adopted, was similarly not to be questioned; that provision is repealed by the Planning and Compulsory Purchase Act 2004 ss 118(1),

120, Sch 6 paras 1, 8, Sch 9; for transitional provisions in relation to Wales see PARAS 148 note 11, 979 note 8 post. As to structure plans see PARA 176 et seq post; as to local plans under the Town and Country Planning Act 1990 Pt II (ss 13-54A) (repealed with savings) see PARAS 176 et seq, 195 et seq post; as to minerals local plans see PARA 196 post; as to waste local plans see PARA 197 post; and as to unitary development plans see PARA 155 et seq post.

6 Ie any order under *ibid* s 97 (as amended) (see PARA 541 post) or under the provisions of s 97 (as amended) as applied by or under any other provision of the Town and Country Planning Act 1990. For these purposes, except in so far as the context otherwise requires, 'planning permission' means permission under Pt III (ss 55-106B) (as amended) (see PARA 217 et seq post): s 336(1) (definition amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 52(1), (2)(g), Sch 19 Pt I).

7 Ie any order under the Town and Country Planning Act 1990 s 102 (as amended): see PARA 546 et seq post.

8 For the meaning of 'use' see PARA 221 note 4 post.

9 For these purposes, except in so far as the context otherwise requires, 'buildings or works' includes waste materials, refuse and other matters deposited on land, and references to the erection or construction of buildings or works are to be construed accordingly; and references to the removal of buildings or works include demolition of buildings and filling in of trenches: Town and Country Planning Act 1990 s 336(1) (definition amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 52(1), (2)(b)). For the meanings of 'erection' and 'building' see PARA 2 note 10 ante.

10 For these purposes, except in so far as the context otherwise requires, 'tree preservation order' has the meaning given in the Town and Country Planning Act 1990 s 198 (as amended) (see PARA 850 post): 336(1).

11 Ie any order made in pursuance of *ibid* s 221(5): see PARA 771 post.

12 Ie any order under *ibid* s 102(8), Sch 9 paras 1, 3, 5, or 6 (as amended): see PARAS 757, 758, 762-763 post.

13 Ibid s 284(1)(e), (2).

14 As to the Secretary of State see PARA 19 ante.

15 As to the transfer of the majority of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

16 Ie under *ibid* s 77 (as amended): see PARA 483 post.

17 Ie any decision on an appeal under *ibid* s 78 (as amended): see PARA 598 post. In *Chalgray Ltd v Secretary of State for the Environment* (1976) 33 P & CR 10 it was held that a letter declining jurisdiction was a decision for these purposes, although this was considered doubtful in *Co-operative Retail Services Ltd v Secretary of State for the Environment* [1980] 1 All ER 449 at 453, [1980] 1 WLR 271 at 277, CA, obiter per Brandon LJ. A decision by the Secretary of State refusing to adjourn the start of a local inquiry into an appeal is not a decision for the purposes of the Town and Country Planning Act 1990 s 284(3)(b), but it seems that a refusal might be the subject of an application for judicial review (see PARA 650 post): *Co-operative Retail Services Ltd v Secretary of State for the Environment* *supra*. An order requiring one party to pay the party's costs is not such a decision: *North Kesteven District Council v Secretary of State for the Environment* [1989] JPL 445.

18 Ie under the Town and Country Planning Act 1990 s 95: see PARA 539 post.

19 Ie under *ibid* s 177(1)(a) (as substituted): see PARA 610 post at head (1) in the text.

20 Ie under *ibid* s 177(1)(b): see PARA 610 post at head (2) in the text.

21 For the meaning of 'purchase notice' see PARA 966 post.

22 For the meaning of 'land' see PARA 2 note 10 ante.

23 Ie any decision on an appeal under the Town and Country Planning Act 1990 s 195(1) (as amended): see PARA 613 post.

24 Ie an application for consent under any regulations made in accordance with *ibid* s 220 (as amended) (see PARA 769 post) or s 221 (as amended) (see PARA 771 post).

25 Ie under *ibid* s 293A (as added): see PARA 456 post.

26 Ibid s 284(1)(f), (3) (amended by the Planning and Compensation Act 1991 ss 31, 32, 84(6), Sch 6 paras 8, 24, Sch 7 paras 8, 41, Sch 19 Pts I, II; and by the Planning and Compulsory Purchase Act 2004 s 82(2), partly as from a day to be appointed under s 121). It has been held that this may be the case even though bad faith on the part of the Secretary of State is alleged: see *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL; applied in *R v Cotswold District Council, ex p Barrington Parish Council* (1997) 75 P & CR 515 and followed in *Collins v Scottish Ministers* 2004 SLT 228.

In relation to any action which: (1) apart from the provisions of the Town and Country Planning Act 1990 Pt XI (ss 262-283) (as amended) (see PARA 1009 et seq post) would fall to be taken by the Secretary of State or the Assembly and, if so taken, would be action falling within s 284(3) (as so amended), but (2) by virtue of Pt XI (ss 262-283) (as amended), is required to be taken by the Secretary of State (or the Assembly) and the appropriate minister, the provisions of s 284 (as amended) and s 288 (as amended) (see PARA 47 post) have effect, subject to s 292 (see infra), as if any reference in those provisions to the Secretary of State or the Assembly were a reference to the Secretary of State (or the Assembly) and the appropriate minister: s 291. For the meaning of 'the appropriate minister' see PARA 1012 post; and for the meaning of references to the Secretary of State and the appropriate minister see PARA 1012 post.

Where an order under s 247 (as amended), s 248 (as amended) or s 249 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq) or s 277 (see PARA 1025 post) is subject to special parliamentary procedure, then (a) if the order is confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6 (see PARLIAMENT vol 34 (Reissue) PARA 926) the Town and Country Planning Act 1990 s 284 (as amended) and s 287 (as amended) (see PARA 46 post) do not apply to the order; (b) in any other case, s 287 (as amended) has effect in relation to the order as if, in s 287(4), for the reference to the date there mentioned there were substituted a reference to the date on which the order becomes operative under the Statutory Orders (Special Procedure) Act 1945 s 6 ('the operative date'): Town and Country Planning Act 1990 s 292(1).

Where by virtue of Pt XI (ss 262-283) (as amended) (see PARA 1009 et seq post) any such action as is mentioned in s 291 is required to be embodied in an order, and that order is subject to special parliamentary procedure, then (i) if the order in which the action is embodied is confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6, the Town and Country Planning Act 1990 s 284 (as amended) and s 288 (as amended) (see PARA 47 post) do not apply; and (ii) in any other case, s 288 (as amended) applies with the substitution for any reference to the date on which the action is taken of a reference to the operative date: s 292(2).

27 Ibid s 284(4). As to the application of ss 284, 288 (as amended): (1) to decisions of the Secretary of State or the Assembly on an appeal under the Planning and Compensation Act 1991 s 22, Sch 2 para 5 (old mining permissions) see PARA 725 note 8 post; (2) to a decision on an application referred to him or to it under Sch 2 para 7 see PARA 719 note 6 post; (3) to such decisions on an appeal under the Environment Act 1995 Sch 13 para 6 or Sch 13 para 11 (old mineral planning permissions) see PARA 740 note 11 post; (4) to a decision on an application referred to him or to it under Sch 13 para 13 see PARA 737 note 10 post; (5) to such decisions on an appeal under Sch 14 para 9(1) see PARA 740 note 11 post; (6) to a decision on an application referred to him or to it under Sch 14 para 8 see PARA 828 note 10 post; and (7) to the determination of a ROMP application by the Secretary of State or the Assembly without an environmental impact assessment see PARA 742 note 14 post.

UPDATE

43 Validity of certain orders, decisions, directions etc

TEXT AND NOTES 14-26--Head (i), words 'for planning permission' omitted: Town and Country Planning Act s 284(3) (amended by the Planning Act 2008 s 191(1), (3) (in force in relation to England)). Also, head (ix) any decision on an application referred to the Secretary of State under the 1990 Act s 76A: Town and Country Planning Act s 284(3) (amended by the Planning Act 2008 s 191(1), (2)).

NOTE 26--Planning and Compulsory Purchase Act 2004 s 82(2) in force for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/44. Validity of enforcement notices and similar notices.

44. Validity of enforcement notices and similar notices.

The validity of an enforcement notice¹ may not, except by way of an appeal², be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought³; but this provision does not apply to criminal proceedings for breach of an enforcement notice brought⁴ against a person who:

- 181 (1) has held an interest in the land⁵ since before the enforcement notice was issued⁶;
 - 182 (2) did not have a copy of the enforcement notice served⁷ on him;
 - 183 (3) satisfies the court:
- 17
- 21. (a) that he did not know and could not reasonably have been expected to know that the enforcement notice had been issued; and
 - 22. (b) that his interests have been substantially prejudiced by the failure to serve him with a copy of it⁸.
- 18

Proceedings which have already been begun in anticipation of an enforcement notice being issued may be stayed in so far as they relate to issues covered by the statutory grounds of appeal⁹. A challenge to the validity of an enforcement notice on other grounds, such as that the notice is a nullity, is not, however, precluded by the above provisions¹⁰.

The validity of a notice which has been served¹¹ on the owner¹² and occupier of the land by a local planning authority under its statutory power to require proper maintenance of land may not, except by way of an appeal¹³, be questioned in any proceedings whatsoever on either of the specified¹⁴ grounds¹⁵; but this provision does not prevent the validity of such a notice being questioned on either of those grounds in proceedings brought¹⁶ against a person on whom the notice was not served, but who has held an interest in the land since before the notice was served on the owner and occupier of the land, if he did not appeal¹⁷ against the notice¹⁸.

1 For these purposes, except in so far as the context otherwise requires, 'enforcement notice' means a notice served under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 post): s 336(1). As to the service of notices see PARA 54 post.

2 Ie under *ibid* Pt VII (ss 171A-196C) (as amended): see PARA 551 et seq post.

3 *Ibid* s 285(1) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 42(a), Sch 19 Pt I). The Town and Country Planning Act 1990 s 285(1) (as amended) does not prevent the validity of a stop notice being questioned: see *B v Hertfordshire County Council* [2002] EWCA Crim 1941, [2002] All ER (D) 461 (Jul). As to challenging the validity of stop notices see PARA 45 post.

In relation to special enforcement notices the Town and Country Planning Act 1990 s 285(1) (as so amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution for the words 'Part VII' of the words 'section 295(3)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

In relation to hazardous substances contravention notices the Town and Country Planning Act 1990 s 285(1) (as amended) has effect with the substitution for 'an enforcement notice' of 'a hazardous substances contravention notice': Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1), Sch 4 para 10(a). As to hazardous substances contravention notices see PARA 1270 et seq post.

4 Ie under the Town and Country Planning Act 1990 s 179 (as substituted): see PARA 569 post.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 See note 2 supra.

7 le served on him under the Town and Country Planning Act 1990 Pt VII (as amended).

8 Ibid s 285(2) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 42(b), Sch 19 Pt I). It is clear from the Town and Country Planning Act 1990 s 285(2) (as so amended) that the statutory provisions are intended to encourage those who own, occupy or otherwise have interests in land to take all necessary steps to advise themselves of the planning status of the land: *R v Collet*, *R v Furminger*, *R v Nazari*, *R v Pope*, *R v Bandar* [1994] 2 All ER 372, [1994] 1 WLR 475, CA.

For transitional provisions see the Planning (Consequential Provisions) Act 1990 s 5(1), Sch 3 para 10(1)-(5).

In relation to special enforcement notices the Town and Country Planning Act 1990 s 285(2) (as so amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the following modifications: (1) for s 285(2)(a) there is to be substituted '(a) has occupied the land since before the special enforcement notice was issued under section 294(3)'; and (2) in s 285(2)(b), for the words 'that Part' there must be substituted the words 'section 295(1)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule.

In relation to hazardous substances contravention notices the Town and Country Planning Act 1990 s 285(2) (as so amended) has effect with the substitution for 'enforcement notice' in each place where it occurs of 'hazardous substances contravention notice': Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 para 10(b).

9 *Square Meals Frozen Foods Ltd v Dunstable Borough Council* [1974] 1 All ER 441, [1974] 1 WLR 59, CA: but see *R v Basildon District Council, ex p Martin Grant Homes Ltd* [1987] JPL 863, DC (the statutory provisions do not preclude a challenge by way of judicial review seeking a declaration as to the scope of planning permission where no enforcement notice has been served).

10 Eg where the enforcement notice is alleged to be a nullity. An enforcement notice is a nullity and thus devoid of legal effect if it is defective upon its face: see *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196 at 226-227, [1963] 1 All ER 459 at 470, CA, per Upjohn LJ (an enforcement notice would be a nullity if it 'was hopelessly ambiguous and uncertain, so that the owner or occupier could not tell in what respect it was alleged that he had developed land without permission or ... failed to comply with a condition or ... that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches'). A notice may, however, be valid notwithstanding minor discrepancies remediable on appeal under the Town and Country Planning Act 1990 s 174(1) (see PARA 603 post) unless the totality of the notice amounts to an injustice: see *Patel v Betts* [1978] JPL 109, DC; *Wiesenfeld v Secretary of State for the Environment* [1992] 1 PLR 32.

See also *Flashman v Camden London Borough Council* (1979) 130 NLJ 885, CA; *Davy v Spelthorne Borough Council* [1984] AC 262, [1983] 3 All ER 278, HL (the statutory provisions do not prevent challenges on grounds other than those in the statutory provisions relating to enforcement notices).

11 le under the Town and Country Planning Act 1990 s 215: see PARA 887 post.

12 For the meaning of 'owner' see PARA 17 note 1 ante.

13 le under the Town and Country Planning Act 1990 Pt VIII Ch II (ss 215-219) (as amended): see PARA 887 et seq post.

14 le either of the grounds specified in ibid s 217(1)(a) or (b): see PARA 888 post at heads (1)-(2) in the text.

15 Ibid s 285(3). In relation to hazardous substances contravention notices s 285(3) is to be omitted: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 para 10(c).

16 le under the Town and Country Planning Act 1990 s 216 (as amended): see PARA 890 post.

17 See note 12 supra.

18 Town and Country Planning Act 1990 s 285(4). In relation to hazardous substances contravention notices s 285(4) is to be omitted: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 para 10(c).

UPDATE

44 Validity of enforcement notices and similar notices

NOTE 10--*Miller-Mead*, cited, applied in *Payne v National Assembly for Wales* [2006] EWHC 597 (Admin), [2007] 1 P & CR 93.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/45. Challenges to validity on grounds of authority's powers.

45. Challenges to validity on grounds of authority's powers.

The validity of any permission, determination or certificate granted, made or issued or purporting to have been granted, made or issued by a local planning authority¹ in respect of:

- 184 (1) an application for planning permission²;
- 185 (2) an application for a certificate of lawfulness of existing or proposed use or development³;
- 186 (3) an application for consent to the display of advertisements⁴; or
- 187 (4) a determination under the statutory provisions relating to enforcement in respect of war-time breaches of planning control by the Crown⁵,

may not be called in question in any legal proceedings, or in any proceedings under the Town and Country Planning Act 1990 which are not legal proceedings, on the ground that the permission, determination or certificate should have been granted, made or given by some other local planning authority⁶.

The validity of any order⁷ revoking or modifying planning permission, any order⁸ requiring discontinuance of use⁹, or imposing conditions on continuance of use, or requiring the alteration or removal of buildings or works¹⁰, or any enforcement notice¹¹ or stop notice¹² or breach of condition notice¹³, being an order or notice purporting to have been made, issued or served by a local planning authority, may not be called in question in any such proceedings on the ground:

- 188 (a) in the case of an order or notice purporting to have been made, issued or served by a district planning authority¹⁴, that it failed to comply with the specified statutory provisions¹⁵;
- 189 (b) in the case of an order or notice purporting to have been made, issued or served by a county planning authority¹⁶, that it had no power to make, issue or serve it because it did not relate to a county matter¹⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 Ie under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 post) or s 192 (as substituted) (see PARA 587 post).

4 Ie under ibid s 220 (as amended): see PARA 769 post. For the meaning of 'advertisement' see PARA 770 post.

5 Ie ibid s 302, Sch 15 (as amended): see PARA 899 et seq post.

6 Ibid s 286(1) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 43(a), Sch 19 Pt I).

7 Ie under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 post.

8 le under ibid s 102 (as amended) (see PARAS 546-547 post) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 post).

9 For the meaning of 'use' see PARA 221 note 4 post.

10 For the meanings of 'buildings or works' and 'removal' see PARA 43 note 9 ante.

11 le under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 post. For the meaning of 'enforcement notice' see PARA 44 note 1 ante.

12 le under ibid s 183 (as amended): see PARAS 577-579 post. For these purposes, except in so far as the context otherwise requires, 'stop notice' has the meaning given in s 183 (as amended) (see PARA 577 post): s 336(1).

13 le under ibid s 187A (as added): see PARA 583 post. For these purposes, except in so far as the context otherwise requires, 'breach of condition notice' has the meaning given in s 187A (as added): s 336(1) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 52(1), (2)(a)).

14 As to district planning authorities see PARA 28 ante.

15 le the Town and Country Planning Act 1990 s 1(5)(c), Sch 1 para 11(2): see PARA 214 post.

16 As to county planning authorities see PARA 28 ante.

17 Town and Country Planning Act 1990 s 286(2) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 43(b)). For these purposes, 'county matter' has the meaning given in the Town and Country Planning Act 1990 Sch 1 (as amended) (see PARA 38 ante): s 286(2) (as so amended).

UPDATE

45 Challenges to validity on grounds of authority's powers

TEXT AND NOTES 1-6--Town and Country Planning Act 1990 s 286(1) further amended: Planning Act 2008 s 190(1), (5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/46. Proceedings for questioning validity of simplified planning zone schemes etc.

46. Proceedings for questioning validity of simplified planning zone schemes etc.

A person aggrieved¹ by a relevant document may make an application to the High Court² on the ground that:

- 190 (1) it is not within the appropriate power³; or
- 191 (2) a procedural requirement⁴ has not been complied with⁵;

and for these purposes a 'relevant document' is:

- 192 (a) a simplified planning zone scheme⁶ or an alteration of such a scheme;
- 193 (b) an order under specified provisions of the Town and Country Planning Act 1990 relating to highways⁷; or
- 194 (c) an order under the relevant provisions of that Act⁸ relieving statutory undertakers from obligations rendered impracticable⁹.

Such an application must be made within six weeks from the relevant date¹⁰.

The High Court may make an interim order suspending the operation of the relevant document either wholly or in part and either generally or as it affects the property of the applicant¹¹. An interim order has effect until the proceedings are finally determined¹².

If the High Court is satisfied:

- 195 (i) that a relevant document is to any extent outside the appropriate power;
- 196 (ii) that the interests of the applicant have been substantially prejudiced¹³ by a failure to comply with a procedural requirement,

the High Court may quash the relevant document either wholly or in part and either generally or as it affects the property of the applicant¹⁴.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 656.

2 As to the mode of application see CPR Sch 1 RSC Ord 94 rr 1-2; and PARA 42 note 11 ante.

3 For these purposes, the appropriate power is (1) in the case of a simplified planning zone scheme or an alteration of the scheme, the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 213 et seq post); (2) in the case of an order under ss 247, 248, 249, 251, 257, 258 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq) or s 277 (see PARA 1025 post), the section under which the order is made: s 287(3D) (s 287(1)-(3D) substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 9(1), (2)). At the date at which this title states the law, that substitution was not in force in relation to Wales: see note 14 infra.

4 'Procedural requirement' is not defined for these purposes; cf para 42 note 10 ante. As to applications under the Town and Country Planning Act 1990 s 287 (as originally enacted and as amended, but prior to the amendments made by the Planning and Compulsory Purchase Act 2004 cited in note 3 supra, notes 10, 14 infra) where there has been a procedural error, see *First Corporate Shipping Ltd v North Somerset Council* [2001] EWCA Civ 693, [2002] PLCR 106, CA (application under s 287 (as amended) not most obvious or appropriate remedy).

5 Town and Country Planning Act 1990 s 287(2) (as substituted: see note 3 supra).

6 For the meaning of 'simplified planning zone scheme' see PARA 43 note 2 ante. As to simplified planning zones see PARA 426 et seq post.

7 Ie an order under the Town and Country Planning Act 1990 ss 247, 248, 249, 251, 257, 258 (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq.

8 Ie an order under *ibid* s 277: see PARA 1025 post.

9 See *ibid* s 287(1) (as substituted: see note 3 supra).

10 *Ibid* s 287(4). For these purposes, the 'relevant date' is: (1) in the case of an application in respect of a simplified planning zone scheme or an alteration of such a scheme, the date of the publication of the first notice of the approval or adoption of the scheme or alteration required by regulations under Sch 7 para 13 (as amended) (see PARA 429 post); (2) in the case of an application in respect of an order under ss 247, 248, 249 or 251 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq), the date on which the notice required by s 252(10) (as amended) is first published; (3) in the case of an application in respect of an order under s 257 or s 258, the date on which the notice required by s 259(4), Sch 14 para 7 is first published in accordance therewith; (4) in the case of an application in respect of an order under s 277 (see PARA 1025 post), the date on which the notice required by s 277(6) is first published; but subject, in the case of those orders mentioned in heads (2), (4) supra to which s 292 (see PARA 43 note 26 ante) applies, to s 292: s 287(5) (amended by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 9(1), (3), Sch 9). The court has no power to extend the time for making such application: *Smith v East Elloe RDC* [1956] AC 736, [1956] 1 All ER 855, HL; *R v Secretary of State for the Environment, ex p Ostler* [1977] QB 122, [1976] 3 All ER 90, CA. As to the position where the application is filed in the wrong division of the High Court see *Cala Homes (South) Ltd v Chichester District Council* (1999) 79 P & CR 430, [1999] All ER (D) 979.

11 Town and Country Planning Act 1990 s 287(3) (as substituted: see note 3 supra). As to evidence at the hearing see CPR Sch 1 RSC Ord 94 r 3; and PARA 42 note 13 ante.

12 Town and Country Planning Act 1990 s 287(3C) (as substituted: see note 3 supra).

13 An applicant is substantially prejudiced if, by reason of a failure to serve statutory notices, he is deprived of an opportunity of being heard (*Brown v Ministry of Housing and Local Government* [1953] 2 All ER 1385, [1953] 1 WLR 1370; *George v Secretary of State for the Environment* (1979) 38 P & CR 609, CA) but not if, in spite of a failure to notify him of his rights of appeal, he took full advantage of those rights (*Re Bowman, South Shields (Thames Street) Clearance Order 1931* [1932] 2 KB 621). An applicant is substantially prejudiced if refused an adequate adjournment to consider letters produced for the first time at a public inquiry (*Performance Cars Ltd v Secretary of State for the Environment* (1977) 34 P & CR 92, CA) but not where, in spite of the failure of the local planning authority to serve a copy of a ministerial direction as to the issues to be considered at a public inquiry and also a failure to serve a statement of its own case as required by inquiry procedure rules, the applicant was aware of the issues considered by the Secretary of State to be relevant and dealt with those issues at the public inquiry (*Davies v Secretary of State for Wales* (1976) 33 P & CR 330). A breach of the rules of natural justice outside inquiry procedure rules can lead to substantial prejudice: *Reading Borough Council v Secretary of State for the Environment and Commercial Union Properties (Investments) Ltd* [1986] JPL 115. It is not necessary for the applicant to prove that the decision would have been different had the requirements been satisfied; it is sufficient that there is the risk that it might have been different: *Hibernian Property Co Ltd v Secretary of State for the Environment* (1973) 27 P & CR 197 at 217-218 per Browne J; approved in *Performance Cars Ltd v Secretary of State for the Environment* supra. An applicant is not, however, prejudiced by the failure of an inspector to record a legal submission if that submission was irrelevant or if in fact the Secretary of State correctly interpreted the law: *AB Motor Co of Hull Ltd v Minister of Housing and Local Government* (1969) 211 Estates Gazette 289; *North Surrey Water Co v Secretary of State for the Environment* (1976) 34 P & CR 140.

An applicant may be prejudiced by the failure of the Secretary of State to give intelligible reasons for his decision (*Kent Messenger Ltd v Secretary of State for the Environment* [1976] JPL 372; *French Kier Developments Ltd v Secretary of State for the Environment* [1977] 1 All ER 296); or where the reasons given are inadequate (*Save Britain's Heritage v Secretary of State for the Environment* [1991] 2 All ER 10 at 24; sub nom *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153 at 167, HL per Lord Bridge). The inclusion of an invalid reason among good reasons will not necessarily invalidate the decision: *Steele v Minister of Housing and Local Government and West Ham County Borough Council* (1956) 6 P & CR 386, CA. As to the duty to give reasons see PARA 654 post. See also *Linden Developments Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1737, (2002) Times, 12 December, [2002] All ER (D) 402 (Nov) (no prejudice suffered simply because applicant not informed by inspector exactly what form of development would meet his objections). As to the relevance of substantial prejudice when the document in question is outside the appropriate power see *Bersted Parish Council v Arun District Council* [2003] EWHC 3419 (Admin), [2004] 2 P & CR 184, [2003] All ER (D) 363 (Dec). All the cases cited in this note were decided before the amendments to the Town and Country Planning Act 1990 made by the Planning and Compulsory Purchase Act 2004 which are cited in notes 3, 10 supra and in note 14 infra.

14 Town and Country Planning Act 1990 s 287(3A), (3B) (as substituted: see note 3 supra).

At the date at which this title states the law, s 287(1)-(3) (as originally enacted; amended by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 para 31, Sch 19 Pt I) applied for transitional purposes in Wales: see PARAS 148 note 11, 979 note 8 post. Those provisions read as follows: If any person aggrieved by a unitary development plan or a local plan, minerals local plan or waste local plan or by any alteration or replacement of any such plan or structure plan, desires to question the validity of the plan or, as the case may be, the alteration or replacement on the ground: (1) that it is not within the powers conferred by the Town and Country Planning Act 1990 Pt II (ss 110-54A) (as amended; repealed with savings); or (2) that any requirement of that Part or of any regulations made under it has not been complied with in relation to the approval or adoption of the plan or, as the case may be, its alteration or replacement, he may make an application to the High Court: s 287(1) (as so enacted and amended). On any such application the High Court: (a) may by interim order wholly or in part suspend the operation of the plan or, as the case may be, the alteration or replacement, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings; (b) if satisfied that the plan or, as the case may be, the alteration or replacement is wholly or to any extent outside the powers conferred by Pt II (as amended; repealed with savings), or that the interests of the applicant have been substantially prejudiced by the failure to comply with any requirement of that Part or of any regulations made under it, may wholly or in part quash the plan or, as the case may be, the alteration or replacement either generally or in so far as it affects any property of the applicant: s 287(2) (as so enacted and amended). The Town and Country Planning Act 1990 s 287(1), (2) (as so enacted and amended) applies subject to any necessary modifications, to a simplified planning zone scheme or an alteration of such a scheme or to an order under ss 247, 248, 249, 251, 257, 258 (see HIGHWAYS, STREETS AND BRIDGES) or s 277 (see PARA 1025 post) as it applies to any plan or any alteration or replacement there mentioned: s 287(3) (as so enacted and amended). In its application to simplified planning zone schemes and their alteration, the Town and Country Planning Act 1990 s 287(1), (2) (as amended) has effect as if it referred to Pt III (ss 55-106B) (as amended) (see PARA 217 et seq post) instead of Pt II (ss 10-54A) (as amended; repealed with savings): s 287(6) (repealed by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 9(1), (4), Sch 9 subject to the transitional provisions set out in PARAS 148 note 11, 979 note 8 post). Any such application must be made within six weeks

from the relevant date: s 287(4). For these purposes, the relevant date is, in the case of an application in respect of such a plan as is mentioned in s 287(1) (as so enacted and amended), the date of the publication of the first notice of the approval or adoption of the plan, alteration or replacement required by regulations under s 26 (as amended; repealed with savings) (see PARA 156 post) or, as the case may be, s 53 (as amended; repealed with savings) (see PARA 177 post); (2) in the case of an application by virtue of s 287(3) (as so enacted and amended), the date set out in note 10 heads (1)-(4) supra (see s 287(5) (as originally enacted: amended by the Planning and Compensation Act 1991 Sch 4 para 31(b), Sch 19 Pt I). As to unitary development plans see PARA 155 et seq post; as to local plans see PARAS 176 et seq, 195 et seq post; as to minerals local plans see PARA 196 post; as to waste local plans see PARA 197 post; and as to structure plans see PARA 176 et seq post.

A decision of the Secretary of State to approve called-in proposals for a local plan or for the alteration or replacement of a structure plan or local plan, or a decision of a local planning authority to adopt a structure plan or local plan, is a question of policy and the court cannot interfere with matters entrusted by Parliament to the discretion of the Secretary of State or local planning authority unless the decision is beyond the powers conferred by the Town and Country Planning Act 1990 or is otherwise improperly reached: see *Re City of Plymouth (City Centre) Declaratory Order 1946*, *Robinson v Minister of Town and Country Planning* [1947] KB 702, [1947] 1 All ER 851, CA; *Earl of Iveagh v Minister of Housing and Local Government* [1964] 1 QB 395 at 409, [1963] 3 All ER 817 at 820, CA, per Lord Denning MR; *Edwin H Bradley & Sons Ltd v Secretary of State for the Environment* [1983] JPL 43 (the decision of the Secretary of State to approve a policy included in a structure plan may be quashed on the grounds that (1) in reaching his conclusion he took into account some matter which he ought not to have taken into account or failed to take into account some matter which he ought to have taken into account; (2) he failed to give proper reasons; or (3) he came to a decision so unreasonable that no reasonable Secretary of State could ever have come to it). See also *Buckinghamshire County Council v Hall Aggregates (Thames Valley) Ltd and Sand and Gravel Association Ltd* [1985] JPL 634, CA; *Warren v Uttlesford District Council* [1997] JPL 1130, CA, (court will apply normal judicial review principles to assess whether decision of a local authority not to reopen an inquiry into adoption of a local plan is illegal); *Butler v Bath and North East Somerset Council* [2003] EWCA Civ 1614, (2003) Times, 4 November, [2003] All ER (D) 495 (Oct) (challenge to policies in structure plan); *University of Leeds v Leeds City Council* [2002] EWHC 738 (Admin), [2002] All ER (D) 211 (Apr) and *Keyland Developments Ltd v Leeds City Council*, *Jack Lunn Developments Ltd v Leeds City Council* [2002] EWHC 667 (Admin), [2002] All ER (D) 301 (Mar) (challenges to policies in unitary development plans); *Watson v Essex County Council* [2002] EWHC 699 (Admin), [2002] All ER (D) 468 (Mar) (challenge to policy in local plan); *Bedfordia plc v Huntingdonshire District Council* [2003] EWHC 2655 (Admin), [2003] All ER (D) 141 (Nov) (unsuccessful challenge to alterations in local plan); *Bellway Homes Ltd v West Berkshire Council* [2003] EWHC 105 (Admin) at [20]-[23], [2003] All ER (D) 17 (Feb) per Newman J (discussion of principles on which court's exercise of discretion to quash a development plan should be exercised).

As to challenging the validity of development plan documents in relation to England, and local development plans under the Planning and Compulsory Purchase Act 2004 in relation to Wales, see now para 42 ante.

UPDATE

46 Proceedings for questioning validity of simplified planning zone schemes etc

NOTE 9--See also *Dinedor Hill Action Association v County of Herefordshire DC* [2008] EWHC 1741 (Admin), [2009] 1 P & CR 80.

NOTE 14--See *Ashwell Property Group plc v Cambridge City Council* [2008] EWCA Civ 1151, [2009] PTSR (CS) 6.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(iv) Validity of Strategies, Plans, Orders, Notices etc/47. Proceedings for questioning validity of other orders, decisions and directions.

47. Proceedings for questioning validity of other orders, decisions and directions.

If any person:

197 (1) is aggrieved¹ by any specified order² and wishes to question the validity of that order on the grounds:

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23. (a) that the order is not within the statutory powers³; or

24. (b) that any of the relevant requirements⁴ have not been complied with in relation to that order; or

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198 (2) is aggrieved by any specified action⁵ on the part of the Secretary of State or, in relation to Wales, by the National Assembly for Wales and wishes to question the validity of that action on the grounds:

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25. (a) that the action is not within the statutory powers⁶; or

26. (b) that any of the relevant requirements have not been complied with in relation to that action,

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he may make an application to the High Court⁷.

Without prejudice to the above provisions, if the authority directly concerned⁸ with any such order or with any such action on the part of the Secretary of State or the Assembly wishes to question the validity of that order or action on any of the grounds mentioned in head (1) or head (2) above, the authority may make an application to the High Court⁹.

An application must be made within six weeks from:

199 (i) the date on which the order is confirmed¹⁰; or

200 (ii) in the case of certain orders revoking or modifying planning permission which take effect without confirmation¹¹, the date on which the order takes effect; or, as the case may be,

201 (iii) the date on which the action is taken¹².

On any such application the High Court:

202 (A) may by interim order suspend the operation of the order or action, the validity of which is questioned by the application, until the final determination of the proceedings¹³;

203 (B) if satisfied that the order or action in question is not within the statutory powers¹⁴, or that the interests of the applicant have been substantially prejudiced¹⁵ by a failure to comply with any of the relevant requirements in relation to it, may quash that order or action¹⁶.

The court is not, however, able to adjudicate on the merits of the claim; that is the function of the Secretary of State or his inspector and the court may act only where a claimant is able to demonstrate an error of law on the part of the decision-maker¹⁷.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW VOL 61 (2010) PARA 656. See also *Morbaine Ltd v First Secretary of State* [2004] EWHC 1708 (Admin), [2004] All ER (D) 313 (Jul) (commercial opportunism falls short of the interest which has to be shown to give a claimant standing to complain under the Town and Country Planning Act 1990 s 288 (as amended)); *Hill v First Secretary of State* [2005] EWHC 1128 (Admin), [2005] All ER (D) 247 (May) (claimant was not a 'person aggrieved'). For a comparison of the 'sufficient interest' test for the purposes of judicial review, the 'person aggrieved' test under s 288 (as amended), the 'victim' test under the Human Rights Act 1998 s 7 and the 'direct and individual concern' test under the EU Treaty art 230 see Ligere 'Locus Standi and the Public Interest--A Hotchpotch of Legal Principles' [2005] JPL 292.

2 le any such order as is mentioned in the Town and Country Planning Act 1990 s 284(2): see PARA 43 ante at heads (a)-(e) in the text.

3 le the powers of the Town and Country Planning Act 1990.

4 For these purposes, 'the relevant requirements', in relation to any order or action to which *ibid* s 288 (as amended) applies, means any requirements of the Town and Country Planning Act 1990 or the Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under either of those Acts which are applicable to that order or action: Town and Country Planning Act 1990 s 288(9) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 25).

5 le any such action on the part of the Secretary of State or the Assembly as is mentioned in the Town and Country Planning Act 1990 s 284(3) (as amended): see PARA 43 ante at heads (i)-(viii) in the text.

6 See note 3 *supra*. For the purposes of *ibid* Pt XII (ss 284-292) (as amended), the reference in s 288 (as amended) to action of the Secretary of State or the Assembly which is not within the powers of the Town and Country Planning Act 1990 is to be taken to extend to a grant of planning permission by the Secretary of State or the Assembly in contravention of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3 (see PARA 491 post) or reg 25(1) (see PARA 512 post): reg 30. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under those regulations and under the majority of the provisions of the Town and Country Planning Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

As to the application of the Town and Country Planning Act 1990 s 288 (as amended) to decisions of the Secretary of State or the Assembly on an appeal under the Planning and Compensation Act 1991 s 22, Sch 2 para 5 or an application referred to him or to it under Sch 2 para 7 (old mining permissions) see PARAS 725 note 8, 719 note 6 respectively post. See also *Earthline Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599, [2003] 1 P & CR 393, [2002] All ER (D) 64 (Nov).

An order or action will be beyond the powers so conferred if (1) the Secretary of State has acted on no evidence; or (2) he has come to a conclusion to which, on the evidence, he could not reasonably have come; or (3) he has given a wrong interpretation to the wording of the statute; or (4) he has taken into consideration matters which he ought not to have taken into account; or (5) he has failed to take into account matters which he ought to have considered; or (6) he has otherwise gone wrong in law: *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371 at 374, [1965] 1 WLR 1320 at 1325, CA, per Lord Denning MR. See also *North Surrey Water Co v Secretary of State for the Environment* (1976) 34 P & CR 140; *Seddon Properties Ltd v Secretary of State for the Environment and Macclesfield Borough Council* [1978] JPL 835. If the factor wrongly taken into account (or omitted) was insignificant, or the wrong taking into account (or omission) actually operated in favour of the person who later claimed to be aggrieved by the decision, the court, in the exercise of its discretion, may refuse to quash the order or action: *Chichester District Council v Secretary of State for the Environment and Hall Aggregates (South Coast) Ltd* [1981] JPL 591. Where the jurisdiction to make an order depends on particular facts, the order may be quashed if there is no evidence to support those facts: *Re Ripon (Highfield) Housing Confirmation Order 1938*, *White and Collins v Minister of Health* [1939] 2 KB 838, [1939] 3 All ER 548, CA; *Coleen Properties Ltd v Minister of Housing and Local Government* [1971] 1 All ER 1049, [1971] 1 WLR 433, CA. If the course which events followed has resulted in that degree of unfairness that is commonly referred to as a departure from the rules of natural justice, it may equally be said that the order is not within the powers of the Act and that a requirement of the Act has not been complied with: *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 2 All ER 865 at 872, [1976] 1 WLR 1255 at 1263, HL, per Lord Russell of Killowen.

7 Town and Country Planning Act 1990 s 288(1), (4). See also ss 291, 292 (cited in PARA 43 note 26 ante). Section 288 (as amended) applies to a correction notice issued under the Planning and Compulsory Purchase Act 2004 s 57 (see PARA 56 post) as if it were an action on the part of the Secretary of State or the Assembly to which the Town and Country Planning Act 1990 s 288 (as amended) applies, if the decision document in respect of which the correction notice is given records a decision mentioned in (1) the Planning and Compulsory Purchase Act 2004 s 59(4)(a) (see PARA 56 note 4 head (1) post); or (2) s 59(4)(b) (see PARA 56 note 4 head (2) post), if it is a decision mentioned in the Town and Country Planning Act 1990 s 177 (as amended) (grant or modification of planning permission on appeal against enforcement notice: see PARA 610 post): Planning and Compulsory Purchase Act 2004 s 58(4).

There is no general rule that a party to a planning appeal decision is to be prevented from raising, in a challenge to that decision under the Town and Country Planning Act 1990 s 288 (as amended), an argument that has not been advanced in representations made on the appeal: *South Oxfordshire District Council v Secretary of State for the Environment, Transport and the Regions* [2000] 2 All ER 667, [2000] 02 LS Gaz R 32.

It is not for the court to go into matters again and fresh evidence should be admitted only in exceptional cases: *Ashbridge Investments Ltd v Minister of Housing and Local Government* [1965] 3 All ER 371, [1965] 1 WLR 1320, CA; and see *Glover v Secretary of State for the Environment* [1981] JPL 110. Nevertheless evidence may be admitted to show (1) what material was in the possession and thus within the knowledge of the Secretary of

State (*Chichester District Council v Secretary of State for the Environment and Hall Aggregates (South Coast) Ltd* [1981] JPL 591; *Hollis v Secretary of State for the Environment and Woking Borough Council and Martin Grant Homes Ltd* [1983] JPL 164); (2) that a matter of real importance had been wholly omitted from the inspector's report or had been completely misunderstood or put in an entirely wrong or misleading way so that the Secretary of State was either unaware of the matter or never had the real picture (*East Hampshire County Council v Secretary of State for the Environment and Josephi* [1978] JPL 182 at 183; affd [1979] JPL 533, CA); or (3) that there was no evidence upon which the Secretary of State or his inspector could properly have come to the conclusion which he reached (*H Sabey & Co Ltd v Secretary of State for the Environment* [1978] 1 All ER 586). See also *Wychavon District Council v Secretary of State for the Environment* (1994) 69 P & CR 394, [1994] 3 PLR 42, CA (costs to be awarded to Secretary of State on unsuccessful challenge); *Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions* [2000] All ER (D) 2258, CA (court, in exercise of its discretion to amend a claim form, treated an application for permission to appeal under the Town and Country Planning Act 1990 s 289(6) (as substituted) (see PARA 648 post) as an application under s 288 (as amended)).

8 For these purposes, any reference to the authority directly concerned with any order or action to which the Town and Country Planning Act 1990 s 288 (as amended) applies (1) in relation to any such decision as is mentioned in s 284(3)(f) (see PARA 43 ante at head (v) in the text), is a reference to the council on which the notice in question was served and, in a case where the Secretary of State or the Assembly has modified such a notice, wholly or in part, by substituting another local authority or statutory undertakers for that council, includes a reference to that local authority or those statutory undertakers; (2) in any other case, is a reference to the authority which made the order in question or made the decision or served the notice to which the proceedings in question relate, or which referred the matter to the Secretary of State or the Assembly, or, where the order or notice in question was made or served by him or by the Assembly, the authority named in the order or notice: s 288(10). The references in head (a) supra to a council and to a local authority are to be construed as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990 and the National Park for which it is the local planning authority were its area: see s 147A (added by the Environment Act 1995 s 67(5)); and PARA 966 note 20 post. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. For the meaning of 'local authority' see PARA 3 note 3 ante; and for the meaning of 'statutory undertakers' see PARA 1009 post.

9 Town and Country Planning Act 1990 s 288(2).

10 For these purposes, references to the confirmation of an order include the confirmation of an order subject to modifications as well as the confirmation of an order in the form in which it was made: *ibid* s 288(8). The date refers to the date on which the decision letter of the Secretary of State is signed and date stamped: *Griffiths v Secretary of State for the Environment* [1983] 2 AC 51, [1983] 1 All ER 439, HL; followed in *Stainer v Secretary of State for the Environment and Shepway District Council* (1992) 65 P & CR 310 (where it was held that the six-week time limit for making the application includes in its calculation days such as Christmas Day and bank holidays). See also *Low v Secretary of State for Wales* [1993] COD 393, [1994] JPL 41, CA (where alleged administrative error at court offices resulted in application being made outside the six-week time limit, an inference was drawn in favour of the applicant; but as to the caution to be exercised in applying pre-CPR authorities see CIVIL PROCEDURE vol 11 (2009) PARA 33). For a post-CPR decision regarding an application under the Town and Country Planning Act 1990 s 287 (as amended) (see PARA 46 ante) see *Cala Homes (South) Ltd v Chichester District Council* (1999) 79 P & CR 430, [1999] All ER (D) 979.

11 *Ie* in the case of an order under the Town and Country Planning Act 1990 s 97 (as amended) (see PARA 541 post) which takes effect under s 99 (see PARA 543 post) without confirmation.

12 *Ibid* s 288(3).

13 *Ibid* s 288(5)(a). Section 288(5)(a) does not apply to applications questioning the validity of tree preservation orders: s 288(6). For the meaning of 'tree preservation order' see PARA 43 note 10 ante; and as to such orders see PARA 850 et seq post. In relation to a tree preservation order, or to an order made in pursuance of s 221(5) (areas of special control in relation to advertisements: see PARA 771 post), the powers conferred on the High Court by s 288(5) are exercisable by way of quashing or, where applicable, suspending the operation of the order either in whole or in part, as the court may determine: s 288(7).

14 See note 3 supra.

15 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

16 Town and Country Planning Act 1990 s 288(5)(b). See also note 13 supra. Where a decision of the Secretary of State, as distinct from an order, is quashed, the matter in question is still pending and he should come to a fresh decision in accordance with the court's ruling (*Hartnell v Minister of Housing and Local Government* [1963] 3 All ER 130, [1963] 1 WLR 1141; affd sub nom *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL); but it may not be necessary to reopen the matter in its entirety (see eg *H Sabey & Co Ltd v Secretary of State for the Environment* [1978] 1 All ER 586; *Price Bros*

(*Rode Health*) Ltd v Department of the Environment (1978) 38 P & CR 579). In *Kingswood District Council v Secretary of State for the Environment* [1988] JPL 248 it was, however, held that the Secretary of State had to consider the matter afresh.

Where, at a local inquiry, an inspector fails to identify the main issues of a case and does not give sufficient weight to a particular issue, thereby potentially affecting his decision, that decision may be quashed: *Hedges v Secretary of State for the Environment* (1996) 73 P & CR 534. The applicant's complaint must be considered in the light of what is at stake for him: *R (on the application of Cadbury Garden Centre Ltd) v Secretary of State for the Environment, Transport and the Regions* [2000] All ER (D) 1550, sub nom *R v North Somerset District Council, ex p Cadbury Garden Centre Ltd* [2000] EGCS 120, CA.

For examples of successful applications under the Town and Country Planning Act 1990 s 288 (as amended) see *Berkeley v Secretary of State for the Environment* [2001] 2 AC 603, [2000] 3 All ER 897, HL (application to quash grant of planning permission on grounds that developer had failed to provide environmental statement; refused at first instance and by the Court of Appeal but granted by the House of Lords); *Graham v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1150 (Admin), [2002] All ER (D) 541 (May) (application to quash inspector's decision that proposed agricultural development would result in unacceptable odours); *JJ Gallagher Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] All ER (D) 88 (Aug) (challenge to Secretary of State's rejection of inspector's recommendations; on the facts, the reasons given for such rejection were deficient); *Patel v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1963 (Admin), [2003] 2 P & CR 251, [2002] All ER (D) 05 (Sep) (inspector having regard to outdated supplementary planning guidelines); *Rosy Homes (Holt) Ltd v First Secretary of State* [2003] EWHC 2199 (Admin), [2003] All ER (D) 50 (Sep) (inspector misconstruing housing policies in district plan); *Chelmsford Borough Council v First Secretary of State* [2003] EWHC 2978 (Admin), [2003] All ER (D) 343 (Nov) (Secretary of State in error in accepting inspector's conclusion that ordinary educational needs of two children amounted to 'very special circumstances' justifying development in the Green Belt; distinguished in *Mole Valley District Council v First Secretary of State* [2005] EWHC 1079 (Admin), [2005] All ER (D) 336 (Apr)); *Wycombe District Council v First Secretary of State* [2003] All ER (D) 452 (Jul) (inspector failing to provide adequate reasons for his decision); *Kingsley Ventures Ltd v First Secretary of State* [2003] All ER (D) 422 (Mar) (inspector erred in relying on local policy still in early stages of development as a basis for refusing permission for an application in accordance with the existing plan); *Bravebyte Ltd (t/a London Equestrian Centre) v First Secretary of State* [2004] EWHC 1324 (Admin), [2004] All ER (D) 411 (Feb) (inspector failing to draw correct distinction between Green Belt development which was inappropriate development, and development which, although not inappropriate, might be injurious to the Green Belt); *R (on the application of Rubin) v First Secretary of State* [2004] EWHC 266 (Admin), [2004] All ER (D) 125 (Feb) (claimant not notified of informal appeal hearing as a result of clerical error; procedural unfairness); *Horsham District Council v First Secretary of State* [2004] EWHC 769 (Admin), [2004] All ER (D) 449 (Mar) (inspector failing to explain reasons for decision that development in a village was sustainable despite lack of public transport); *Qaadria Jilaani Trust v First Secretary of State* [2004] EWHC 1440 (Admin), [2004] All ER (D) 55 (Jun) (defective reasoning by inspector with regard to noise policies and effect of increased parking on trees); *T-Mobile (UK) Ltd v First Secretary of State* [2004] EWHC 1713 (Admin), [2004] Times, 8 July, [2004] All ER (D) 253 (Jun); affd [2004] EWCA Civ 1763, [2004] Times, 16 November, [2004] All ER (D) 208 (Nov) (inspector misconstruing policy guidance on mobile telephone masts and failing to give adequate reasons); *Hammersmatch Properties Ltd v First Secretary of State* [2005] EWHC 187 (Admin), [2005] All ER (D) 363 (Feb) (inspector in error in refusing permission for change of use of part of building which had been empty for five years because of failure to attract business tenants). See also *Sainsbury's Supermarkets Ltd v First Secretary of State* [2005] EWCA Civ 520, [2005] All ER (D) 75 (May) (successful challenge to Secretary of State's refusal of permission for expansion of large out of town store overturned on appeal).

For examples of unsuccessful applications see *R (on the application of Bennett Fergusson Coal Ltd) v First Secretary of State* [2003] EWHC 1858 (Admin), [2004] 1 P & CR 469, [2003] All ER (D) 263 (Jul); *Bowers v First Secretary of State* [2003] All ER (D) 170 (Nov) (claimant seeking to reverse onus on her to establish very special circumstances to justify inappropriate development in the Green Belt and to advance a case that had not been put before the inspector); *R (on the application of Brennon) v Bromsgrove District Council* [2003] EWHC 752 (Admin), [2003] 2 P & CR 430, [2003] All ER (D) 248 (Mar) (alleged breach of procedural requirements relating to a tree preservation order); *Chant v Secretary of State for Local Government and the Regions* [2002] EWHC 1440 (Admin), [2002] All ER (D) 11 (Jul) (challenge to confirmation of a discontinuance order under the Town and Country Planning Act 1990 s 103 (see PARA 549 post)); *R (on the application of Gosbee) v First Secretary of State* [2003] EWHC 770 (Admin), [2004] 1 P & CR 343, [2003] All ER (D) 301 (Mar) (challenge to inspector's decision to uphold reasonableness of condition attached to planning permission); *Burgess v First Secretary of State* [2003] EWHC 2406 (Admin), [2003] All ER (D) 176 (Oct) (inspector's clear findings as to harmful effects of proposed development unaffected by alleged error in interpreting local policy); *Lee v Secretary of State for Transport, Local Government and the Regions* [2003] EWHC 512 (Admin), [2003] All ER (D) 189 (Mar); *Millgate Homes Ltd v First Secretary of State* [2003] EWHC 2510 (Admin), [2003] All ER (D) 260 (Oct) (adequacy of inspector's reasons); *Monmouthshire County Council v National Assembly for Wales* [2003] EWHC 1419 (Admin), [2003] All ER (D) 65 (Jun); *SPA Properties Ltd v First Secretary of State* [2003] EWHC 2103 (Admin), [2003] All ER (D) 03 (Sep) (challenge to inspector's decision that loft amounted to third storey); *Stilwell v First Secretary of State* [2003] EWHC 2854 (Admin), [2003] All ER (D) 226 (Nov) (challenge to inspector's decision to grant planning permission for addition of ward to psychiatric hospital); *Gwilliam v First Secretary of State* [2004]

EWHC 1047 (Admin), [2004] All ER (D) 199 (Apr) (challenge to inspector's interpretation of planning policy guidance regarding proposed building of new country house); *Ikea Properties Ltd v First Secretary of State* [2005] EWHC 208 (Admin) (challenge to Secretary of State's refusal of permission for construction of large store in Stockport); *Aspden v Derby City Council* [2005] EWHC 591 (Admin), [2005] All ER (D) 365 (Mar) (procedural failure by local planning authority confirming tree preservation order but no substantial prejudice to claimant); *Stagg v First Secretary of State* [2005] EWHC 1170 (Admin), [2005] All ER (D) 273 (May) (challenge to inspector's decision that proposed recreation of previously demolished listed building would cause inappropriate harm to Green Belt); *Sweet v First Secretary of State* [2005] EWHC 689 (Admin), [2005] All ER (D) 302 (Mar) (challenge to refusal of permission for proposed extraction of peat followed by restoration of land to a waterfowl habitat); *Kemnal Manor Memorial Gardens Ltd v First Secretary of State* (challenge to refusal of planning permission for the construction of a crematorium and cemetery within the Metropolitan Green Belt); *Golf Operations Ltd v First Secretary of State* [2005] All ER (D) 258 (Jul) (challenge to inspector's decision that waste material would be better used in restoring landfill and mineral sites than in constructing a golf course).

17 See eg dicta of Sullivan J in *Newsmith Stainless Ltd v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 74 (Admin), [2001] All ER (D) 19 (Feb) and in *Blackburn v First Secretary of State* [2003] All ER (D) 193 (Mar).

UPDATE

47 Proceedings for questioning validity of other orders, decisions and directions

NOTE 6--SI 1999/293 reg 30 amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 7--See *Chichester DC v First Secretary of State* [2007] JPL 389; and *R (on the application of Davies) v Secretary of State for Communities and Local Government* (2008) Times, 15 October.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(v) Finance; in general/48. Grants for research and education.

(v) Finance; in general

48. Grants for research and education.

In relation to England, the Secretary of State¹ may, with the consent of the Treasury, make grants for assisting establishments engaged in promoting or assisting research relating to, and education with respect to, the planning and design of the physical environment². In relation to Wales, the National Assembly for Wales³ may exercise the like power concurrently with the Secretary of State but free from the requirement for Treasury consent⁴.

¹ As to the Secretary of State see PARA 19 ante.

² Town and Country Planning Act 1990 s 304. Any expenses so incurred must be paid out of money provided by Parliament: see s 311(1)(d); and PARA 51 post at head (4) in the text.

³ As to the Assembly see PARA 20 ante.

⁴ See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(v) Finance; in general/49. Grants for advice and assistance.

49. Grants for advice and assistance.

The appropriate authority, that is:

- 204 (1) the Secretary of State¹ in relation to England;
- 205 (2) the National Assembly for Wales² in relation to Wales³,

may make grants for the purpose of assisting any person⁴ to provide advice and assistance in connection with any matter which is related to:

- 206 (a) the planning Acts⁵;
- 207 (b) the Planning and Compulsory Purchase Act 2004;
- 208 (c) the enactments which relate to planning contained in the Planning and Compensation Act 1991, the Transport and Works Act 1992 and the Environment Act 1995⁶.

The appropriate authority may make a grant subject to such terms and conditions as he or it thinks appropriate⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 See the Town and Country Planning Act 1990 s 304A(5) (s 304A(1)-(5) added by the Planning and Compulsory Purchase Act 2004 s 115).

4 For these purposes, 'person' includes a body whether or not incorporated: Town and Country Planning Act 1990 s 304A(4) (as added: see note 3 supra).

5 For the meaning of 'the planning Acts' see PARA 2 ante.

6 Town and Country Planning Act 1990 s 304A(1), (2) (as added: see note 3 supra).

7 Ibid s 304A(3) (as added: see note 3 supra).

UPDATE

49 Grants for advice and assistance

TEXT AND NOTES 1-6--Also, head (d) the Planning Act 2008: Town and Country Planning Act 1990 s 304A(1), (2) (amended by the Planning Act 2008 s 177).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(v) Finance; in general/50. Contributions by local authorities and statutory undertakers.

50. Contributions by local authorities and statutory undertakers.

Any local authority¹ may² contribute towards any expenses incurred by a local highway authority³:

- 209 (1) in the acquisition of land under the specified statutory provisions⁴;
- 210 (2) in the construction or improvement⁵ of roads on land so acquired; or
- 211 (3) in connection with any development⁶ required in the interests of the proper planning of the area of the local authority⁷.

Any local authority and any statutory undertakers⁸ may contribute towards:

- 212 (a) any expenses incurred by a local planning authority for the purposes of carrying out a review of certain matters affecting development under the relevant provisions⁹ of the Planning and Compulsory Purchase Act 2004¹⁰;
- 213 (b) any expenses incurred by a county council¹¹ for the purposes of carrying out a review of such matters¹² under that Act¹³;
- 214 (c) any expenses incurred by a local planning authority or a mineral planning authority¹⁴ in or in connection with the performance of any of its functions¹⁵ under specified provisions¹⁶ of the Town and Country Planning Act 1990¹⁷.

Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under specified statutory provisions¹⁸, the Secretary of State¹⁹ or, in relation to Wales, the National Assembly for Wales²⁰ may, if it appears to him or to it to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him or to the Assembly to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation²¹.

1 The Town and Country Planning Act 1990 s 306 (as amended) (see the text and notes 2-21 infra) has effect as if the references to a local authority included references to a National Park authority: s 306(6) (added by the Environment Act 1995 s 78, Sch 10 para 32(10)). For the meaning of 'local authority' generally see PARA 3 note 3 ante.

2 Ie without prejudice to the Highways Act 1980 s 274 (contributions by local authorities to expenses of highway authorities): see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) PARA 72.

3 For the meaning of 'local highway authority' see PARA 39 note 21 ante.

4 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq post) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-61) (as amended) (see PARA 1154 et seq post). For the meaning of 'land' see PARA 2 note 10 ante.

5 For these purposes, except in so far as the context otherwise requires, 'improvement', in relation to a highway, has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) PARA 59 note 2); and 'highway' has the same meaning as in that Act (see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) PARA 7): Town and Country Planning Act 1990 s 336(1).

6 For the meaning of 'development' see PARA 217 post.

7 Town and Country Planning Act 1990 s 306(1). For the purposes of s 306 (as amended), contributions made by a local planning authority towards the expenditure of a joint advisory committee are deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee: s 306(5). As to local planning authorities see PARA 28 et seq ante; and as to the appointment of joint committees see the Local Government Act 1972 s 102 (as amended); and LOCAL GOVERNMENT vol 69 (2009) PARA 371.

8 For the meaning of 'statutory undertakers' see PARA 1009 post.

9 Ie under the Planning and Compulsory Purchase Act 2004 s 13 or s 61: see PARA 89 post.

10 Town and Country Planning Act 1990 s 306(2)(a) (s 306(2)(a), (ab) substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 12).

11 As to county councils see PARA 28 ante.

12 Ie under the Planning and Compulsory Purchase Act 2004 s 14: see PARA 90 post.

13 Town and Country Planning Act 1990 s 306(2)(ab) (as substituted: see note 10 supra).

14 For the meaning of 'mineral planning authority' see PARA 29 ante.

15 For the meaning of 'functions' see PARA 2 note 1 ante.

16 Ie under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq post), the provisions of Pt VI (ss 137-171) (as amended) (see PARA 966 et seq post) relating to purchase notices, Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq post) (except s 196A (as added) (see PARA 556 post) and s 196B (as added) (see PARA 557 post)), Pt VIII (ss 197-225) (as amended) (see PARAS 769 et seq, 847 et seq, 887 et seq post) (except s 207 (as amended) (see PARA 874 post)), Pt IX (ss 226-246) (as amended) (see PARA 934 et seq post) or Sch 5 (as amended) (see PARA 711 et seq post) or s 102(8), Sch 9 (as amended) (see PARA 757 et seq post). For the meaning of 'purchase notice' see PARA 966 post.

17 Ibid s 306(2)(b) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 47).

18 Ie under the Town and Country Planning Act 1990 Pt III (as amended), the provisions of Pt VI (ss 137-171) relating to purchase notices, Pt VII (as amended) (except s 196A (as added) and s 196B (as added)), Pt VIII (as amended) or Sch 5 (as amended) or Sch 9 (as amended).

19 As to the Secretary of State see PARA 19 ante.

20 As to the transfer of functions under the Town and Country Planning Act 1990 s 306 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

21 Town and Country Planning Act 1990 s 306(3) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 47). The Town and Country Planning Act 1990 s 306(3) (as so amended) applies in relation to payments made by a local authority to any statutory undertakers in accordance with financial arrangements to which effect is given under s 275(5)(c) (see PARA 1023 post) as it applies in relation to compensation payable by such an authority in consequence of anything done under Pt III (as amended), Pt VIII (as amended) or Sch 5 (as amended) or Sch 9 (as amended); and the reference in s 306(3) (as so amended) to the proceeding giving rise to the compensation is to be construed accordingly: s 306(4).

UPDATE

50 Contributions by local authorities and statutory undertakers

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(v) Finance; in general/51. Expenses of government departments etc.

51. Expenses of government departments etc.

The following expenses of the Secretary of State¹ must be paid out of money provided by Parliament:

- 215 (1) any expenses incurred by him in respect of specified statutory provisions² relating to the control of advertisements³;
- 216 (2) any sums necessary to enable him to make any payments in respect of compensation becoming payable⁴ by him⁵;
- 217 (3) any expenses incurred by him in the discharge of certain planning functions⁶ relating to highways⁷;
- 218 (4) any expenses incurred by him in the making of grants⁸ for research and education⁹;
- 219 (5) any administrative expenses incurred by the Secretary of State for the purposes of the Town and Country Planning Act 1990¹⁰;
- 220 (6) any expenses of the Secretary of State in making grants in connection with the provision of advice and assistance in relation to the planning Acts¹¹.

There must also be paid out of money provided by Parliament any expenses incurred by any government department¹², including the Secretary of State:

- 221 (a) in the acquisition of land¹³;
- 222 (b) in the payment of compensation under specified statutory provisions¹⁴;
- 223 (c) in the making of certain grants in connection with the removal of human remains and monuments from burial grounds¹⁵; or
- 224 (d) in paying contributions towards compensation paid¹⁶ by local authorities¹⁷.

These provisions do not, however, have effect in relation to expenses incurred by the National Assembly for Wales¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 I.e. under the Town and Country Planning Act 1990 s 220(5) or in the payment of expenses of any committee established under s 220 (as amended): see PARA 769 post.

3 Ibid s 311(1)(a).

4 I.e. any payment becoming payable by him under ibid Pt IV (ss 107-118) (as amended): see PARA 914 et seq post.

5 Ibid s 311(1)(b) (amended by the Planning and Compensation Act 1991 ss 31, 84(6), Sch 6 paras 8, 29, Sch 19 Pt II).

6 I.e. under the Town and Country Planning Act 1990 Pt X (ss 247-261) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq.

7 Ibid s 311(1)(c).

8 I.e. under ibid s 304: see PARA 48 ante.

9 Ibid s 311(1)(d).

10 Ibid s 311(1)(e).

11 Planning and Compulsory Purchase Act 2004 s 123(1)(a). For the meaning of 'the planning Acts' see PARA 2 ante. As to grants for advice and assistance see the Town and Country Planning Act 1990 s 304A (as added); and PARA 49 ante.

There must also be paid out of money provided by Parliament any increase attributable to the Planning and Compulsory Purchase Act 2004 in the sums payable out of money so provided under any other enactment: s 123(1)(b). There is to be paid into the Consolidated Fund any increase attributable to the Planning and Compulsory Purchase Act 2004 in the sums so payable under any other enactment: s 123(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

12 For the meaning of 'government department' see PARA 3 note 5 ante.

13 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended): see PARA 934 et seq post.

14 Ie under ibid s 236(4) (see PARA 955 post), s 279(2) (see PARA 1027 post) or s 325 (as amended) (see PARA 58 post).

15 Ie under ibid s 240(1)(b): see PARA 958 post at head (2) in the text.

16 Ie under ibid s 305 (as amended): see PARA 913 post.

17 Ibid s 311(2).

18 See the Government of Wales Act 1998 s 89(b). As to expenditure by the Assembly see further s 85; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the Assembly see PARA 20 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(v) Finance; in general/52. Expenses of county councils.

52. Expenses of county councils.

The council of a county¹ may direct that any expenses incurred by it under specified statutory provisions² shall be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions³.

1 As to county councils see PARA 28 ante.

2 Ie the provisions specified in the Town and Country Planning Act 1990 ss 314-319, Sch 16 Pts I, II (as amended): see PARA 16 note 4 ante.

3 Ibid s 314. As to the special expenses of county councils see further LOCAL GOVERNMENT vol 29(1) (Reissue) PARAS 550-551.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(vi) General Administrative Provisions/53. Power to require information as to interests in land.

(vi) General Administrative Provisions

53. Power to require information as to interests in land.

For the purpose of enabling the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² or a local authority³ to make an order or issue or serve any notice or other document⁴ which he or it is authorised or required under the Town and Country Planning Act 1990 to make, issue or serve, the Secretary of State or the Assembly, or the local authority, may by notice in writing⁵ require the occupier of any premises and any person who, either directly or indirectly, receives rent in respect of any premises to give in writing such information as to the following matters as may be so specified⁶:

- 225 (1) the nature of the interest in the premises of the person on whom the notice is served;
- 226 (2) the name and postal address of any other person known to him as having an interest in the premises;
- 227 (3) the purpose for which the premises are being used;
- 228 (4) the time when that use⁷ began;
- 229 (5) the name and postal address of any person known to the person on whom the notice is served as having used the premises for that purpose;
- 230 (6) the time when any activities being carried out on the premises began⁸.

Any such notice may require information to be given within 21 days after the date on which it is served, or such longer time as may be specified in it, or as the Secretary of State or the Assembly or, as the case may be, the local authority may allow⁹.

Any person who without reasonable excuse fails to comply with a notice so served on him is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰.

Any person who, having been required by such a notice to give any information, knowingly makes any misstatement in respect of it is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum¹¹.

As from a day to be appointed¹², the above provisions do not apply to an interest in Crown land¹³ which is not a private interest¹⁴, but the following provisions apply¹⁵. For such a purpose as is described above¹⁶, the Secretary of State or the Assembly may request the appropriate authority¹⁷ to give him or it such information as to the matters mentioned in heads (1) to (6) above as he or it specifies in the request¹⁸; and the appropriate authority must comply with such a request except to the extent:

- 231 (a) that the matter is not within the knowledge of the authority; or
- 232 (b) that to do so will disclose information as to any of the specified matters¹⁹ relating to national security and to the measures taken or to be taken to ensure the security of any premises or property²⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 330 (as amended), s 330A (as prospectively added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'local authority' see PARA 3 note 3 ante. The Town and Country Planning Act 1990 s 330 (as amended) (see the text and notes 4-11 infra) has effect as if the references to a local authority included references to a National Park authority: s 330(6) (added by the Environment Act 1995 s 78, Sch 10 para 32(11)). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

If the Secretary of State or the Assembly so provides by order, the Town and Country Planning Act 1990 s 330 (as amended) has effect in relation to an urban development corporation specified in the order and to land in that corporation's area as if: (1) after the words 'local authority' in the first place where they occur in s 330(1) there were inserted the words 'or an urban development corporation'; and (2) after those words, in the second place where they occur in s 330(1) and in s 330(3) there were inserted the words 'or corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 9 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(6), (13)). For the meaning of 'urban development corporation' see PARA 1429 post. As to the making of such orders see further PARA 1464 post.

4 As to the service of notices and documents see PARA 54 post.

5 Electronic communications may not be used for service of the notice: see PARA 54 note 4 post.

- 6 Town and Country Planning Act 1990 s 330(1).
- 7 For the meaning of 'use' see PARA 221 note 4 post.
- 8 Town and Country Planning Act 1990 s 330(2) (amended by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, arts 1(2), 5(b); the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, arts 1(2), 5(b)).
- 9 Town and Country Planning Act 1990 s 330(3).
- 10 Ibid s 330(4). As to offences by corporations see PARA 55 post. The 'standard scale' means the standard scale of maximum fines for summary offences as set out in the Criminal Justice Act 1982 s 37 (as amended): see the Interpretation Act 1978 s 5, Sch 1 (definition added by the Criminal Justice Act 1988 s 170(1), Sch 15 para 58); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 142. At the date at which this title states the law, the standard scale is as follows: level 1, £200; level 2, £500; level 3, £1,000; level 4, £2,500; level 5, £5,000: Criminal Justice Act 1982 s 37(2) (substituted by the Criminal Justice Act 1991 s 17(1)). As to the determination of the amount of the fine actually imposed, as distinct from the level on the standard scale which it may not exceed, see the Criminal Justice Act 2003 s 164 (as amended); and SENTENCING AND DISPOSITION OF OFFENDERS vol 92 (2010) PARA 144.
- 11 Town and Country Planning Act 1990 s 330(5). The 'statutory maximum' is the prescribed sum within the meaning of the Magistrates' Courts Act 1980 s 32 (as amended) and, as from 1 October 1992, is £5,000: s 32(9) (amended by the Criminal Justice Act 1991 s 17(2)).
- 12 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.
- 13 For the meaning of 'Crown land' for these purposes see PARA 14 ante (definition applied by the Town and Country Planning Act 1990 s 330A(5) (as added: see note 15 infra)).
- 14 For the meaning of 'private interest' see PARA 11 note 19 ante (definition as applied: see note 13 supra).
- 15 Town and Country Planning Act 1990 s 330A(1), (2) (s 330A prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 17, as from a day to be appointed: see note 12 supra).
- 16 Ie a purpose mentioned in the Town and Country Planning Act 1990 s 330(1): see the text and notes 1-6 supra.
- 17 For the meaning of 'the appropriate authority' for these purposes see PARA 14 note 15 ante (definition as applied: see note 13 supra).
- 18 Town and Country Planning Act 1990 s 330A(3) (as added: see note 15 supra).
- 19 Ie the matters mentioned in ibid s 321(4): see PARA 652 post.
- 20 Ibid s 330A(4) (as added: see note 15 supra).

UPDATE

53 Power to require information as to interests in land

TEXT AND NOTE 12--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(vi) General Administrative Provisions/54. Service of notices.

54. Service of notices.

Any notice or other document required or authorised to be served or given under the Town and Country Planning Act 1990 may be served or given either:

- 233 (1) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- 234 (2) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address; or
- 235 (3) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at his usual or last known place of abode or, in a case where an address for service has been given by that person, at that address; or
- 236 (4) in a case where an address¹ for service using electronic communications² has been given by that person, by sending it using electronic communications, in accordance with the statutory condition as to accessibility, legibility and permanence³ and subject to specified exceptions where electronic communications may not be used⁴; or
- 237 (5) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office or sending it in a prepaid registered letter, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office⁵.

Where the notice or document is required or authorised to be served on any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry⁶, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document is taken to be duly served if:

- 238 (a) it is addressed to him either by name or by the description of 'the owner' or, as the case may be, 'the occupier' of the premises, describing them, and is delivered or sent in the manner specified in head (1), head (2) or head (3) above; or
 - 239 (b) it is so addressed and is marked⁷ in such a manner as may be prescribed⁸ for securing that it is plainly identifiable as a communication of importance and:
- 23 27. (i) it is sent to the premises in a prepaid registered letter or by the recorded delivery service and is not returned to the authority sending it; or
 - 28. (ii) it is delivered to some person on those premises, or is affixed conspicuously to some object on those premises⁹.
- 24

Where the notice or other document is required to be served on or given to all persons who have interests in or are occupiers of premises comprised in any land¹⁰, and it appears to the authority required or authorised to give the notice or other document that any part of the land is unoccupied, the notice or document is taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land, other than a person who has given to that authority an address for the service of the notice or document on him, if it is addressed to 'the owners and any occupiers' of that part of the land, describing it, and is affixed conspicuously to some object on the land¹¹.

As from a day to be appointed¹², any notice or other document required under the Town and Country Planning Act 1990 to be served on the Crown must be served on the appropriate authority¹³; and the provisions set out above do not apply for the purposes of the service of such a notice or document¹⁴.

1 For these purposes, unless the context otherwise requires, 'address', in relation to electronic communications, means any number or address used for the purposes of such communications: Town and Country Planning Act 1990 s 336(1) (definition added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 6(1), (2) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 6(1), (2)).

2 For these purposes, 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning Act 1990 s 336(1) (definition as added: see note 1 supra).

3 In accordance with the condition set out in *ibid* s 329(3A) (as added). That condition is that the notice or other document must be: (1) capable of being accessed by the person mentioned in head (4) in the text; (2) legible in all material respects; and (3) in a form sufficiently permanent to be used for subsequent reference; and for this purpose 'legible in all material respects' means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served or given by means of a notice or document in printed form: s 329(3A) (s 329(1)(cc), (3A), (3B) (added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 4(1)-(3) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 4(1)-(3)).

4 In subject to the Town and Country Planning Act 1990 s 329(3B) (as added). Section 329(1)(cc) (as added) (see head (4) in the text) does not apply to (1) service of a planning contravention notice (see PARA 559 post); (2) service of a copy of an enforcement notice by a local planning authority (see PARA 561 post); (3) giving of notice under s 173A (as substituted) of the exercise of powers conferred by s 173A(1) (as substituted) (see PARA 566 post); (4) service under s 181(4) (as amended) of notice of a local planning authority's intention to take steps required by an enforcement notice (see PARA 571 post); (5) service of an enforcement notice issued by the Secretary of State or, in relation to Wales, by the National Assembly for Wales (see PARA 562 post); (6) service of a stop notice, or of notice of withdrawal of a stop notice, by a local planning authority (see PARAS 577, 579 post); (7) service of a stop notice by the Secretary of State or the Assembly (see PARA 580 post); (8) service of a breach of condition notice or of notice of withdrawal of a breach of condition notice (see PARA 583 post); (9) giving of notice of the making of a tree preservation order, or service of a copy of such an order, in accordance with regulations under s 199 (see PARAS 856, 858 post); (10) service of a notice under s 215 requiring steps to be taken to remedy the condition of any land (see PARA 887 post); (11) service of a notice under s 330 (as amended) requiring information as to interests in land (see PARA 53 ante); s 329(3B) (as added: see note 3 supra).

Where an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of the Town and Country Planning Act 1990 and the communication is received by that person outside that person's business hours, it is to be taken to have been received on the next working day; and for these purposes, 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: s 336(4A) (added relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 6(1), (3) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 6(1), (3)).

5 Town and Country Planning Act 1990 s 329(1) (as amended: see note 3 supra). Section 329 (as amended) is without prejudice to the Local Government Act 1972 s 233 (as amended) (service of notice by local authorities: see LOCAL GOVERNMENT vol 69 (2009) PARA 576): Town and Country Planning Act 1990 s 329(4) (added by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 51). As to service of a stop notice under the provisions of the Local Government Act 1972 s 233 (as amended) see *Gloucestershire County Council v Keyway (Gloucester) Ltd* [2003] EWHC 3012 (Admin), [2003] All ER (D) 202 (Nov) (not necessary to prove delivery into the hands of a director or company secretary for effective service on a body corporate under that provision).

As to the additional requirements for service in the case of ecclesiastical property see PARA 17 ante.

6 As to the power to require information as to interests in land see PARA 53 ante.

7 The manner in which any such notice or document must be marked in order that it is taken to be duly served is by inscribing clearly and legibly upon the notice or document, and upon the envelope containing it, the words 'Important--This Communication affects your Property': Town and Country Planning General Regulations 1992, SI 1992/1492, reg 13.

8 For the meaning of 'prescribed' see PARA 16 note 5 ante; and as to the exercise of this power see note 7 supra. As to the making of regulations generally see PARA 3 ante.

9 Town and Country Planning Act 1990 s 329(2).

10 For the meaning of 'land' see PARA 2 note 10 ante.

11 Town and Country Planning Act 1990 s 329(3).

12 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

13 Town and Country Planning Act 1990 s 329A(1) (s 329A(1)-(3) prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 16, as from a day to be appointed: see note 12 supra). For the meaning of 'appropriate authority' for these purposes see PARA 14 note 15 ante (definition applied by the Town and Country Planning Act 1990 s 329A(3) (as so added)).

14 Ibid s 329A(2) (as added: see note 13 supra).

UPDATE

54 Service of notices

NOTES 12-14--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 329A: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(g).

TEXT AND NOTE 12--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(vi) General Administrative Provisions/55. Offences by corporations.

55. Offences by corporations.

Where an offence under the Town and Country Planning Act 1990 which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of:

- 240 (1) a director¹, manager, secretary or other similar officer of the body corporate;
or
- 241 (2) any person who was purporting to act in any such capacity,

he as well as the body corporate is guilty of that offence and is liable to be proceeded against accordingly².

1 For these purposes, 'director', in relation to any body corporate (1) which was established by or under an enactment for the purpose of carrying on under national ownership an industry or part of an industry or undertaking; and (2) whose affairs are managed by its members, means a member of that body corporate: Town and Country Planning Act 1990 s 331(2). For the meaning of 'enactment' see PARA 2 note 11 ante.

2 Ibid s 331(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/(vi) General Administrative Provisions/56. Correction of errors in certain decisions.

56. Correction of errors in certain decisions.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales², or an inspector³ issues a decision document⁴ which contains a correctable error⁵, the following provisions apply⁶. The Secretary of State or the Assembly or, as the case may be, the inspector may correct the error:

- 242 (1) if he or it is requested to do so in writing by any person;
- 243 (2) if he or it sends a statement in writing to the applicant⁷ which explains the error and states that he or it is considering making the correction⁸.

The Secretary of State, the Assembly or the inspector must not, however, correct the error unless:

- 244 (a) not later than the end of the relevant period⁹ he or it receives a request mentioned in head (1) above or sends a statement mentioned in head (2) above;
- 245 (b) he or it informs the local planning authority¹⁰ of that fact; and
- 246 (c) he or it obtains the appropriate consent¹¹.

If head (1) or head (2) above applies the Secretary of State, the Assembly or the inspector must as soon as practicable after making any correction or deciding not to make any correction issue a notice in writing (a 'correction notice') which either specifies the correction of the error or gives notice of his or its decision not to correct such an error¹². The Secretary of State, the Assembly or the inspector, as the case may be, must give the correction notice to:

- 247 (i) the applicant;
- 248 (ii) if the applicant is not the owner of the land in respect of which the original decision was made, the owner;
- 249 (iii) the local planning authority for the area in which the land in respect of which the decision was made is situated;
- 250 (iv) if the correction was requested by any other person, that person¹³.

The Secretary of State or the Assembly may by order specify any other person or description of persons to whom the correction notice must be given¹⁴.

If a correction is made in pursuance of the above provisions, the original decision is taken not to have been made and the decision is taken for all purposes to have been made on the date the correction notice is issued¹⁵. If, however, a correction is not made, the original decision continues to have full force and effect and nothing in the relevant statutory provisions¹⁶ affects anything done in pursuance of or in respect of the decision¹⁷.

The validity of certain correction notices¹⁸ may be questioned on an application to the High Court¹⁹ and an appeal may be made to the High Court²⁰ against certain other correction notices²¹. Further, where the Secretary of State or the Assembly has exercised the power to make an order specifying a description of decision as one that may be recorded in a decision document²², he or it must by order make provision for questioning the validity of a correction notice given in respect of a decision document recording a decision of such a description²³. Except to the extent so provided for, however, a correction notice must not be questioned in any legal proceedings²⁴.

1 As to the Secretary of State see PARA 19 ante.

2 For the purposes of the exercise of any function under the Planning and Compulsory Purchase Act 2004 Pt 5 (ss 56-59) (see the text and notes 3-24 infra) in relation to Wales, references to the Secretary of State are to be construed as references to the National Assembly for Wales: s 59(9). As to the Assembly see PARA 20 ante.

3 For the purposes of ibid Pt 5, an inspector is a person appointed under any of the planning Acts to determine appeals instead of the Secretary of State or the Assembly: s 59(1), (2). In the case of a decision document issued by an inspector any other inspector may act under Pt 5: s 59(3). For the meaning of 'decision document' see note 4 infra. As to the Planning Inspectorate see PARA 21 ante; and as to appeals determined by inspectors see PARAS 621 et seq, 1199 et seq, 1297 et seq post. For the meaning of 'the planning Acts' see PARA 2 ante.

4 For these purposes, a decision document is a document which records any of the following decisions: (1) a decision of any description which constitutes action on the part of the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 284(3) (as amended) (decisions which are not to be questioned in legal proceedings: see PARA 43 ante); (2) a decision in proceedings on an appeal under Pt VII (ss 171A-196C) (as amended) (enforcement notices: see PARAS 551 et seq, 603 et seq post); (3) a decision in proceedings on an appeal under s 208 (as amended) (appeals against enforcement notices relating to trees: see PARAS 885-886 post); (4) a decision mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 62(2) (as amended) (decisions which are not to be questioned in legal proceedings: see PARA 1088 post); (5) a decision on an appeal under s 39 (as amended) (appeals against listed building enforcement notices: see PARA 1191 post); (6) a decision relating to conservation area consent within the meaning of s 74(1) (consent required for demolition of certain buildings: see PARA 1190 post); (7) a decision under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) or s 21 (certain applications referred to and appeals determined by the Secretary of State or the Assembly: see PARA 1287 et seq post); (8) a decision under any of the planning Acts which is of a description specified by the Secretary of State or the Assembly by order: Planning and Compulsory Purchase Act 2004 ss 59(1), (4), 117(5)-(7). As to the making of orders see PARA 5 ante. At the date at which this title states the law, no such order had been made.

5 For these purposes, a correctable error is an error (1) which is contained in any part of the decision document which records the decision; but (2) which is not part of any reasons given for the decision: ibid s 59(1), (5). 'Error' includes omission: s 59(8).

6 Ibid s 56(1).

7 For these purposes, the applicant is (1) in the case of a decision made on an application under any of the planning Acts, the person who made the application; (2) in the case of a decision made on an appeal under any of those Acts, the appellant: ibid s 59(1), (6).

8 Ibid s 56(2).

9 The relevant period (1) is the period within which an application or appeal may be made to the High Court in respect of the decision recorded in the decision document; (2) does not include any time by which such a period may be extended by the High Court: ibid s 56(4). It is immaterial whether any such application or appeal is made: s 56(5).

10 As to local planning authorities see PARA 28 et seq ante.

11 Planning and Compulsory Purchase Act 2004 s 56(3). The appropriate consent is (1) the consent in writing of the applicant; (2) if the applicant is not the owner of the land in respect of which the decision was made, the consent in writing of both the applicant and the owner: s 56(6). But consent is not appropriate consent if it is given subject to a condition: s 56(7). For these purposes, the owner in relation to land is a person who (1) is the estate owner in respect of the fee simple; (2) is entitled to a tenancy granted or extended for a term of years simple of which not less than seven years remain unexpired; (3) is entitled to an interest in any mineral prescribed by a development order, in the case of such applications under the Town and Country Planning Act 1990 as are so prescribed: Planning and Compulsory Purchase Act 2004 s 59(1), (7). For the meaning of 'development order' see PARA 252 post.

12 Ibid s 57(1).

13 Ibid s 57(2).

14 Ibid s 57(3).

15 Ibid s 58(1).

16 Ie nothing in ibid Pt 5: see the text and notes 1-15 supra, 17-24 infra.

17 Ibid s 58(2).

18 Ie the validity of a correction notice may be so questioned if the decision document in respect of which it is given records a decision mentioned in: (1) *ibid* s 59(4)(a) (see note 4 head (1) *supra*); (2) s 59(4)(b) (see note 4 head (2) *supra*, if it is a decision mentioned in the Town and Country Planning Act 1990 s 177 (as amended) (grant or modification of planning permission on appeal against enforcement notice: see PARA 610 post); (3) any of the Planning and Compulsory Purchase Act 2004 s 59(4)(d)-(f) (see note 4 heads (4)-(6) *supra*); (4) s 59(4)(g) (see note 4 head (7) *supra*): see s 58(3), (5), (6).

19 Ie under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 46 ante), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended) (see PARA 1090 post) or the Planning (Hazardous Substances) Act 1990 s 22 (as amended) (see PARA 1286 post): see the Planning and Compulsory Purchase Act 2004 s 58(3), (5), (6).

20 Ie under the Town and Country Planning Act 1990 s 289 (as amended): see PARA 648 post.

21 Ie *ibid* s 289 (as amended) applies to the correction notice as if it were a decision of the Secretary of State or the Assembly mentioned in (1) s 289(1), if the decision document in respect of which the correction notice is given records a decision mentioned in the Planning and Compulsory Purchase Act 2004 s 59(4)(b) (see note 4 head (2) *supra*, not being a decision mentioned in the Town and Country Planning Act 1990 s 177 (as amended); or (2) s 289(2), if the decision document in respect of which the correction notice is given records a decision mentioned in the Planning and Compulsory Purchase Act 2004 s 59(4)(c) (see note 4 head (3) *supra*): s 58(4).

22 Ie if the decision document in respect of which the correction notice is given records a decision mentioned in *ibid* s 59(4)(h): see note 4 head (8) *supra*.

23 Ie the Secretary of State or the Assembly must by order make provision for questioning the validity of the notice which corresponds to the provisions of the planning Acts mentioned in *ibid* s 58(3)-(6) (see notes 18-21 *supra*): s 58(7).

24 Ibid s 58(8). As to the availability of judicial review see PARA 650 post; and JUDICIAL REVIEW.

UPDATE

56 Correction of errors in certain decisions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

TEXT AND NOTES 9-11--Planning and Compulsory Purchase Act 2004 s 56(3) amended: Planning Act 2008 s 184.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/ (vii) Rights of Entry; in general/57. Rights of entry under the Town and Country Planning Act 1990; in general.

(vii) Rights of Entry; in general

57. Rights of entry under the Town and Country Planning Act 1990; in general.

Any person duly authorised in writing by the Secretary of State¹ or, in relation to Wales, by the National Assembly for Wales², or by a local planning authority³ may at any reasonable time enter any land⁴ for the purpose of surveying⁵ it in connection with:

- 251 (1) in England, the preparation, revision, adoption or approval of a local development document⁶ under Part 2 of the Planning and Compulsory Purchase Act 2004⁷ or in Wales, a local development plan⁸ under Part 6⁹ of that Act¹⁰;
- 252 (2) any application under Part III of the Town and Country Planning Act 1990¹¹ or under other specified provisions of that Act¹², or under any order or regulations made under any of those statutory provisions, for any permission, consent or determination to be given or made¹³ in connection with that land or any other land¹⁴;
- 253 (3) any proposal by the local planning authority¹⁵ or by the Secretary of State or the Assembly to make, issue or serve any specified¹⁶ order or notice¹⁷.

Any person duly authorised in writing by the local planning authority may at any reasonable time enter any land for the purpose of exercising a power conferred on the authority to removed or obliterate placards or posters¹⁸ if the land is unoccupied and it would be impossible to exercise the power without entering the land¹⁹.

Any person who is an officer of the Valuation Office²⁰ or is duly authorised in writing:

- 254 (a) by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of that land or any other land which is payable, under specified provisions of the Town and Country Planning Act 1990²¹, by the local planning authority²²;
- 255 (b) by a local authority²³ or minister²⁴ authorised²⁵ to acquire land or by a local authority which has power²⁶ to acquire land may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect of any such acquisition²⁷.

The authority of the appropriate minister²⁸ is required for the carrying out under the above provisions of works so authorised if the land in question is held by statutory undertakers²⁹ and they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking³⁰.

As from a day to be appointed³¹, the above provisions³² apply to Crown land³³ subject to the following modifications³⁴. A person must not enter Crown land unless he has the relevant permission³⁵; and relevant permission is the permission of (i) a person appearing to the person seeking entry to the land to be entitled to give it; or (ii) the appropriate authority³⁶. The requirement for the authority of the appropriate minister set out above³⁷ and the additional rights and duties set out below³⁸ do not apply to anything done by virtue of these provisions relating to Crown land³⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 ss 324-325 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Any power so conferred to conferred to survey land is to be construed, subject to the Town and Country Planning Act 1990 s 325 (as amended) (see PARA 58 post), as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it: s 324(8). No person may carry out under s 324 (as amended) any works authorised by s 324(8) unless notice of his intention to do so was

included in the notice required by s 324(1) (as amended): s 325(8). For the meaning of 'minerals' see PARA 16 note 2 ante.

Sections 324(8), 325(8) do not apply to anything done by virtue of s 325A (as prospectively added) (Crown land: see the text and notes 31-39 infra): see s 325A(4), (5) (s 325A(1)-(6) prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 13, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed).

6 For the meaning of 'local development document' see PARA 92 note 7 ante.

7 Ie under the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37): see PARA 89 et seq post.

8 For the meaning of 'local development plan' see PARAS 91, 135 post.

9 Ie under the Planning and Compulsory Purchase Act 2004 Pt 6 (ss 60-78): see PARA 133 et seq post.

10 Town and Country Planning Act 1990 s 324(1)(a) (substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 13).

11 Ie any application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq post.

12 Ie any application under ibid s 220 (as amended) (see PARA 769 post) or s 221 (as amended) (see PARA 771 post).

13 Ie under ibid Pt III (ss 55-106B) (as amended) or s 220 (as amended) or s 221 (as amended) or under any order or regulations made under any of those provisions.

14 Ibid s 324(1)(b) (s 324(1)(b), (c), (5) amended by the Planning and Compensation Act 1991 ss 11(2), 23(8), 84(6), Sch 19 Pt I).

15 For these purposes, and for the purposes of the Town and Country Planning Act 1990 s 324(7) (see note 17 infra), references to a local planning authority include, in relation to a building situated in Greater London, a reference to the Historic Buildings and Monuments Commission for England ('English Heritage'): see s 324(9). As to English Heritage see PARA 1058 post; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

16 Ie any order or notice under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended), other than s 94 (see PARA 538 post) and s 96 (see PARA 540 post), or Pt VIII Ch II (ss 215-219 (as amended): see PARA 887 et seq post) or Pt VIII Ch III (ss 220-225 (as amended): see PARA 769 et seq post) or under any order or regulations made under any of those provisions.

17 Ibid s 324(1)(c) (as amended: see note 14 supra). Any person duly authorised in writing by the Secretary of State or the Assembly, or by a local planning authority, may at any reasonable time enter any land in respect of which an order or notice has been made or served as mentioned in s 324(1)(c) (as so amended) (see head (3) in the text) for the purpose of ascertaining whether the order or notice has been complied with: s 324(7). See also note 15 supra.

18 Ie the power conferred by ibid s 225: see PARA 811 post.

19 Ibid s 324(3).

20 For these purposes, except in so far as the context otherwise requires, 'Valuation Office' means the Valuation Office of the Inland Revenue Department: ibid s 336(1).

21 Ie under ibid Pt IV (ss 107-118) (as amended): see PARA 914 et seq post), s 186 (as amended) (see PARA 581 post), Pt VIII Ch II (ss 215-219) (as amended), Pt VIII Ch III (ss 220-225) (as amended), s 250(1) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 794) or Pt XI (ss 262-283 (as amended): see PARA 1009 et seq post), other than s 279(2) or (3) (as amended) (see PARA 1027 post) or s 280(1) (c) (see PARA 1028 post).

22 Ibid s 324(5) (as amended: see note 14 supra).

23 For the meaning of 'local authority' see PARA 3 note 3 ante.

24 For the meaning of 'minister' see PARA 3 note 5 ante.

25 Ie under the Town and Country Planning Act 1990 s 226 (as amended) (see PARA 934 post) or s 228 (as amended) (see PARA 939 post).

- 26 Ie under ibid Pt IX (ss 226-246) (as amended): see PARA 934 et seq post.
- 27 Ibid s 324(6).
- 28 For the meaning of 'the appropriate minister' see PARA 1012 post.
- 29 For the meaning of 'statutory undertakers' see PARA 1009 post.
- 30 Town and Country Planning Act 1990 s 325(9). This does not apply to anything done by virtue of s 325A (as prospectively added) (Crown land): see s 325A(5) (as so added: see note 5 supra).
- 31 See note 5 supra.
- 32 Ie the Town and Country Planning Act 1990 s 324 (as amended): see the text and notes 1-27 supra.
- 33 For the meaning of 'Crown land' for these purposes see PARA 14 ante.
- 34 Town and Country Planning Act 1990 s 325A(1) (as added: see note 5 supra).
- 35 Ibid s 325A(2) (as added: see note 5 supra).
- 36 Ibid s 325A(3) (as added: see note 5 supra). For the meaning of 'appropriate authority' for these purposes see PARA 14 note 15 ante (definition applied by s 325A(6) (as so added)).
- 37 Ie ibid s 325(9): see the text and notes 28-30 supra.
- 38 Ie ibid s 325(1)-(7) (as amended): see PARA 58 post. As to the disapplication of s 325(8) see note 5 supra.
- 39 See ibid s 325A(4), (5) (as added: see note 5 supra).

UPDATE

57 Rights of entry under the Town and Country Planning Act 1990; in general

NOTE 5--Day now appointed: SI 2006/1281.

TEXT AND NOTE 19--Words 'the land is unoccupied and' omitted: Town and Country Planning Act 1990 s 324(3) (amended by the Clean Neighbourhoods and Environment Act 2005 s 34(6), Sch 5 Pt 3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/ (vii) Rights of Entry; in general/58. Additional rights and duties relating to rights of entry.

58. Additional rights and duties relating to rights of entry.

A person authorised under the provisions set out above¹ to enter any land²:

- 256 (1) must, if so required, produce evidence of his authority and state the purpose of his entry before so entering; and
- 257 (2) may not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier³.

Any person who wilfully obstructs a person acting in the exercise of his powers of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

If any person who, in compliance with his right of entry, is admitted into a factory, workshop or workplace⁵ discloses to any person any information obtained by him in it as to any manufacturing process or trade secret, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum⁶; but this provision does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land⁷.

Where any damage is caused to land or chattels:

- 258 (a) in the exercise of such a right of entry; or
- 259 (b) in the making of any survey for the purpose of which any such right of entry has been so conferred,

compensation may be recovered by any person suffering the damage from the Secretary of State⁸ or, in relation to Wales, from the National Assembly for Wales⁹, or from the authority on whose behalf the entry was effected¹⁰.

These provisions do not apply to anything done by virtue of the statutory rights of entry¹¹ on Crown land¹².

1 le under the Town and Country Planning Act 1990 s 324 (as amended): see PARA 57 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Town and Country Planning Act 1990 s 325(1) (s 325(1), (2), (4) amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 50).

4 Town and Country Planning Act 1990 s 325(2) (as amended: see note 3 supra). As to the standard scale see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

5 The expression 'factory, workshop or workplace' appears to have been first used in the Public Health (London) Act 1891 s 38 (repealed). As to the meaning of 'factory' see HEALTH AND SAFETY AND WORK vol 52 (2009) PARA 318. For a statutory definition of 'workplace' in the context of health and safety legislation see eg the Workplace (Health, Safety and Welfare) Regulations 1992, SI 1992/3004, reg 2(1) ('workplace' means any premises or part of premises which are not domestic premises and are made available to any person as a place of work, and includes any place within the premises to which such person has access while at work and any room, lobby, corridor, staircase, road or other place used as a means of access to or egress from that place of work or where facilities are provided for use in connection with the place of work other than a public road); and HEALTH AND SAFETY AND WORK vol 52 (2009) PARA 456.

6 Town and Country Planning Act 1990 s 325(3), (5). For the meaning of 'the statutory maximum' see PARA 53 note 11 ante.

7 Ibid s 325(4) (as amended: see note 3 supra).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990 s 325 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 Town and Country Planning Act 1990 s 325(6) (amended by the Planning and Compensation Act 1991 s 11(3)). The provisions of the Town and Country Planning Act 1990 s 118 (see PARA 931 post) apply in relation to any compensation under s 325(6) (as so amended) as they apply in relation to compensation under Pt IV (ss 107-118) (as amended) (see PARA 914 et seq post): s 325(7). Any expenses incurred by any government department, including the Secretary of State, in the payment of compensation under s 325 (as amended) must

be paid out of money provided by Parliament: see s 311(2)(b); and PARA 51 ante at head (b) in the text. As to expenses incurred by the Assembly see PARA 20 ante.

11 le done by virtue of ibid s 325A (as prospectively added): see PARA 57 the text and notes 31-39 ante.

12 Ibid s 325A(5) prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 13, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed).

UPDATE

58 Additional rights and duties relating to rights of entry

NOTE 12--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(4) ADMINISTRATION/ (vii) Rights of Entry; in general/59. Other rights of entry.

59. Other rights of entry.

Special statutory provision is made for rights of entry in relation to:

- 260 (1) enforcement¹;
- 261 (2) enterprise zones²;
- 262 (3) hazardous substances³;
- 263 (4) licensing and control of caravan sites⁴;
- 264 (5) listed buildings⁵;
- 265 (6) new town development corporations⁶;
- 266 (7) tree preservation orders⁷;
- 267 (8) urban development corporations⁸; and
- 268 (9) war-time breaches of planning control by the Crown⁹.

1 See PARAS 556-558 post.

2 See PARA 1498 post.

3 See PARAS 1227-1229 post.

4 See PARAS 1037, 1038, 1048 post.

5 See PARAS 1083-1086 post.

6 See PARAS 1336, 1364 post.

7 See PARAS 880-882 post.

8 See PARA 1458 post.

9 See PARA 904 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/60. Application of the 2004 Regulations; consultation bodies.

(5) ENVIRONMENTAL ASSESSMENT

(i) Environmental Assessment of Plans and Programmes

60. Application of the 2004 Regulations; consultation bodies.

With prescribed exceptions relating to transboundary consultations and the plans and programmes of other member states¹, the Environmental Assessment of Plans and Programmes Regulations 2004² apply to a plan or programme³ relating:

- 269 (1) solely to the whole or any part of England⁴ or to England, whether as to the whole or part, and any other part of the United Kingdom⁵;
- 270 (2) to a plan or programme relating, whether wholly or in part, to the Isles of Scilly as if the Isles were a county in England⁶;

but do not apply to a plan or programme relating solely to the whole or any part of Northern Ireland⁷, to the whole or any part of Scotland⁸ or to the whole or any part of Wales⁹.

The Environmental Assessment of Plans and Programmes (Wales) Regulations 2004¹⁰ apply to a plan or programme¹¹ relating solely to the whole or any part of Wales¹².

For these purposes, 'plans and programmes' means plans and programmes, including those co-financed by the European Community, as well as any modifications to them, which:

- 271 (a) are subject to preparation or adoption by an authority at national, regional or local level; or
- 272 (b) are prepared by an authority for adoption, through a legislative procedure by Parliament or government; and, in either case,
- 273 (c) are required by legislative, regulatory or administrative provisions¹³.

The 'responsible authority', in relation to a plan or programme, means the authority by which or on whose behalf it is prepared and where, at any particular time, that authority ceases to be responsible, or solely responsible, for taking steps in relation to the plan or programme, the person who, at that time, is responsible, solely or jointly with the authority, for taking those steps¹⁴.

In relation to every plan or programme which is described in head (1) or head (2) above¹⁵, and subject to prescribed exceptions¹⁶, each of the following bodies is a consultation body:

- 274 (i) the Countryside Agency¹⁷;
- 275 (ii) the Historic Buildings and Monuments Commission for England ('English Heritage')¹⁸;
- 276 (iii) English Nature¹⁹; and
- 277 (iv) the Environment Agency²⁰.

Where a body mentioned in heads (i) to (iv) above is at any time the responsible authority as regards a plan or programme, it must not at that time exercise the functions²¹ of a consultation body in relation to that plan or programme²².

In relation to every plan or programme relating solely to the whole or any part of Wales²³, each of the following bodies is a consultation body:

- 278 (A) the Countryside Council for Wales²⁴;
- 279 (B) the Environment Agency; and
- 280 (C) Cadw²⁵,

but where such a body is at any time the responsible authority as regards a plan or programme, it must not at that time exercise the functions²⁶ of a consultation body in relation to that plan or programme²⁷.

1 Ile with the exception of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, regs 14, 15: see PARAS 66-67 post.

2 Ile the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633: see PARA 61 et seq post.

3 See heads (a)-(c) in the text.

4 For these purposes, 'England' includes the territorial waters of the United Kingdom that are not part of Northern Ireland, Scotland or Wales, and waters in any area for the time being designated under the Continental Shelf Act 1964 s 1(7) (as amended): see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1636; INTERNATIONAL RELATIONS LAW vol 61 (2010) PARA 172; Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1).

5 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 3(1), (2). 'United Kingdom' means Great Britain and Northern Ireland: Interpretation Act 1978 s 5, Sch 1. 'Great Britain' means England, Scotland and Wales: Union with Scotland Act 1706, preamble art I; Interpretation Act 1978 s 22(1), Sch 2 para 5(a). Neither the Channel Islands nor the Isle of Man are within the United Kingdom.

6 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 3(1), (3). As to the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

7 For these purposes, 'Northern Ireland' has the meaning given by the Northern Ireland Act 1998 s 98 (ie it includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Northern Ireland): Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1). As to the territorial sea of the United Kingdom see WATER AND WATERWAYS vol 100 (2009) PARA 31.

8 For these purposes, 'Scotland' has the meaning given by the Scotland Act 1998 s 126 (ie it includes so much of the internal waters and territorial sea of the United Kingdom as are adjacent to Scotland): Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1).

9 Ibid reg 3(1), (4). For these purposes, 'Wales' has the meaning given by the Government of Wales Act 1998 s 155 (see PARA 20 note 1 ante): Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1).

10 Ile the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656: see PARA 61 et seq post.

11 See heads (a)-(c) in the text.

12 Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 3(1). For these purposes: (1) 'Wales' has the meaning given by the Government of Wales Act 1998 s 155 and any orders under s 155(2) (see PARA 20 note 1 ante); (2) the territorial waters of the United Kingdom adjacent to Wales are to be treated as part of Wales and references to Wales are to be construed as including the adjacent territorial waters; (3) 'territorial waters' include any waters landward of the baselines from which the breadth of the territorial sea is measured: Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 3(2)-(4).

13 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 2(1). In relation to Wales, the words 'or both' are inserted after the words 'preparation or adoption' in head (a) in the text: see reg 2(1).

14 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 2(1).

15 Ie every plan or programme to which the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, apply.

16 Ie subject to ibid reg 4(5): see the text and notes 21-22 infra. See also reg 4(2)-(4); and note 20 infra.

17 As to the Countryside Agency see PARA 70 post; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.

18 As to English Heritage see PARA 1058 post.

19 As to English Nature see PARA 70 post; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.

20 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 4(1). As to the Environment Agency see PARA 70 post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

Where reg 4(2), (3) or (4) applies, the functions of those bodies under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, are exercisable only in relation to so much of the plan or programme as relates to England: reg 4(1). In relation to such part of a plan or programme to which those regulations apply as relates to Northern Ireland, the Department of the Environment for Northern Ireland is a consultation body for these purposes: reg 4(2). In relation to such part of a plan or programme to which those regulations apply as relates to Scotland, each of the following is a consultation body for these purposes: (1) the Scottish Ministers; (2) the Scottish Environment Protection Agency; and (3) Scottish Natural Heritage: reg 4(3). In relation to such part of a plan or programme to which those regulations apply as relates to Wales, each of the following is a consultation body for these purposes: (a) the National Assembly for Wales (see PARA 20 ante); and (b) the Countryside Council for Wales: reg 4(4).

21 Ie the functions under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633.

22 Ibid reg 4(5). References to the consultation bodies in regs 5-17, Schs 1, 2 are to be construed accordingly: reg 4(5).

23 Ie a plan or programme to which the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, apply: see the text and notes 10-12 supra.

24 As to the Countryside Council for Wales see PARA 70 post; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.

25 Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 4(1). For these purposes, 'Cadw' means the executive agency responsible for administering the exercise of functions vested in the National Assembly for Wales relating to the historic environment: reg 2(1). As to Cadw see PARA 70 note 9 post.

26 Ie the functions under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656. For these purposes, 'functions' includes powers and duties: reg 2(1).

27 Ibid reg 4(2). References to the consultation bodies in regs 5-17, Schs 1, 2 are to be construed accordingly: reg 4(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/61. Plans or programmes for which the carrying out of an environmental assessment is required.

61. Plans or programmes for which the carrying out of an environmental assessment is required.

Where the first formal preparatory act of a plan or programme¹ is on or after 21 July 2004 and the plan or programme is of one of the following descriptions², that is a plan or programme:

- 281 (1) which is prepared for agriculture, forestry, fisheries, energy, industry, transport, waste management, water management, telecommunications, tourism, town and country planning or land use and sets the framework for future development consent of certain projects³; or
- 282 (2) which, in view of the likely effect on sites, has been determined to require an assessment pursuant to the Habitats Directive⁴;

then the responsible authority⁵ must⁶ carry out, or secure the carrying out of, an environmental assessment⁷ during the preparation of that plan or programme and before its adoption or submission to the legislative procedure⁸.

Similarly, where:

- 283 (a) the first formal preparatory act of a plan or programme, other than a plan or programme of the description set out in head (1) or head (2) above, is on or after 21 July 2004;
- 284 (b) the plan or programme sets the framework for future development consent of projects; and
- 285 (c) the plan or programme is the subject of a determination⁹ or a direction¹⁰ that it is likely to have significant environmental effects,

the responsible authority must¹¹ carry out, or secure the carrying out of, an environmental assessment¹² during the preparation of that plan or programme and before its adoption or submission to the legislative procedure¹³.

Nothing in the above provisions, however, requires the carrying out of an environmental assessment for:

- 286 (i) a plan or programme the sole purpose of which is to serve national defence or civil emergency;
- 287 (ii) a financial or budget plan or programme; or
- 288 (iii) a plan or programme co-financed¹⁴ under certain European Council Regulations¹⁵.

Nor need an environmental assessment be carried out for a plan or programme of the description set out in head (1) or head (2) above which determines the use of a small area at local level, or for a minor modification to a plan or programme of the description set out in either of those heads, unless it has been determined¹⁶ that the plan, programme or modification, as the case may be, is likely to have significant environmental effects, or it is the subject of a direction¹⁷ that it is likely to have such effects¹⁸.

Where a plan or programme of which the first formal preparatory act was before 21 July 2004 has not been adopted or submitted to the legislative procedure for adoption before 22 July 2006, and either

- 289 (A) the plan or programme is such that, had the first act in its preparation occurred on 21 July 2004, the plan or programme would have required¹⁹ an environmental assessment by virtue of falling within head (1) or head (2) above; or
- 290 (B) the responsible authority is of the opinion that, if a determination²⁰ in respect of the plan or programme had been made on 21 July 2004, it would have determined that the plan or programme was likely to have significant environmental effects,

the responsible authority must²¹ carry out, or secure the carrying out of, an environmental assessment²² during the preparation of that plan or programme and before its adoption or submission to the legislative procedure²³; but nothing in the above provision requires the environmental assessment of a particular plan or programme if the responsible authority decides that such assessment is not feasible and informs the public²⁴ of its decision²⁵.

The environmental assessment required²⁶ for a plan or programme co-financed by the European Community must be carried out by the responsible authority in conformity with the specific provisions in relevant Community legislation²⁷.

1 For the meaning of 'plan or programme' see PARA 60 ante.

2 It is of the description set out in either the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(2) or (3) (or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(2) or (3)): see heads (1)-(2) in the text.

3 It projects listed in EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) (as amended by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)) on the assessment of the effects of certain public and private projects on the environment (the 'EIA Directive'), Annex I or II. See further PARA 10 ante, PARAS 62 et seq, 487 et seq post; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 7; WATER AND WATERWAYS vol 101 (2009) PARA 674.

4 It by EC Council Directive 92/43 (OJ L206, 22.07.92, p 07) (as last amended by EC Council Directive 97/62 (OJ L 305, 08.11.97, p 42)) on the conservation of natural habitats and of wild flora and fauna, art 6 or art 7. See further PARA 10 ante; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 674. See also the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 748 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 679.

5 For the meaning of 'the responsible authority' see PARA 60 post.

6 It subject to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(5), (6), 7 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(5), (6), 7: see the text and notes 14-18, 26-27 infra.

7 It in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 3 (regs 12-15) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 3 (regs 12-15): see PARA 65 et seq post. For these purposes, 'environmental assessment' means the preparation of an environmental report, the carrying out of consultations, the taking into account of the environmental report and the results of the consultations in decision-making and the provision of information on the decision in accordance with European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30), arts 4-9 (see PARA 10 ante): art 2(b) (definition applied by the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(2); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 2(2)).

8 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(1)-(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(1)-(3).

9 It under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(1) or the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(1): see PARA 63 post.

10 It under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(3) or the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(3): see PARA 63 post.

11 It subject to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(5), 7 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(5), 7: see the text and notes 14-15, 26-27 infra.

12 See note 7 supra.

13 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(4); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(4).

- 14 le co-financed under (1) the 2000-2006 programming period for EC Council Regulation 1260/1999 (OJ L161, 26.06.99, p 01) (as amended) laying down general provisions on the Structural Funds; or (2) the 2000-2006 or 2000-2007 programming period for EC Council Regulation 1257/1999 (OJ L160, 26.06.99, p 80) (as amended) for rural development from the European Agricultural Guidance and Guarantee Fund (EAGGF).
- 15 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(5); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(5).
- 16 See note 9 *supra*.
- 17 See note 10 *supra*.
- 18 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(6); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(6).
- 19 le by virtue of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(1) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(1).
- 20 See note 9 *supra*.
- 21 le subject to the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 6(2), 7 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 6(2), 7: see the text and notes 24-27 *infra*.
- 22 See note 7 *supra*.
- 23 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 6(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 6(1).
- 24 For these purposes, 'the public' means one or more natural or legal persons and, in accordance with national legislation or practice, their associations, organisations or groups: European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30), art 2(d) (definition as applied: see note 7 *supra*).
- 25 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 6(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 6(2).
- 26 le by any provision of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 2 (regs 5-11) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 2 (regs 5-11): see the text and notes 1-25 *supra*, 27 *infra*; and PARAS 62-64 *post*.
- 27 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 7; Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 7.

UPDATE

61 Plans or programmes for which the carrying out of an environmental assessment is required

NOTE 3--EC Council Directive 85/337 further amended: European Parliament and EC Council Directive 2009/31 (OJ L140, 5.6.2009, p 114).

NOTE 4--See *Morge v Hampshire CC* [2009] EWHC 2940 (Admin), [2009] All ER (D) 01 (Dec).

NOTE 14--EEC Council Regulation 1260/1999 (OJ L161, 26.06.99, p 1) repealed and replaced from 1 January 2007 by EC Council Regulation 1083/2006 (OJ L210, 31.7.2006 p 6; corrected in OJ L27 2.2.2007 p 5, OJ L145, 7.6.2007, p 38).

PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/62. Restriction on adoption or submission of plans, programmes and modifications.

62. Restriction on adoption or submission of plans, programmes and modifications.

A plan, programme¹ or modification in respect of which a determination of the responsible authority² is required must not be adopted or submitted to the legislative procedure for the purpose of its adoption:

- 291 (1) where an environmental assessment³ is required in consequence of the determination or of a direction that it is likely to have significant environmental effects⁴, before the requirements set out below have been met;
- 292 (2) in any other case, before the determination has been made⁵.

The requirements mentioned in head (1) above are that account must be taken of:

- 293 (a) the environmental report⁶ for the plan or programme;
- 294 (b) opinions expressed in response to the invitation to consultation bodies⁷ and the public consultees to express their opinions⁸;
- 295 (c) opinions expressed in response to action taken by the responsible authority in accordance with the statutory requirement to keep a copy of the relevant documents available at its principal office for inspection by the public⁹; and
- 296 (d) the outcome of any consultations¹⁰ with another member state¹¹.

A plan or programme for which an environmental assessment is required¹² must not be adopted or submitted to the legislative procedure for the purpose of its adoption before:

- 297 (i) if it is a plan or programme co-financed by the European Community, the environmental assessment has been carried out¹³;
- 298 (ii) in any other case, the requirements of heads (a) to (d) above, and such prescribed requirements¹⁴ as apply in relation to the plan or programme, have been met¹⁵.

1 For the meaning of 'plan or programme' see PARA 60 ante.

2 I.e. under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(1) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(1): see PARA 63 post. For the meaning of 'the responsible authority' see PARA 60 ante.

3 For the meaning of 'environmental assessment' see PARA 61 note 7 ante.

4 I.e. a determination under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(3) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(3): see PARA 63 post.

5 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 8(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 8(1).

6 For these purposes, 'environmental report' means the part of the plan or programme documentation containing the information required in European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30), art 5, Annex I (see PARA 10 ante): art 2(c) (definition applied by the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 2(2); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 2(2)). As to environmental reports see PARA 65 post.

7 As to consultation bodies see PARA 60 ante.

8 le the invitation referred to in the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(2)(d) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(2)(d): see PARA 66 post.

9 le action taken under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(4) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(4): see PARA 66 post.

10 le under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(4) or the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 14(4): see PARA 66 post.

11 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 8(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 8(3).

12 le required by any provision of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 2 (regs 5-11) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 2 (regs 5-11): see PARA 61 ante; the text and notes 1-11 supra, 13-15 infra; and PARAS 63-64 post.

13 le carried out as mentioned in the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 7 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 7: see PARA 61 ante.

14 le such requirements of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 3 (regs 12-15) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 3 (regs 12-15): see PARA 65 et seq post.

15 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 8(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 8(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/63. Making or giving of determinations and directions.

63. Making or giving of determinations and directions.

The responsible authority¹ must determine whether or not a plan, programme² or modification of a prescribed description³ is likely to have significant environmental effects⁴. Before making such a determination the responsible authority must take into account the following criteria⁵:

- 299 (1) the characteristics of plans and programmes, having regard, in particular, to:
- 25
29. (a) the degree to which the plan or programme sets a framework for projects and other activities, either with regard to the location, nature, size and operating conditions or by allocating resources;
30. (b) the degree to which the plan or programme influences other plans and programmes including those in a hierarchy;
31. (c) the relevance of the plan or programme for the integration of environmental considerations in particular with a view to promoting sustainable development⁶;
32. (d) environmental problems relevant to the plan or programme; and
33. (e) the relevance of the plan or programme for the implementation of Community legislation on the environment⁷;

26

300 (2) characteristics of the effects and of the area likely to be affected, having regard, in particular, to the:

27

- 34. (a) probability, duration, frequency and reversibility of the effects;
- 35. (b) cumulative nature of the effects;
- 36. (c) transboundary nature of the effects;
- 37. (d) risks to human health or the environment;
- 38. (e) magnitude and spatial extent of the effects (geographical area and size of the population likely to be affected);
- 39. (f) value and vulnerability of the area likely to be affected due to special natural characteristics or cultural heritage, exceeded environmental quality standards or limit values or intensive land-use; and
- 40. (g) effects on areas or landscapes which have a recognised national, Community or international protection status⁸.

28

The responsible authority must also consult the consultation bodies⁹.

Where the responsible authority determines that the plan, programme or modification is unlikely to have significant environmental effects and, accordingly, does not require an environmental assessment, it must prepare a statement of its reasons for the determination¹⁰.

The Secretary of State¹¹ or, if the plan, programme or modification relates solely to Wales, the National Assembly for Wales¹² may at any time¹³ require¹⁴ the responsible authority to send to him or to the Assembly a copy of:

- 301 (i) any determination under the above provisions with respect to the plan, programme or modification;
- 302 (ii) the plan, programme or modification to which the determination relates; and
- 303 (iii) where a determination has been made that the plan, programme or modification is unlikely to have significant environmental effects¹⁵, the statement of reasons¹⁶ prepared accordingly¹⁷.

The responsible authority must comply with such a requirement within seven days¹⁸.

The Secretary of State or the Assembly may direct that a plan, programme or modification is likely to have significant environmental effects, whether or not a copy of it has been sent to him or to it in response to a requirement under heads (i) to (iii) above¹⁹. Before giving such a direction the Secretary of State or the Assembly must take into account the criteria set out in heads (1) and (2) above and must consult the consultation bodies²⁰. He or it must, as soon as reasonably practicable after the giving of the direction, send to the responsible authority and to each consultation body a copy of the direction and a statement of his or the Assembly's reasons for giving the direction²¹. In relation to a plan, programme or modification in respect of which such a direction has been given, any determination²² with respect to the plan, programme or modification ceases to have effect on the giving of the direction²³. If, however, no such determination has been made with respect to that plan, programme or modification, the responsible authority ceases to be under any duty²⁴ to make one²⁵.

1 For the meaning of 'the responsible authority' see PARA 60 ante.

2 For the meaning of 'plan or programme' see PARA 60 ante.

3 I.e a plan, programme or modification of a description referred to in (1) the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(4)(a), (b) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(4)(a), (b); (2) the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(6)(a) or, if

relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(6)(a); or (3) the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 5(6)(b) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 5(6)(b): see PARA 61 ante.

4 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(1).

5 le the criteria specified in the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(2)(a), Sch 1 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(2)(a), Sch 1: see heads (1)-(2) in the text.

6 As to sustainable development see further PARA 6 ante.

7 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(2)(a), Sch 1 para 1; Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(2)(a), Sch 1 para 1.

8 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(2)(a), Sch 1 para 2; Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(2)(a), Sch 1 para 2.

9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(2)(b); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(2)(b). As to the consultation bodies see PARA 60 ante.

10 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(3).

11 As to the Secretary of State see PARA 19 ante.

12 As to the Assembly see PARA 20 ante.

13 le in the case of the Assembly, at any time before the adoption of a plan, programme or modification or its submission to the legislative procedure for the purpose of its adoption (as the case may be): see the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(1).

14 le in the case of the Assembly, require in writing: see *ibid* reg 10(1).

15 le where the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(3) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(3) applies: see the text and note 10 *supra*.

16 le prepared in accordance with the provisions mentioned in note 15 *supra*.

17 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(1).

18 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(2). In the case of a requirement by the Assembly, the responsible authority must comply within seven days of receiving notification of it: see reg 10(2).

19 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(3).

20 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(4); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(4), (7).

21 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(5); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(5), (7).

22 le under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(1) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(1): see the text and notes 1-4 *supra*.

23 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(6)(a); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(6)(a), (7).

24 le any duty imposed by the provisions mentioned in note 22 supra.

25 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(6)(b);
Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(6)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/64. Publicity for determinations and directions.

64. Publicity for determinations and directions.

Within 28 days of making a determination¹, the responsible authority² must send a copy of it to each consultation body³. Where the responsible authority has determined that the plan or programme⁴ does not require an environmental assessment⁵, it must also send within that time limit, to each consultation body, a statement of its reasons for the determination⁶. The responsible authority must:

- 304 (1) keep a copy of the determination, and any accompanying statement of reasons, available at its principal office for inspection by the public⁷ at all reasonable times and free of charge; and
- 305 (2) within the prescribed time⁸, take such steps as it considers appropriate to bring to the attention of the public:
- 29
 - 41. (a) the title of the plan, programme or modification to which the determination relates;
 - 42. (b) that the responsible authority has determined that the plan, programme or modification is or is not likely to have significant environmental effects, as the case may be, and, accordingly, that an environmental assessment is or is not required in respect of the plan, programme or modification; and
 - 43. (c) the address (which may include a website) at which a copy of the determination and any accompanying statement of reasons may be inspected or from which a copy may be obtained⁹.
- 30

Where the responsible authority receives a direction that the plan, programme or modification is likely to have significant environmental effects¹⁰, it must:

- 306 (i) keep a copy of the direction and of the Secretary of State's¹¹ statement of his reasons, or of the statement of reasons of the National Assembly for Wales¹², for giving it available at its principal office for inspection by the public at all reasonable times and free of charge; and
- 307 (ii) within the prescribed time¹³ of the receipt of such a direction, take such steps as it considers appropriate to bring to the attention of the public:
- 31
 - 44. (A) the title of the plan, programme or modification to which the direction relates;
 - 45. (B) that the Secretary of State or the Assembly has directed that the plan, programme or modification is likely to have significant environmental effects and, accordingly, that an environmental assessment is required in respect of the plan, programme or modification; and

46. (c) the address (which may include a website) at which a copy of the direction and of the Secretary of State's or the Assembly's statement of his or its reasons for giving it may be inspected or from which a copy may be obtained¹⁴.

32

1 le under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(1) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(1): see PARA 63 the text and notes 1-4 ante.

2 For the meaning of 'the responsible authority' see PARA 60 ante.

3 See the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(1) (a); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(1)(a). As to consultation bodies see PARA 60 ante.

4 For the meaning of 'plan or programme' see PARA 60 ante.

5 For the meaning of 'environmental assessment' see PARA 61 note 7 ante.

6 See the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(1) (b); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(1)(b).

7 For the meaning of 'the public' see PARA 61 note 24 ante.

8 le within 28 days of the making of the determination or, if relating solely to Wales, within 14 days of the making of the copy of the determination: see the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(2)(b); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(2)(b).

9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(2). The responsible authority must, unless it relates solely to Wales, provide a copy of any document referred to in head (2)(c) in the text free of charge: see the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(4). In relation solely to Wales, nothing in that head in the text requires the responsible authority to provide a copy of the documents concerned free of charge; but, where a charge is made, it must be of a reasonable amount: Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(4).

10 le a direction under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 10(3) or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 10(3): see PARA 63 ante.

11 As to the Secretary of State see PARA 19 ante.

12 As to the Assembly see PARA 20 ante.

13 le within 28 days of receipt of the direction or, if relating solely to Wales, within 14 days of such receipt: see the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(3)(b); the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(3)(b).

14 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(3). The responsible authority must, unless it relates solely to Wales, provide a copy of any document referred to in head (ii)(c) in the text free of charge: see the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 11(4). In relation solely to Wales, nothing in that head in the text requires the responsible authority to provide a copy of the documents concerned free of charge; but, where a charge is made, it must be of a reasonable amount: Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 11(4).

PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/65. Preparation of environmental report.

65. Preparation of environmental report.

Where an environmental assessment¹ is required², the responsible authority³ must prepare, or secure the preparation of, an environmental report⁴ in accordance with the following provisions⁵.

The report must identify, describe and evaluate the likely significant effects on the environment of:

- 308 (1) implementing the plan or programme⁶; and
- 309 (2) reasonable alternatives taking into account the objectives and the geographical scope of the plan or programme⁷.

It must include such of the specified information⁸ as may reasonably be required, taking account of:

- 310 (a) current knowledge and methods of assessment;
- 311 (b) the contents and level of detail in the plan or programme;
- 312 (c) the stage of the plan or programme in the decision-making process; and
- 313 (d) the extent to which certain matters are more appropriately assessed at different levels in that process in order to avoid duplication of the assessment⁹.

When deciding on the scope and level of detail of the information that must be included in the report, the responsible authority must consult the consultation bodies¹⁰. Where a consultation body wishes to respond to such a consultation, it must do so within the period of five weeks beginning with the date on which it receives the responsible authority's invitation to engage in the consultation or, solely in relation to Wales, the date on which the consultation begins¹¹.

1 For the meaning of 'environmental assessment' see PARA 61 note 7 ante.

2 Ie by any provision of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, Pt 2 (regs 5-11) or, if solely in relation to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, Pt 2 (regs 5-11): see PARAS 61-64 ante.

3 For the meaning of 'the responsible authority' see PARA 60 ante.

4 For the meaning of 'environmental report' see PARA 62 note 6 ante.

5 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(1).

6 For the meaning of 'plan or programme' see PARA 60 ante.

7 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(2).

8 Ie the information referred to in the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(3), Sch 2 or, if solely in relation to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(3), Sch 2. That information is as follows:

- 88 (1) an outline of the contents and main objectives of the plan or programme, and of its relationship with other relevant plans and programmes;
- 89 (2) the relevant aspects of the current state of the environment and the likely evolution thereof without implementation of the plan or programme;

- 90 (3) the environmental characteristics of areas likely to be significantly affected;
- 91 (4) any existing environmental problems which are relevant to the plan or programme including, in particular, those relating to any areas of a particular environmental importance, such as areas designated pursuant to EC Council Directive 79/409 (OJ L103, 25.04.79, p 01) (as amended) on the conservation of wild birds and the Habitats Directive (ie EC Council Directive 92/43 (OJ L206, 22.07.92, p 07) (as last amended by EC Council Directive 97/62 (OJ L 305, 08.11.97, p 42)) on the conservation of natural habitats and of wild flora and fauna);
- 92 (5) the environmental protection objectives, established at international, Community or member state level, which are relevant to the plan or programme and the way those objectives and any environmental considerations have been taken into account during its preparation;
- 93 (6) the likely significant effects on the environment, including short, medium and long-term effects, permanent and temporary effects, positive and negative effects, and secondary, cumulative and synergistic effects, on issues such as:
 - 1. (a) biodiversity;
1
 - 2. (b) population;
2
 - 3. (c) human health;
3
 - 4. (d) fauna;
4
 - 5. (e) flora;
5
 - 6. (f) soil;
6
 - 7. (g) water;
7
 - 8. (h) air;
8
 - 9. (i) climatic factors;
9
 - 10. (j) material assets;
10
 - 11. (k) cultural heritage, including architectural and archaeological heritage; (l) landscape; and
11
 - 12. (m) the inter-relationship between the issues referred to in heads (a)-(l) supra;
12
- 94 (7) the measures envisaged to prevent, reduce and as fully as possible offset any significant adverse effects on the environment of implementing the plan or programme;
- 95 (8) an outline of the reasons for selecting the alternatives dealt with, and a description of how the assessment was undertaken including any difficulties (such as technical deficiencies or lack of know-how) encountered in compiling the required information;
- 96 (9) a description of the measures envisaged concerning monitoring in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 17 or, if solely in relation to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 17 (see PARA 68 post);
- 97 (10) a non-technical summary of the information provided under heads (1)-(9) supra.

Information referred to in heads (1)-(10) supra may be provided by reference to relevant information obtained at other levels of decision-making or through other Community legislation: Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(4); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(4).

9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(3).

10 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(5); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(5). As to the consultation bodies see PARA 60 ante.

11 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12(6); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/1. INTRODUCTION/(5) ENVIRONMENTAL ASSESSMENT/(i) Environmental Assessment of Plans and Programmes/66. Consultation procedures and transboundary consultations.

66. Consultation procedures and transboundary consultations.

Every draft plan or programme¹ for which an environmental report² has been prepared³ and its accompanying environmental report ('the relevant documents') must be made available for the purposes of consultation in accordance with the following provisions⁴. As soon as reasonably practicable after the preparation of the relevant documents, the responsible authority⁵ must:

- 314 (1) send a copy of those documents to each consultation body⁶;
- 315 (2) take such steps as it considers appropriate to bring the preparation of the relevant documents to the attention of the public consultees⁷;
- 316 (3) inform the public consultees of the address (which may include a website) at which a copy of the relevant documents may be viewed, or from which a copy may be obtained⁸; and
- 317 (4) invite the consultation bodies and the public consultees to express their opinion on the relevant documents, specifying the address to which, and the period within which, opinions must be sent⁹;

and the period referred to in head (4) above must be of such length as will ensure that the consultation bodies and the public consultees are given an effective opportunity to express their opinion on the relevant documents¹⁰.

The responsible authority must keep a copy of the relevant documents available at its principal office for inspection by the public at all reasonable times and free of charge¹¹.

Where a responsible authority, other than the Secretary of State¹² or, in relation solely to Wales, the National Assembly for Wales¹³, is of the opinion that a plan or programme for which it is the responsible authority is likely to have significant effects on the environment of another member state, it must, as soon as reasonably practicable after forming that opinion:

- 318 (a) notify the Secretary of State or the Assembly of its opinion and of the reasons for it; and
- 319 (b) supply the Secretary of State or the Assembly with a copy of the plan or programme concerned, and of the accompanying environmental report¹⁴.

Where the Secretary of State or the Assembly has been so notified under head (a) above, the responsible authority must, within such period as the Secretary of State or the Assembly may specify¹⁵ by notice in writing to the authority, provide him or it with such other information

about the plan or programme or its accompanying environmental report as he or the Assembly may reasonably require¹⁶.

Where either:

- 320 (i) the Secretary of State, whether in consequence of a notice under head (a) or otherwise, considers that the implementation of a plan or programme in any part of the United Kingdom¹⁷ is likely to have significant effects on the environment of another member state; or
- 321 (ii) a member state that is likely to be significantly affected by the implementation of a plan or programme so requests,

the Secretary of State must, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, forward a copy of it and of its accompanying environmental report to the member state concerned¹⁸. Where the Secretary of State receives from a member state an indication that it wishes to enter into consultations before the adoption, or submission to the legislative procedure for adoption, of a plan or programme so forwarded to it, he must agree with the member state detailed arrangements to ensure that the specified authorities¹⁹ and the public²⁰ in the member state likely to be significantly affected are informed and given an opportunity to forward their opinion within a reasonable time²¹. He must agree a reasonable time for the duration of the consultations²². He must also enter into consultations with the member state concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects²³. Where he is not the responsible authority, he must direct the responsible authority that it is not to adopt the plan or programme, or submit it to the legislative procedure for adoption, until the consultations with the member state have been concluded²⁴. Where consultations take place pursuant to these provisions, the Secretary of State must, as soon as reasonably practicable after those consultations begin, notify the consultation bodies of that fact²⁵. He must also notify the consultation bodies and, where he is not the responsible authority, the responsible authority, of the outcome of the consultations²⁶.

Solely in relation to Wales, where either:

- 322 (A) the Assembly, whether in consequence of a notice under head (a) above or otherwise, considers that the implementation of a plan or programme is likely to have significant effects on the environment of another member state; or
- 323 (B) a member state that is likely to be significantly affected by the implementation of such a plan or programme requests the specified documents²⁷,

the Assembly must forward a copy of the plan or programme, and of its accompanying environmental report, to the Secretary of State²⁸. It must notify the responsible authority that head (A) or head (B) applies, as the case may be²⁹ and must direct the responsible authority that it must not adopt, or submit to the legislative procedure for adoption, the plan or programme until the consultation exercise has been concluded³⁰.

1 For the meaning of 'plan or programme' see PARA 60 ante.

2 For the meaning of 'environmental report' see PARA 62 note 6 ante.

3 In accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 12 or, if relating solely to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 12: see PARA 66 ante.

4 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(1).

5 For the meaning of 'the responsible authority' see PARA 60 ante.

6 As to the consultation bodies see PARA 60 ante.

7 Ie the persons who, in the authority's opinion, are affected or likely to be affected by, or have an interest in the decisions involved in, the assessment and adoption of the plan or programme concerned required under the Environmental Assessment of Plans and Programmes Directive (ie European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) ('the public consultees').

8 Nothing in head (3) in the text requires the responsible authority to provide copies free of charge; but where a charge is made, it must be of a reasonable amount: Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(5); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(5).

9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(2).

10 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(3). In relation solely to Wales, it must be not less than 28 days: reg 13(3)(a).

11 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(4); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(4).

12 As to the Secretary of State see PARA 19 ante.

13 As to the Assembly see PARA 20 ante.

14 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 14(1).

15 In relation solely to Wales, that period must be not less than 21 days: see *ibid* reg 14(2).

16 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 14(2).

17 For the meaning of 'United Kingdom' see PARA 60 note 5 ante.

18 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(3).

19 Ie the authorities referred to in European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) art 6(3) (designated authorities).

20 Ie the public referred to in European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) art 6(4) (member states to identify the public for consultation purposes). For the meaning of 'the public' see PARA 61 note 24 ante.

21 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(4)(a)(i).

22 *Ibid* reg 14(4)(a)(ii).

23 *Ibid* reg 14(4)(b).

24 *Ibid* reg 14(4)(c).

25 *Ibid* reg 14(5)(a).

26 *Ibid* reg 14(5)(b).

27 Ie the documents specified in the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 14(4)(a): see the text to note 28 *infra*.

28 *Ibid* reg 14(3), (4)(a). For these purposes, 'Secretary of State' means the Secretary of State having responsibility for the plan or programme: reg 2(1).

29 *Ibid* reg 14(4)(b).

30 *Ibid* reg 14(4)(c).

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67. Plans and programmes of other member states.

Where the Secretary of State¹ receives from a member state, whether or not in response to a request made by the United Kingdom² in that behalf³, a copy of a draft plan or programme⁴:

- 324 (1) that is being prepared in relation to any part of that member state; and
- 325 (2) whose implementation is likely to have significant effects on the environment of any part of the United Kingdom,

the following provisions apply⁵. The Secretary of State must indicate to the member state whether, before the adoption of the plan or programme or its submission to the legislative procedure for adoption, the United Kingdom wishes to enter into consultations in respect of that plan or programme concerning the likely transboundary environmental effects of implementing the plan or programme and the measures envisaged to reduce or eliminate such effects⁶. Where the Secretary of State so indicates, he must agree with the member state concerned:

- 326 (a) detailed arrangements to ensure that the consultation bodies⁷ and the public⁸ in the United Kingdom or, as the case may be, the part of the United Kingdom that is likely to be significantly affected by the implementation of the plan or programme, are informed and given an opportunity to forward their opinion within a reasonable time; and
- 327 (b) a reasonable time for the duration of the consultations⁹.

Where such consultations take place under these provisions, the Secretary of State must:

- 328 (i) inform the consultation bodies of the receipt of the draft plan or programme;
- 329 (ii) provide them with a copy of the draft plan or programme and the relevant environmental report provided¹⁰ or specify the address (which may include a website) at which those documents may be inspected;
- 330 (iii) take such steps as he considers appropriate to bring the receipt of the draft plan or programme to the attention of the transboundary consultees¹¹;
- 331 (iv) inform the transboundary consultees of the address (which may include a website) at which a copy of the draft plan or programme and the relevant environmental report provided¹² may be inspected, or from which a copy may be obtained¹³; and
- 332 (v) invite the consultation bodies and the transboundary consultees to forward to him their opinions within such period as he may specify¹⁴.

Where the National Assembly for Wales¹⁵ receives from a member state, whether or not in response to a request made by the United Kingdom in that behalf¹⁶, a copy of a draft plan or programme that is being prepared in relation to any part of that member state, and whose implementation is likely to have significant effects on the environment of any part of the United Kingdom, the Assembly must forward any information it receives to the Secretary of State¹⁷.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'United Kingdom' see PARA 60 note 5 ante.
- 3 Ie under the Environmental Assessment of Plans and Programmes Directive (ie European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30)): see PARA 10 ante.
- 4 For the meaning of 'plan or programme' see PARA 60 ante.
- 5 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 15(1).
- 6 Ibid reg 15(2).
- 7 As to the consultation bodies see PARA 60 ante.
- 8 For the meaning of 'the public' see PARA 61 note 24 ante.
- 9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 15(3).
- 10 Ie under European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30), art 7.1. For the meaning of 'environmental report' see PARA 62 note 6 ante.
- 11 Ie such persons as, in his opinion, are affected or likely to be affected by, or have an interest in the decisions involved in, the assessment and adoption of the plan or programme concerned required under the Environmental Assessment of Plans and Programmes Directive (ie European Parliament and EC Council Directive 2001/42 (OJ L197, 21.07.2001, p 30) ('the transboundary consultees').
- 12 See note 10 supra.
- 13 Nothing in head (iv) in the text requires the Secretary of State to provide copies free of charge; but where a charge is made, it must be of a reasonable amount: Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 15(6).
- 14 Ibid reg 15(4). The period specified under reg 15(4)(e) (see head (v) in the text) must end not later than 28 days before the end of the period that the Secretary of State has agreed with the member state concerned, pursuant to reg 15(3)(b), as reasonable for the duration of their consultations: reg 15(5).
- 15 As to the Assembly see PARA 20 ante.
- 16 See note 3 supra.
- 17 Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 15. For the meaning of 'Secretary of State' for these purposes see PARA 66 note 28 ante.

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68. Post-adoption procedures.

As soon as reasonably practicable after the adoption of a plan or programme¹ for which an environmental assessment² has been carried out³, the responsible authority⁴ must make a copy of the plan or programme and its accompanying environmental report⁵ available at its principal office for inspection by the public⁶ at all reasonable times and free of charge⁷. It must take such steps as it considers appropriate to bring to the attention of the public:

- 333 (1) the title of the plan or programme;
- 334 (2) the date on which it was adopted;

- 335 (3) the address (which may include a website) at which a copy of it and of its accompanying environmental report, and of a statement containing the specified particulars⁸, may be viewed or from which a copy may be obtained;
- 336 (4) the times at which inspection may be made; and
- 337 (5) that inspection may be made free of charge⁹.

As soon as reasonably practicable after the adoption of a plan or programme, the responsible authority must inform:

- 338 (a) the consultation bodies¹⁰;
- 339 (b) the persons who, in relation to the plan or programme, were public consultees¹¹; and
- 340 (c) where the responsible authority is not the Secretary of State¹² or the National Assembly for Wales¹³, the Secretary of State or the Assembly,

of the following matters:

- 341 (i) that the plan or programme has been adopted;
- 342 (ii) the date on which it was adopted; and
- 343 (iii) the address (which may include a website) at which a copy of the plan or programme, as adopted, its accompanying environmental report, and a statement containing the specified particulars¹⁴ may be viewed, or from which a copy may be obtained¹⁵.

The Secretary of State must inform the member state with which consultations in relation to the plan or programme have taken place¹⁶ of the matters referred to in heads (i) to (iii) above¹⁷; and, in relation solely to Wales, the Assembly must inform the Secretary of State¹⁸ of those matters¹⁹.

The responsible authority must monitor the significant environmental effects of the implementation of each plan or programme with the purpose of identifying unforeseen adverse effects at an early stage and being able to undertake appropriate remedial action²⁰. Its monitoring arrangements may, however, comprise or include arrangements established otherwise than for the express purpose of complying with this requirement²¹.

1 For the meaning of 'plan or programme' see PARA 60 ante.

2 For the meaning of 'environmental assessment' see PARA 61 note 7 ante.

3 See under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, or, if solely relating to Wales, the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656: see PARA 60 et seq ante.

4 For the meaning of 'the responsible authority' see PARA 60 ante.

5 For the meaning of 'environmental report' see PARA 62 note 6 ante. As to the preparation of such reports see PARA 65 ante.

6 For the meaning of 'the public' see PARA 61 note 24 ante.

7 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 16(1)(a); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 16(1)(a).

8 The specified particulars are as follows (Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 16(4); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 16(4)):

- 98 (1) how environmental considerations have been integrated into the plan or programme;
 - 99 (2) how the environmental report has been taken into account;
 - 100 (3) how opinions expressed in response to (a) the invitation referred to in the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(2)(d) (or, if relating solely to Wales, in the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(2)(d)) (see PARA 66 ante), (b) action taken by the responsible authority in accordance with the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13(4) (or, if relating solely to Wales, in accordance with the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13(4)) (see PARA 66 ante), have been taken into account;
 - 101 (4) how the results of any consultations entered into under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(4) (or, if relating solely to Wales, under the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 14) (see PARA 66 ante) have been taken into account;
 - 102 (5) the reasons for choosing the plan or programme as adopted, in the light of the other reasonable alternatives dealt with; and
 - 103 (6) the measures that are to be taken to monitor the significant environmental effects of the implementation of the plan or programme.
- 9 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 16(1)(b); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 16(1)(b).
- 10 As to the consultation bodies see PARA 60 ante.
- 11 le for the purposes of the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 13 or, in relation solely to Wales, of the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 13: see PARA 66 ante.
- 12 As to the Secretary of State see PARA 19 ante.
- 13 As to the Assembly see PARA 20 ante.
- 14 See note 8 supra.
- 15 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 16(2)(a), (3); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 16(2)(a), (3).
- 16 le under the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 14(4): see PARA 66 ante.
- 17 Ibid reg 16(2)(b).
- 18 For the meaning of 'Secretary of State' for these purposes see PARA 66 note 28 ante.
- 19 Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 16(2)(b).
- 20 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 17(1); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 17(1).
- 21 Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 17(2); Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 17(2).

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(ii) Assessment of Environmental Impact of Particular Developments

69. Assessment of environmental impact; in general.

Planning permission¹ may not be granted for certain types of development known as 'EIA development'² unless the environmental information³ has been taken into account in accordance with the requirements of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁴. The relevant requirements are discussed in a later part of this title⁵.

Assessment of the environmental impact of certain projects is required for other statutory purposes under legislation relating to:

- 344 (1) the decommissioning of nuclear reactors⁶;
- 345 (2) electricity works⁷;
- 346 (3) fish farming in marine waters⁸;
- 347 (4) forestry⁹;
- 348 (5) harbour works¹⁰;
- 349 (6) highways¹¹;
- 350 (7) land drainage improvement works¹²;
- 351 (8) offshore petroleum production and pipelines¹³;
- 352 (9) pipeline works¹⁴;
- 353 (10) transport and works¹⁵;
- 354 (11) uncultivated land and semi-natural land¹⁶;
- 355 (12) water resources¹⁷.

These provisions are discussed elsewhere in this work¹⁸.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'EIA development' see PARAS 488-490 post.

3 For the meaning of 'environmental information' see PARA 491 note 6 post.

4 ie the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended); see PARA 488 et seq post.

5 See PARA 488 et seq post.

6 See the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARAS 1614-1624.

7 See the Electricity Works (Environmental Impact Assessment) (England and Wales) Regulations 2000, SI 2000/1927; and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1254 et seq.

8 See the Environmental Impact Assessment (Fish Farming in Marine Waters) Regulations 1999, SI 1999/367; and AGRICULTURE AND FISHERIES vol 1(2) (2007 Reissue) PARA 943.

9 See the Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999, SI 1999/2228; and FORESTRY vol 52 (2009) PARA 11 et seq.

10 See the Harbour Works (Environmental Impact Assessment) Regulations 1999, SI 1999/3445; and PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 664.

11 See eg the Highways (Assessment of Environmental Effects) Regulations 1999, SI 1999/369 (amending the Highways Act 1980); and HIGHWAYS, STREETS AND BRIDGES.

12 See the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, SI 1999/1783 (as amended); and WATER AND WATERWAYS vol 101 (2009) PARA 649 et seq.

13 See the Offshore Petroleum Production and Pipe-lines (Assessment of Environmental Effects) Regulations 1999, SI 1999/360; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARAS 1644-1657.

14 See the Pipe-line Works (Environmental Impact Assessment) Regulations 2000, SI 2000/1928; the Public Gas Transporter Pipe-line Works (Environmental Impact Assessment) Regulations 1999, SI 1999/1672; and FUEL AND ENERGY vol 19(2) (2007 Reissue) PARAS 844-855; RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 567.

15 See eg the Transport and Works (Assessment of Environmental Effects) Regulations 2000, SI 2000/3199 (amending the Transport and Works Act 1992); and RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES.

16 See the Environmental Impact Assessment (Uncultivated Land and Semi-natural Areas) (England) Regulations 2001, SI 2001/3966 (as amended); the Environmental Impact Assessment (Uncultivated Land and Semi-Natural Areas) (Wales) Regulations 2002, SI 2002/2127; and AGRICULTURAL LAND vol 1 (2008) PARA 638 et seq.

17 See the Water Resources (Environmental Impact Assessment) (England and Wales) Regulations 2003, SI 2003/164; and WATER AND WATERWAYS vol 100 (2009) PARAS 258-259, 268, 271-272.

18 See the titles of this work referred to in notes 6-17 supra. As to the links between the environmental impact assessment system and environmental assessment under the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716 (as amended), and under the integrated pollution control system, see ODPM Circular 02/99: *Environmental Impact Assessment* paras 79-80; as to the conservation of natural habitats see ANIMALS; **OPEN SPACES AND COUNTRYSIDE**; and as to integrated pollution control see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 159 et seq. For an example of a case where planning permission was refused because, inter alia, of the effect on the habitat of a protected species see *ADP & E Farmers v First Secretary of State* [2004] EWHC 2067 (Admin), [2004] All ER (D) 204 (Jul) (effect on habitat of cirl bunting).

UPDATE

69 Assessment of environmental impact; in general

NOTE 7--SI 2000/1927 amended: SI 2007/1977.

NOTE 9--SI 1999/2228 amended: SI 2006/3106.

NOTE 14--SI 2000/1928 amended: SI 2007/1992. SI 1999/1672 amended: SI 2007/1996.

NOTE 16--SI 2001/3966, SI 2005/1430 revoked: SI 2006/2522. SI 2002/2127 replaced: Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007, SI 2007/2933.

NOTE 17--SI 2003/164 amended: SI 2006/3124.

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(6) STATUTORY CONSULTEES AND NON-STATUTORY PROFESSIONAL BODIES

70. Statutory consultees.

Many statutory provisions concerned with town and country planning require the decision maker to consult¹ either with specified bodies² or with such other persons or bodies as the local planning authority³ or other decision maker thinks appropriate⁴. Consultation is often required between different planning authorities⁵. Additionally, the following bodies have key

responsibilities in terms of the natural and built environment and are frequently specified as such statutory consultees:

- 356 (1) the Environment Agency⁶;
- 357 (2) the Countryside Agency⁷;
- 358 (3) the Historic Buildings and Monuments Commission for England ('English Heritage')⁸ or, in relation to Wales, Cadw⁹;
- 359 (4) English Nature¹⁰;
- 360 (5) the Countryside Council for Wales¹¹;
- 361 (6) the Highways Agency¹².

Failure by a local planning authority to consult the appropriate bodies may amount to maladministration¹³.

The Planning and Compulsory Purchase Act 2004 has introduced a statutory duty to respond to consultation which is discussed in a later part of this title¹⁴.

1 For the meaning of 'consult' see PARA 2 note 1 ante.

2 See eg (1) the Environmental Assessment of Plans and Programmes Regulations 2004, SI 2004/1633, reg 9(2)(b) and the Environmental Assessment of Plans and Programmes (Wales) Regulations 2004, SI 2004/1656, reg 9(2)(b) (requirement to consult the 'consultation bodies' specified in PARA 60 ante); and PARA 63 ante; (2) the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 11(1) (requirement to consult both specified bodies and also bodies representative of specific groups); and PARA 76 post; (3) the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(1) (consultation requirement similar to that set out in head (2) supra); and PARA 110 post; (4) the Town and Country Planning Act 1990 Sch 5 para 4(1) (requirement to consult the Forestry Commission); and PARA 714 post.

3 As to local planning authorities see PARA 28 et seq ante.

4 See eg the Planning and Compulsory Purchase Act 2004 s 60(5) (requirement that National Assembly for Wales consults such persons or bodies as it thinks appropriate in preparing or revising the Wales Spatial Plan); and PARAS 87-88 post.

5 See eg the Town and Country Planning Act 1990 Sch 7 para 5(2) (as substituted) (district planning authority in England to consult county planning authority before making or altering a simplified planning zone scheme); and PARA 433 post.

6 The establishment, constitution and general powers, functions and duties of the Environment Agency are discussed in detail elsewhere in this work: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq. In Wales, the Agency is known as Environment Agency Wales (Asiantaeth yr Amgylchedd Cymru) and is an Assembly sponsored public body while also being part of the corporate Environment Agency for England and Wales. Of particular significance in the context of town and country planning is the Agency's role in giving advice about the risks of flooding and the steps that need to be taken to minimise the risks of development on flood plains. As to flood prevention generally see WATER AND WATERWAYS vol 101 (2009) PARA 556 et seq. The Agency maintains an internet site on the World Wide Web; at the date at which this title states the law, that site was accessible at www.environment-agency.gov.uk.

7 As to the constitution and functions of the Countryside Agency (formerly known as the 'Countryside Commission') see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq et seq. The agency's name was changed in 1999: see the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, art 3, Sch 1. The agency is funded by the Department for Environment, Food and Rural Affairs ('Defra') and a change in its functions was envisaged in the Defra rural strategy published in July 2004. At the date at which this title states the law, proposals for the creation of a new integrated agency to be known as Natural England and for the dissolution of the Countryside Agency and English Nature (as to which see note 10 infra) were before Parliament in the Natural Environment and Rural Communities Bill (HC Bill 3, HL Bill 23 (2005-2006)). See also Defra News Release 61/05.

8 The constitution and functions of English Heritage are discussed in PARA 1058 post. It plays a significant role in the system of listing buildings and advises on planning controls relating to such buildings and to conservation areas. As to its functions with regard to ancient monuments see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1009 et seq.

9 Cadw is an executive agency operating within the Welsh Assembly Government with responsibility for protecting, conserving and promoting an appreciation of the historic environment of Wales (this includes historic buildings, ancient monuments, historic parks and gardens, landscapes and underwater archaeology). Cadw maintains an internet site on the World Wide Web where details of its constitution and functions may be found; at the date at which this title states the law, that site was accessible at www.cadw.wales.gov.uk.

There is also an independent advisory body known as the Historic Buildings Council for Wales whose members are appointed by the National Assembly for Wales to provide advice on grants and other means of protecting historic buildings and townscapes. The secretariat of the Council is provided by Cadw. As to the council see PARA 1059 post.

10 As to the creation, constitution and functions of English Nature see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523 et seq; and as to proposed changes to its current constitution see note 7 supra. The role of English Nature is particularly significant in terms of protecting natural habitats; as to the protection of habitats see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 728 et seq.

11 As to the creation, constitution and functions of the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq. The Council combines, in relation to Wales, many of the roles of the Countryside Agency and English Nature in relation to England. The Council maintains an internet site on the World Wide Web; at the date at which this title states the law, that site was accessible at www.ccw.gov.uk.

12 As to the Highways Agency see HIGHWAYS, STREETS AND BRIDGES vol 21 (Reissue) PARA 52. That agency maintains an internet site on the World Wide Web; at the date at which this title states the law, that site was accessible at www.highways.gov.uk.

13 See eg para 41 ante at head (11) in the text.

14 See the Planning and Compulsory Purchase Act 2004 s 54; and PARA 472 post.

UPDATE

70 Statutory consultees

NOTE 2--Head (3). SI 2004/2204 reg 25 substituted: see PARA 110-112.

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71. Non-statutory professional bodies.

Non-statutory professional bodies whose members are involved in town and country planning, whether as academics, local planning officers, members of government departments or other agencies or employees of private developers, include the Royal Town Planning Institute ('RTPI')¹ and the Royal Institution of Chartered Surveyors ('RICS')².

1 The RTPI is a membership organisation and a registered charity whose postal address is 41 Botolph Lane, London, EC3R 8DL. The RTPI maintains an internet site on the World Wide Web where full details of its constitution, aims and activities may be found; at the date at which this title states the law, that site was accessible at www.rtpi.org.uk. The three main strands of RTPI activity are stated to be:

- 104 (1) shaping opinion and policy (eg by putting forward proposals, and responding to government proposals in all the United Kingdom administrations, for new legislation and policy);
- 105 (2) maintaining standards and increasing knowledge (eg by setting standards of professional education and accrediting university courses which meet those standards; and by upholding a

Code of Practice Conduct (including an obligatory Continuing Professional Development scheme) with power to discipline members); and

- 106 (3) involving people (providing direct help for members of the public through (a) a nationwide Planning Aid network offering free planning advice and support to disadvantaged groups and individuals; (b) an environmental education programme, working with teachers, schoolchildren and local community groups; (c) publications explaining how the planning system works and how to use it; and (d) award schemes to identify and promote the best of town planning, including the annual RTPI Awards for Planning Achievement).

2 The Royal Institution of Chartered Surveyors ('RICS') is a global 'standards and membership' organisation for professionals involved in land, property, construction and environmental issues. The RICS maintains an internet site on the World Wide Web where full details of its constitution, aims and activities may be found; at the date at which this title states the law, that site was accessible at www.rics.org.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/(i) Regional Spatial Strategy/72. Regional spatial strategy.

2. REGIONAL AND WELSH NATIONAL PLANNING

(1) REGIONAL PLANNING IN ENGLAND

(i) Regional Spatial Strategy

72. Regional spatial strategy.

For each region¹ there is to be a regional spatial strategy (referred to as the 'RSS')² which must set out the Secretary of State's³ policies, however expressed, in relation to the development⁴ and use⁵ of land⁶ within the region⁷. If to any extent a policy set out in the RSS conflicts with any other statement or information in the RSS the conflict must be resolved in favour of the policy⁸.

With effect from 28 September 2004⁹, the RSS for a region is so much of the regional planning guidance¹⁰ relating to the region as the Secretary of State prescribes¹¹. The initial RSS has been prescribed¹² for:

- 362 (1) the North East¹³;
- 363 (2) the East of England¹⁴;
- 364 (3) the East Midlands, for which there is now a revised strategy¹⁵;
- 365 (4) the South East¹⁶;
- 366 (5) the South West¹⁷;
- 367 (6) the West Midlands¹⁸;
- 368 (7) Yorkshire and the Humber¹⁹; and
- 369 (8) the North West²⁰.

A regional planning body (an 'RPB') must make a copy of the RSS for its region available for inspection²¹ at its principal office during office hours and must publish the RSS on its website²².

1 For the meaning of 'region' see PARA 24 note 4 ante. See, however, note 7 infra.

2 Planning and Compulsory Purchase Act 2004 s 1(1).

3 For the meaning of 'Secretary of State' for these purposes see PARA 24 note 1 ante; and as to the Secretary of State see PARA 19 ante.

4 For the meaning of 'development' see PARA 217 post (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

5 For the meaning of 'use' see PARA 221 note 4 post (definition as applied: see note 4 supra).

6 For the meaning of 'land' see PARA 2 note 10 ante (definition as applied: see note 4 supra).

7 Planning and Compulsory Purchase Act 2004 s 1(2). In s 1(2) the references to a region include references to any area within a region which includes the area or part of the area of more than one local planning authority: s 1(3). For the meaning of 'local planning authority' see PARA 2 note 1 ante (definition as applied: see note 4 supra). See also *PPS 11--Regional Spatial Strategies*; and the guidance contained in the *Guide to Improving the Economic Evidence Base supporting Regional Economic and Spatial Strategies* (Ove Arup & Partners Ltd and ODPM, September 2005).

8 Planning and Compulsory Purchase Act 2004 s 1(4).

9 The appointed day: see *ibid* s 1(5). The appointed day is the day appointed for the commencement of s 1: s 1(6). Section 1 was brought into force for the purpose of making, or making provision by means of, subordinate legislation on 6 August 2004 and on 28 September 2004 for remaining purposes: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2(a); the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 2(a); and PARA 4 ante.

10 Regional planning guidance for a region is a document issued by the Secretary of State setting out his policies, however expressed, in relation to the development and use of land within the region: Planning and Compulsory Purchase Act 2004 s 12(3).

11 *Ibid* s 1(5). As to the power to prescribe by regulations see s 122; and PARA 5 ante. The Secretary of State must exercise this function with the objective of contributing to the achievement of sustainable development and he must have regard to national policies and advice issued by him: see s 39(1)(a), (2), (3)(a); and PARA 6 ante.

12 See the Town and Country Planning (Initial Regional Spatial Strategy) (England) Regulations 2004, SI 2004/2206, arts 1, 2, Schedule.

13 The RSS so prescribed is the Regional Planning Guidance for the North East to 2016 (RPG 1, November 2002).

14 The RSS so prescribed is the Regional Planning Guidance for East Anglia to 2016 (RPG 6, November 2000) and such part of the Regional Planning Guidance for the South East (RPG 9, March 2001) as relates to Hertfordshire, Bedfordshire and Essex.

15 The RSS so prescribed was the Regional Planning Guidance for the East Midlands to 2021 (RPG 8, January 2002). That RSS is now replaced with the Revised RSS for the East Midlands (17 March 2005, ODPM) which (1) outlines a broad strategy for the region until 2021 and provides the framework for meeting the region's development needs in a way that promotes a more sustainable pattern of development; (2) includes the policies and proposals for Northamptonshire included in the Milton Keynes and South Midlands Sub-Regional Strategy: see ODPM News Release 2005/0068. The area of the Peak District National Park is treated as falling wholly within East Midlands region: see the Town and Country Planning (Regions) (National Parks) (England) Order 2004, SI 2004/2207, art 2(b); and PARA 24 note 4 ante.

16 The RSS so prescribed is the Regional Planning Guidance for the South East (RPG 9, March 2001) as revised in July 2004 by the Regional Transport Strategy (Ch 9) and the Ashford Growth Area (Ch 12) and excluding such part as relates to Greater London, Hertfordshire, Bedfordshire and Essex.

17 The RSS so prescribed is the Regional Planning Guidance for the South West (RPG 10, September 2001).

18 The RSS so prescribed is the Regional Planning Guidance for the West Midlands (RPG 11, June 2004).

19 The RSS so prescribed is the Regional Planning Guidance for Yorkshire and the Humber to 2016 (RPG 12, October 2001). The areas of the North York Moors National Park and the Yorkshire Dales National Park are treated as falling wholly within Yorkshire and the Humber region: see the Town and Country Planning (Regions) (National Parks) (England) Order 2004, SI 2004/2207, art 2(a); and PARA 24 note 4 ante.

20 The RSS so prescribed is the Regional Planning Guidance for the North West (RPG 13, March 2003).

21 'Inspection' means inspection by the public: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

22 Ibid reg 21(1).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

72 Regional spatial strategy

TEXT AND NOTES--The participating authorities in each region other than London must for the purposes of the Local Democracy, Economic Development and Construction Act 2009 Pt 5 (ss 70-87) make a scheme for the establishment and operation of a body (whether or not incorporated) for the region: Local Democracy, Economic Development and Construction Act 2009 s 71(1). For the purposes of s 71, 'participating authority,' in relation to a region, means any of the following authorities whose area falls wholly or partly within the region (1) a district council; (2) a county council; (3) a National Park authority; (4) the Broads Authority: s 71(3). A body under s 71(1) is to be known as a 'Leaders' Board': s 71(2). Before making a scheme under s 71(1) the participating authorities in a region must consult such persons (if any) as they consider appropriate: s 71(4). After making a scheme under s 71(1) the participating authorities in a region must submit it to the Secretary of State for approval: s 71(5). If the Secretary of State approves a scheme under s 71(1), the participating authorities are to establish the body in accordance with the scheme: s 71(6). The Secretary of State may give such sums as the Secretary of State considers appropriate (a) to a Leaders' Board, or (b) to a participating authority in a region in respect of the Leaders' Board for the region: s 71(7). If the Secretary of State considers that a Leaders' Board established for a region is not operating effectively, the Secretary of State may by direction withdraw approval for the scheme under which it is established (and s 71(6) accordingly ceases to apply in relation to that scheme): s 71(8). The Secretary of State must by regulations make provision for the Local Government Act 1972 Pt 5A (public admission to meetings of principal councils, public access to documents, etc: see LOCAL GOVERNMENT vol 69 (2009) PARA 1 et seq) to apply in relation to Leaders' Boards as it applies in relation to principal councils (within the meaning of Pt 5A): Local Democracy, Economic Development and Construction Act 2009 s 71(9). The application referred to in s 71(9) may be with such modifications as the Secretary of State considers necessary or expedient: s 71(10).

The Secretary of State may give to any person exercising functions under the Local Democracy, Economic Development and Construction Act 2009 Pt 5 (i) guidance, or (ii) directions in relation to the exercise of those functions: see Local Democracy, Economic Development and Construction Act 2009 s 84.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/(ii) Functions of Planning Bodies/73. General functions of regional planning bodies.

(ii) Functions of Planning Bodies

73. General functions of regional planning bodies.

The regional planning body ('RPB')¹ must keep under review the regional spatial strategy ('RSS')². The RPB must also keep under review the matters which may be expected to affect:

- 370 (1) development³ in its region⁴ or any part of the region;
- 371 (2) the planning of that development⁵.

The RPB must monitor the implementation of the RSS throughout the region⁶ and consider whether the implementation is achieving the purposes of the RSS⁷; and must for each year prepare a report on the implementation of the RSS in the region⁸. The report:

- 372 (a) must be in respect of such period of 12 months as is prescribed⁹;
- 373 (b) must be in such form and contain such information as is prescribed¹⁰; and
- 374 (c) must be submitted to the Secretary of State on such date as is prescribed¹¹.

At the time an RPB so submits a report to the Secretary of State it must publish the report on its website¹².

The RPB must give advice to any other body or person if it thinks that to do so will help to achieve implementation of the RSS¹³.

For the purpose of the exercise of certain of its functions¹⁴ the RPB must seek the advice of each authority in its region¹⁵ which is a county council¹⁶, a metropolitan district council¹⁷, a district council¹⁸ for an area for which there is no county council or a National Park authority¹⁹ whose area, or any part of whose area, is in the RPB's region²⁰. The authority must give the RPB advice as to the exercise of the function to the extent that the exercise of the function is capable of affecting, directly or indirectly, the exercise by the authority of any function it has²¹. Such advice includes advice relating to the inclusion in the RSS of specific policies relating to any part of the region²². Furthermore, and subject to certain exceptions²³, the RPB may make arrangements with such an authority or with any district council the whole or part of whose area is in the region for the discharge by the authority or council of a function of the RPB²⁴. The RPB may reimburse an authority or council which exercises functions by virtue of such arrangements for any expenditure incurred by the authority or council in doing so²⁵. Nothing in these provisions²⁶, however, affects any power which a body which is recognised as an RPB has apart from them²⁷.

1 As to regional planning bodies see PARA 24 ante.

2 Planning and Compulsory Purchase Act 2004 s 3(1). As to the regional spatial strategy see PARA 72 ante.

3 For the meaning of 'development' see PARA 217 post (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

4 For the meaning of 'region' see PARA 24 note 4 ante.

5 Planning and Compulsory Purchase Act 2004 s 3(2).

6 Ibid s 3(3)(a).

7 Ibid s 3(3)(b).

8 Ibid s 3(4).

9 Ibid s 3(5)(a). 'Prescribed' means prescribed by regulations made by the Secretary of State: see s 122; and PARA 5 ante. The Secretary of State may by regulations make provision in connection with the exercise by any person of functions under Pt 1 (ss 1-12): s 11(1). The regulations may in particular make provision as to (1) the procedure to be followed for the purposes of s 5 (see PARA 74 post); (2) the procedure to be followed by the RPB in connection with its functions under s 6 (see PARA 74 post); (3) requirements about the giving of notice and publicity; (4) requirements about inspection by the public of a draft revision or any other document; (5) the nature and extent of consultation with and participation by the public in anything done under Pt 1; (6) the making of representations about any matter to be included in an RSS; (7) consideration of any such representations; (8) the remuneration and allowances payable to a person appointed to carry out an examination in public under s 8 (see PARAS 79-80 post); (9) the determination of the time at which anything must be done for the purposes of Pt 1; (10) the manner of publication of any draft, report or other document published under Pt 1; (11) monitoring the exercise by RPBs of their functions under Pt 1; (12) the making of reasonable charges for the provision of copies of documents required by or under Pt 1: s 11(2). In the exercise of these powers the Secretary of State has made the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, which came into force on 28 September 2004 and apply in relation to England only: reg 1. As to the Secretary of State see PARA 19 ante.

The period in respect of which reports must be prepared under the Planning and Compulsory Purchase Act 2004 s 3(4) is the period of 12 months commencing on 1 April in each year and ending on 31 March in the following year: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 5(1).

10 Planning and Compulsory Purchase Act 2004 s 3(5)(b). A report under s 3(4) must contain the following information: (1) a statement identifying any policy in the RSS which in the opinion of the RPB is not being implemented; (2) where a policy is identified as mentioned in head (1) supra, a statement of (a) the reasons why the RPB is of the opinion that the policy is not being implemented; and (b) the measures that the RPB intends to take to secure that the policy is implemented including, in particular, whether the RPB intends to prepare a draft revision of the RSS which will amend the policy; (3) in a case to which the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 5(4) applies, a statement as to the number of dwellings built in the part of the region in question (a) during the period of the report; and (b) since the policy concerned was first published by the Secretary of State: reg 5(3). Regulation 5(4) applies where the RSS contains a policy which specifies, whether by reference to a year or any other period, the number of dwellings to be built in any part of the region: reg 5(4).

11 Planning and Compulsory Purchase Act 2004 s 3(5)(c). The date prescribed for these purposes is 28 February in the year following that in respect of which the report under s 3(4) is prepared: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 5(2).

12 Ibid reg 5(5).

13 Planning and Compulsory Purchase Act 2004 s 3(6).

14 I.e. its functions under ibid s 3(1), (3)(a) (see the text and notes 1-2, 6 supra) and s 5(1) (see PARA 74 post).

15 I.e. each authority falling within ibid s 4(4) (see the text and notes 16-19 infra): s 4(1).

16 As to county councils see PARA 28 note 1 ante.

17 As to metropolitan district councils see PARA 28 note 6 ante.

18 As to district councils see PARA 28 note 2 ante.

19 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

20 Planning and Compulsory Purchase Act 2004 s 4(1), (4). In relation to the Isles of Scilly, s 4(4) (see the text and notes 16-19 supra) has effect as if there were inserted therein 'the Council of the Isles of Scilly': Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085, art 4(2). As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

21 Planning and Compulsory Purchase Act 2004 s 4(2).

22 Ibid s 4(3).

23 Ibid s 4(5) does not apply to a function of the RPB under s 5(8) (see PARA 76 post): s 4(7).

24 Ibid s 4(5). Any arrangements made for these purposes must be taken to be arrangements between local authorities for the purposes of the Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370): Planning and Compulsory Purchase Act 2004 s 4(8).

25 Ibid s 4(6).

26 le nothing in ibid s 4: see the text and notes 14-25 supra.

27 Ibid s 4(9).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/74. Duty to prepare draft revision of the regional spatial strategy.

(iii) Revision of Regional Spatial Strategy

A. REVISION PREPARED BY REGIONAL PLANNING BODY

74. Duty to prepare draft revision of the regional spatial strategy.

The regional planning body (the 'RPB')¹ must prepare a draft revision² of the regional spatial strategy (the 'RSS')³:

- 375 (1) when it appears to it necessary or expedient to do so;
- 376 (2) at such time as is prescribed⁴;
- 377 (3) if it is directed⁵ to do so⁶.

The RPB must, however, give notice to the Secretary of State⁷ of its intention to prepare a draft revision under head (1) above⁸.

If the Secretary of State thinks it is necessary or expedient to do so he may direct an RPB to prepare a draft revision of the RSS⁹; and such a direction may require the RPB to prepare the draft revision:

- 378 (a) in relation to such aspects of the RSS as are specified;
- 379 (b) in accordance with such timetable as is specified¹⁰.

In preparing a draft revision the RPB must have regard to:

- 380 (i) national policies and advice contained in guidance issued by the Secretary of State¹¹;
- 381 (ii) the RSS for each adjoining region¹²;
- 382 (iii) the spatial development strategy if any part of its region adjoins Greater London¹³;
- 383 (iv) the Wales Spatial Plan if any part of its region adjoins Wales¹⁴;
- 384 (v) the resources likely to be available for implementation of the RSS¹⁵;
- 385 (vi) the desirability of making different provision in relation to different parts of the region¹⁶;

386 (vii) such other matters as are prescribed¹⁷.

In preparing a draft revision the RPB must also carry out an appraisal of the sustainability of the proposals in the draft, and prepare a report of the findings of the appraisal¹⁸.

For the purposes of the exercise of its functions under the above provisions¹⁹, the RPB must prepare and publish a statement of its policies as to the involvement of persons who appear to the RPB to have an interest in the exercise of those functions²⁰. The RPB must keep the policies under review and from time to time must revise the statement and publish the revised statement²¹. The RPB must comply with the statement or revised statement, as the case may be, in the exercise of its functions under the above provisions²².

1 For the meaning of 'regional planning body' see PARA 24 ante.

2 For these purposes, references to a revision or draft revision of an RSS include references to a revision or draft revision (1) of any part of an RSS; (2) of the RSS as it relates to any part of a region: Planning and Compulsory Purchase Act 2004 s 12(6). For the meaning of 'region' see PARA 24 note 4 ante.

3 As to the RSS see PARA 72 ante.

4 'Prescribed' means prescribed by regulations made by the Secretary of State: see the Planning and Compulsory Purchase Act 2004 s 122; and PARA 5 ante. As to the power to make regulations for these purposes see s 11; and PARA 73 note 9 ante. At the date at which this title states the law, no time had been prescribed for these purposes.

5 *Ibid* under *ibid* s 10(1): see the text and notes 9-10 *infra*.

6 *Ibid* s 5(1). The Secretary of State may by regulations make provision as to (1) the subject matter of a draft revision prepared in pursuance of s 5(1)(b) (see head (2) in the text); (2) any further documents which must be prepared by the RPB in connection with the preparation of a draft revision; (3) the form and content of any draft, report or other document prepared under s 5: s 5(7). The documents mentioned in s 5(7)(b), (c) (see heads (2)-(3) *supra*) include the statement and revised statement under s 6 (see the text and notes 19-22 *infra*): s 6(4).

7 As to the Secretary of State see PARA 19 ante.

8 Planning and Compulsory Purchase Act 2004 s 5(2).

9 *Ibid* s 10(1). Where the Secretary of State issues a direction under s 10(1), the RPB to which the direction is issued must (1) make that direction available for public inspection at its principal office during office hours; and (2) publish that direction on its website: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 19.

Copies, documents, directions, matters, or statements which under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, are (a) made available for inspection; or (b) published on a website, may be removed at the end of the period of six weeks referred to in the Planning and Compulsory Purchase Act 2004 s 113(4) (period for challenging the validity of certain strategies, plans and documents: see PARA 42 ante) that applies as regards the strategy, plan or document concerned; but this does not apply if a challenge is made as mentioned in s 113(4) and is not to apply until any challenge proceedings are finally determined: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 20(2), (3). Regulation 20 does not, however, apply to a document made available or published under reg 21 (see PARA 72 ante): reg 20(1).

Where (i) a person makes a document available for inspection under the 2004 regulations; (ii) that document is not published as required by or under the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12); and (iii) the person is asked by another person for a copy of that document, the person first mentioned must provide a copy of the document to that other person as soon as reasonably practicable after receipt of that other person's request: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 22(1). A person who so provides a copy, or who provides a copy of a document published as required by or under the Planning and Compulsory Purchase Act 2004 Pt 1, may make a reasonable charge for the copy: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 22(2).

10 Planning and Compulsory Purchase Act 2004 s 10(2).

11 Ibid s 5(3)(a). As to such policies and guidance see generally para 9 ante. Section 12(4) (the Secretary of State for the purposes of Pt 1 (ss 1-12): see PARA 24 note 1 ante) does not apply for these purposes: s 12(5). See also the Countryside Agency, Environment Agency, English Heritage and English Nature guidance *Environmental Quality in Spatial Planning* (June 2005) which is intended to supplement guidance issued by the Office of the Deputy Prime Minister.

12 Planning and Compulsory Purchase Act 2004 s 5(3)(b).

13 Ibid s 5(3)(c). As to the spatial development strategy for Greater London see PARA 86 post; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 188 et seq.

14 Ibid s 5(3)(d). As to the Wales Spatial Plan see PARA 87 post.

15 Ibid s 5(3)(e).

16 Ibid s 5(3)(f). If the RPB decides to make different provision for different parts of the region the detailed proposals for such different provision must first be made by an authority which falls within s 4(4) (see PARA 73 the text and notes 16-19 ante): s 5(5). But if the RPB and the authority agree, the detailed proposals may first be made (1) by a district council which is not such an authority; or (2) by the RPB: s 5(6).

Where the RPB decides to make different provision for different parts of the region under s 5(5), it must notify the authorities referred to in s 4(4) of its decision and it may give to those authorities information about how the detailed proposals for that different provision are to be made: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 8(1). The information referred to in reg 8(1) may indicate: (a) the geographical area to be covered by the detailed proposals; (b) the broad subject matter of the detailed proposals; (c) other bodies that the RPB considers should work with the authorities in making the detailed proposals; and (d) which of the authorities the RPB considers should lead in making the detailed proposals: reg 8(2). The authorities referred to in the Planning and Compulsory Purchase Act 2004 s 4(4) must make the detailed proposals for the different provision within 12 weeks of being notified by the RPB under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 8(1); reg 8(3).

Where any provision of the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, requires a person: (i) to send a notice, any other document or a copy of a document to another person, or notify another person of any matter; and (ii) that other person has an address for the purposes of electronic communications, the notice, document, copy or notification may be sent or made by way of electronic communications: reg 3(1). Where an electronic communication is used as mentioned in reg 3(1) and the communication is received by the recipient outside his office hours, it is to be taken to have been received on the next working day; and for these purposes 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 3(3). 'Electronic communication' has the same meaning as in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

17 Planning and Compulsory Purchase Act 2004 s 5(3)(g). Matters prescribed for these purposes, in addition to those specified in s 5(3)(a)-(f) (see heads (i)-(vi) in the text) are: (1) the strategy prepared for the region under the Regional Development Agencies Act 1998 s 7 (as amended) (see TRADE AND INDUSTRY vol 97 (2010) PARA 989); (2) the objectives of preventing major accidents and limiting the consequences of such accidents; (3) the need, in the long term, to maintain appropriate distances between establishments and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest; (4) where the region or part of the region for which the draft revision is being prepared adjoins Scotland, the National Planning Framework for Scotland, published by the Scottish Executive in April 2004; and expressions appearing both in heads (1)-(4) supra and in EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) on the control of major accident hazards involving dangerous substances (as amended by EC Council Directive 2003/105) (OJ L345, 31.12.2003, p 97) (see PARA 1211 post) have the same meanings as in that Directive: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 10(1), (2).

18 Planning and Compulsory Purchase Act 2004 s 5(4). As to sustainable development generally see s 39; and PARA 6 ante.

19 Ie under ibid s 5: see the text and notes 1-18 supra; and PARAS 76-77 post.

20 Ibid s 6(1). In complying with the duty imposed by s 6(1) (preparation and publication of statement of policies as to involvement of persons interested in exercise of RPB's functions under s 5), an RPB must (1) include in that statement policies in particular about: (a) how and when persons who appear to the RPB to have an interest in the revision of the RSS will be involved in its revision; and (b) the identification and involvement of other persons to work with the RPB in the revision of the RSS; (2) make the statement available for inspection during office hours at its principal office and at such other places within the region as the RPB considers appropriate; and (3) publish on its website (a) the statement; (b) confirmation that the statement is available

for inspection; and (c) details of the times and places at which the statement may be inspected: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 6.

21 Planning and Compulsory Purchase Act 2004 s 6(2).

22 Ibid s 6(3).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/75. Form and content of draft revision of regional spatial strategy.

75. Form and content of draft revision of regional spatial strategy.

A draft revision¹ must contain new or amended policies to the regional spatial strategy (the 'RSS') and amendments to the specified diagrams² as the regional planning body (the 'RPB') is of the opinion are appropriate³. A draft revision must also contain a reasoned justification of the policies contained in it⁴. Those parts of a draft revision which comprise the policies of the revision and those parts which comprise the reasoned justification so required must be clearly identified⁵.

A draft revision must contain a diagram, called a key diagram, illustrating the policies contained in the draft revision⁶. A draft revision may also contain a diagram, called an inset diagram, which is drawn to a larger scale than the key diagram and illustrates the application of the policies to part of the area covered by the revision⁷. Where a draft revision contains an inset diagram, the area covered by the inset diagram must be identified on the key diagram and the application of the policies to that area must be illustrated on the inset diagram only⁸. Key diagrams and inset diagrams must:

- 387 (1) set out the title of the draft revision; and
- 388 (2) include an explanation of any symbol or other notation that appears on them;
- and
- 389 (3) be prepared otherwise than on a map base⁹.

1 For these purposes, 'draft revision' means a draft revision of the regional spatial strategy (the 'RSS') prepared by a regional planning body ('RPB') or the Secretary of State (as the case may be) in accordance with the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1). As to the RSS see PARA 72 ante; as to regional planning bodies see PARA 24 ante; and as to the Secretary of State see PARA 19 ante.

2 Ie the diagrams mentioned in ibid reg 9: see the text and notes 6-9 infra.

3 Ibid reg 7(1).

4 Ibid reg 7(2).

5 Ibid reg 7(3).

6 Ibid reg 9(1).

7 Ibid reg 9(2).

8 Ibid reg 9(3).

9 Ibid reg 9(4).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/76. Procedure for the preparation of a revision of the regional spatial strategy.

76. Procedure for the preparation of a revision of the regional spatial strategy.

When the regional planning body (the 'RPB')¹ has prepared a draft revision², the sustainability appraisal report to be prepared³ and any other document to be prepared in connection with the preparation of the draft revision⁴ it must (1) publish the draft revision, report and other document; and (2) submit them to the Secretary of State⁵.

Before so submitting a draft revision to the Secretary of State, an RPB must consult:

- 390 (a) such of the specific consultation bodies⁶ as are, in the opinion of the RPB, likely to be affected by the draft revision;
- 391 (b) such of the general consultation bodies⁷ as the RPB considers appropriate⁸.

The RPB must prepare a statement setting out:

- 392 (i) which of the specific and general consultation bodies the RPB has consulted;
- 393 (ii) how those bodies, and any other persons whom the RPB has consulted, were consulted;
- 394 (iii) a summary of the main issues raised in those consultations; and
- 395 (iv) how those main issues have been addressed in the draft revision⁹.

When the RPB complies with head (1) above it must make copies of the draft revision documents¹⁰ and a statement of the draft revision matters¹¹ available for inspection¹² at its principal office during office hours and at such other places within the region as the RPB considers appropriate¹³. It must also publish on its website the draft revision documents, the draft revision matters, and a statement that the draft revision documents are available for inspection and particulars of the places and times at which they can be inspected¹⁴. The RPB must send to the pre-submission consultees¹⁵, and to such other persons who in the opinion of the RPB may wish to make representations¹⁶ on the draft revision:

- 396 (A) the draft revision;
- 397 (B) the sustainability appraisal report;
- 398 (C) the pre-submission consultation statement;
- 399 (D) such of the supporting documents as in the RPB's opinion are relevant to the person to whom the documents are being sent;
- 400 (E) notice of the draft revision matters; and
- 401 (F) the statement that the draft revision documents are available for inspection¹⁷ which is referred to above¹⁸.

When the RPB complies with head (1) above, each local planning authority within the region, and any county council within the region whose area includes an area for which there is a district council, must make copies of the draft revision documents and draft revision matters available for inspection at their principal offices during office hours¹⁹; but this does not apply to an authority or council unless the draft revision relates to any part of its area²⁰.

Representations on a draft revision must be made within the specified period²¹ and sent to the specified address²² and where appropriate the specified person²³; and the Secretary of State is not required to have regard to a representation on a draft revision unless that representation is made in accordance with these requirements²⁴.

1 As to regional planning bodies see PARA 24 ante.

2 For the meaning of 'draft revision' see PARA 75 note 1 ante.

3 Ie under the Planning and Compulsory Purchase Act 2004 s 5(4)(b): see PARA 74 ante.

4 Ie in pursuance of ibid s 5(7)(b): see PARA 74 ante.

5 Ibid s 5(8). As to withdrawal of the draft revision before complying with head (2) in the text see PARA 77 post. When an RPB complies with s 5(8)(b) (see head (2) in the text), it must also send the draft revision documents to the Secretary of State in electronic form: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 12. As to the Secretary of State see PARA 19 ante.

6 For these purposes, 'specific consultation bodies' means the following bodies (ibid reg 2(1)), ie:

107 (1) a local planning authority any part of whose area is in or adjoins the RPB's region;

108 (2) a county council referred to in the Planning and Compulsory Purchase Act 2004 s 16(1) (see PARA 100 post) any part of whose area is in or adjoins the RPB's region;

109 (3) a parish council any part of whose area is in or adjoins the RPB's region;

110 (4) the RPB for each adjoining region;

111 (5) the Countryside Agency;

112 (6) the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage');

113 (7) English Nature;

114 (8) the Environment Agency;

115 (9) the Strategic Rail Authority;

116 (10) a regional development agency whose area is in or adjoins the RPB's region;

117 (11) the Council of the Isles of Scilly;

118 (12) any person to whom the electronic communications code applies by virtue of a direction given under the Communications Act 2003 s 106(3)(a) (see TELECOMMUNICATIONS vol 97 (2010))

PARA 151), and who owns or controls electronic communications apparatus situated in any part of the region;

- 119 (13) any strategic health authority, person to whom a licence has been granted under the Electricity Act 1989 s 6(1)(b) or (c) (as substituted and amended), person to whom a licence has been granted under the Gas Act 1986 s 7(2) (as substituted and amended), sewerage undertaker and water undertaker exercising functions in any part of the region.

For these purposes, 'local planning authority' means a district council, a London borough council, a metropolitan district council, a county council in relation to any area in England for which there is no district council, the Broads Authority, a National Park authority: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1). See further PARA 28 et seq ante. As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36; and as to English Heritage see PARA 1058 post. As to the Countryside Agency and English Nature see PARA 70 ante; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq; as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; as to regional development agencies see TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq; as to the Strategic Rail Authority see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 5, 46 and as to its prospective abolition see the Railways Act 2005 s 1, Sch 1; as to strategic health authorities see HEALTH SERVICES vol 54 (2008) PARA 94 et seq; and as to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq. For the meaning of 'region' see PARA 24 note 4 ante. 'Electronic communications apparatus' has the same meaning as in PARA 1(1) of the electronic communications code; and 'electronic communications code' has the same meaning as in the Communications Act 2003 s 106(1) (see TELECOMMUNICATIONS vol 97 (2010) PARA 151): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

7 For these purposes, 'general consultation bodies' means the following bodies: (1) voluntary bodies some or all of whose activities benefit any part of the region; (2) bodies which represent the interests of different racial, ethnic or national groups in the region; (3) bodies which represent the interests of different religious groups in the region; (4) bodies which represent the interests of disabled persons in the region; (5) bodies which represent the interests of persons carrying on business in the region: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1). For these purposes, 'disabled person' has the same meaning as in the Disability Discrimination Act 1995 s 1(2) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

8 Ibid reg 11(1). Regulation 11(1) is without prejudice to the Planning and Compulsory Purchase Act 2004 s 4(1) (RPB's duty to seek advice from certain authorities: see PARA 73 ante): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 11(1).

9 Ibid reg 11(2).

10 'Draft revision documents' means (1) the draft revision; (2) the sustainability appraisal report; (3) the pre-submission consultation statement; and (4) such supporting documents as in the opinion of the RPB are relevant to the preparation of the draft revision: ibid reg 2(1). 'Sustainability appraisal report' means the report prepared pursuant to the Planning and Compulsory Purchase Act 2004 s 5(4)(b) (see PARA 74 ante); and 'pre-submission consultation statement' means the statement prepared under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 11(2) (see the text and note 9 supra): reg 2(1).

11 'Draft revision matters' means (1) the subject matter and area covered by the draft revision; (2) where the Secretary of State is of the opinion that the draft revision constitutes a minor amendment to the RSS, a statement to that effect; (3) the period within which representations on the draft revision must be made in accordance with ibid reg 13(4)(a) (see the text and note 21 infra); (4) the address to which and where appropriate the person to whom written representations and representations by electronic communications must be sent in accordance with reg 13(4)(b) (see the text and notes 22-23 infra); (5) a statement that any representations made may be accompanied by a request to be notified at a specified address of the publication of any changes the Secretary of State proposes to make to the draft revision of the RSS under the Planning and Compulsory Purchase Act 2004 s 9(3) (see PARA 81 post) and of the publication of the revision to the RSS; (6) an explanation of the procedure under Pt 1 (ss 1-12) for considering representations on a draft revision and publishing a revision of the RSS; and (7) if the Secretary of State were to decide to hold an examination in public: (a) the likely place the examination will be held; (b) the likely date the examination will start; and (c) the name of the person likely to be appointed by the Secretary of State for the purposes of s 8(2) (see PARA 79 post): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

'Address', in relation to electronic communications, means any number or address used for the purposes of such communications: reg 2(1).

12 For the meaning of 'inspection' see PARA 72 note 21 ante.

13 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(1)(a).

14 Ibid reg 13(1)(b).

15 'Pre-submission consultees' means those bodies which the RPB consults in accordance with ibid reg 11(1) (see the text and notes 6-8 supra): reg 2(1).

16 Where under any provision of the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, or the Planning and Compulsory Purchase Act 2004 Pt 1, a person may make representations on any document or matter, those representations may be made in writing or by way of electronic communications: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 3(2). Where an electronic communication is used as mentioned in reg 3(2), and the communication is received by the recipient outside his office hours, it is to be taken to have been received on the next working day: reg 3(3). For the meaning of 'electronic communication' and 'working day' for these purposes see PARA 74 note 16 ante.

17 Ie the statement referred to in ibid reg 13(1)(b)(iii): see the text to note 14 supra.

18 Ibid reg 13(1)(c).

19 Ibid reg 13(2).

20 Ibid reg 13(3).

21 Ie specified pursuant to ibid reg 13(1): reg 13(4). The period referred to in reg 13(4)(a) must, where the Secretary of State has informed the RPB that, in his opinion, a draft revision constitutes a minor amendment to the RSS, not be less than six weeks; and in any other case, must not be less than 12 weeks, starting on the day the RPB complies with the Planning and Compulsory Purchase Act 2004 s 5(8)(a) (see head (1) in the text): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(5).

22 Ie specified pursuant to ibid reg 13(1): reg 13(4).

23 Ibid reg 13(4); and see note 21 supra.

24 Ibid reg 13(6).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

76 Procedure for the preparation of a revision of the regional spatial strategy

NOTE 6--Strategic Rail Authority now abolished: SI 2006/2925.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/77. Withdrawal of draft revision before submission to the Secretary of State.

77. Withdrawal of draft revision before submission to the Secretary of State.

The regional planning body (the 'RPB')¹ may withdraw a draft revision² at any time before it submits the draft to the Secretary of State³.

As soon as reasonably practicable after a draft revision is so withdrawn, the RPB must:

- 402 (1) publish on its website a statement that it has withdrawn its draft revision and its reasons for doing so; and
 403 (2) notify any person with whom it has corresponded, whether in writing or by electronic communications, about the draft revision, of those matters⁴.

1 As to regional planning bodies see PARA 24 ante.

2 For the meaning of 'draft revision' see PARA 75 note 1 ante.

3 Planning and Compulsory Purchase Act 2004 s 5(9). As to submission of the draft revision to the Secretary of State see s 5(8)(b); and PARA 76 ante; and as to the Secretary of State see PARA 19 ante.

4 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 18(1). For the meaning of 'electronic communications' see PARA 74 note 16 ante.

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/78. Secretary of State's functions on receipt of draft revision.

78. Secretary of State's functions on receipt of draft revision.

When the Secretary of State¹ receives a draft revision² of the regional spatial strategy (the 'RSS')³, any person may make representations⁴ on the draft⁵.

The Secretary of State may arrange for an examination in public to be held into the draft⁶. In deciding whether an examination in public is held the Secretary of State must have regard to:

- 404 (1) the extent of the revisions proposed by the draft;
 405 (2) the extent and nature of the consultation on the draft before it was published;
 406 (3) the level of interest shown in the draft;
 407 (4) such other matters as he thinks appropriate⁷.

Where the Secretary of State decides that an examination in public is not to be held, as soon as reasonably practicable after so deciding he must:

- 408 (a) notify the submission consultees⁸, and any other person who has made representations on the draft revision⁹ and not withdrawn those representations, of that decision¹⁰;
 409 (b) publish a statement of that decision on his website¹¹.

The regional planning body (the 'RPB')¹² must also publish a statement of that decision on its website¹³.

Where the Secretary of State decides that an examination in public is to be held, as soon as reasonably practicable after so deciding, the Secretary of State must publish on his website:

- 410 (i) a statement of that decision;
- 411 (ii) the address of the place where the examination in public will take place;
- 412 (iii) the date when the examination will start;
- 413 (iv) the name of the person appointed by the Secretary of State for the purposes of holding the examination¹⁴.

Where particulars of any of the matters published in accordance with heads (ii) to (iv) above differ in a material respect from the specified information¹⁵ supplied by the RPB in complying with the duty to publish the draft revision matters¹⁶:

- 414 (A) the Secretary of State must notify the submission consultees and any other person who has made representations on the draft revision¹⁷ and not withdrawn those representations of those changes¹⁸;
- 415 (B) the RPB must publish on its website particulars of the matters referred to in head (A) above and indicate the material respects in which those particulars differ from the particulars supplied in complying with that duty to publish the draft revision matters¹⁹; and
- 416 (C) each prescribed authority or council²⁰ must make available for inspection during office hours at its principal office the information provided pursuant to head (B) above²¹.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'draft revision' see PARA 75 note 1 ante.

3 As to the RSS see PARA 72 ante.

4 As to the method of making representations see PARA 76 note 16 ante.

5 Planning and Compulsory Purchase Act 2004 s 7(1), (2).

6 Ibid s 7(1), (3). As to examinations in public see PARA 79 post.

7 Ibid s 7(1), (4).

8 'Submission consultees' means any person to whom the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(1)(c) applies (see PARA 76 ante): reg 2(1).

9 Ie in accordance with ibid reg 13(4): see PARA 76 ante.

10 Ibid reg 14(2)(a)(i).

11 Ibid reg 14(2)(a)(ii). 'Website' in relation to the Secretary of State means a website which he maintains for the purpose of publishing information about a region which is relevant to the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1).

12 As to regional planning bodies see PARA 24 ante.

13 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 14(2)(b).

14 Ibid reg 14(1)(a). The purposes referred to in head (iv) in the text are the purposes of the Planning and Compulsory Purchase Act 2004 s 8(2): see PARA 79 post.

15 le the information in PARA (g) of the definition of 'draft revision matters' in the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1): see PARA 76 note 11 ante.

16 le supplied in complying with ibid reg 13(4): see PARA 76 ante.

17 le in accordance with ibid reg 13(4): see PARA 76 ante.

18 Ibid reg 14(1)(b)(i).

19 See ibid reg 14(1)(b)(ii).

20 le each authority or council to which ibid reg 13(2) applies: see PARA 76 ante.

21 Ibid reg 14(1)(b)(iii).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/79. Examination in public.

79. Examination in public.

If the Secretary of State¹ decides that an examination in public² is to be held of a draft revision³ of the regional spatial strategy (the 'RSS')⁴, the following provisions apply⁵. The examination must be held before a person appointed by the Secretary of State⁶.

No person has a right to be heard at an examination in public⁷. The Secretary of State may, however, after consultation with the Lord Chancellor, make regulations with respect to the procedure to be followed at an examination in public⁸.

1 As to the Secretary of State see PARA 19 ante.

2 An examination in public is a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992 s 1(1)(c) (report on administrative procedures: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15) but is not a statutory inquiry for any other purpose of that Act: Planning and Compulsory Purchase Act 2004 s 8(7).

3 For the meaning of 'draft revision' see PARA 75 note 1 ante.

4 As to the RSS see PARA 72 ante.

5 Planning and Compulsory Purchase Act 2004 s 8(1).

6 Ibid s 8(2). As to publication of that person's name see PARA 78 ante; and as to the power to make regulations as to the remuneration and allowances payable to that person see s 11(2)(h); and PARA 73 note 9 ante. In exercise of that power, the Secretary of State has made the Town and Country Planning (Regional Spatial Strategies) (Examinations in Public) (Remuneration and Allowances) (England) Regulations 2004, SI 2004/2209, which provide for the payment of (1) remuneration of £342 in respect of each day on which the appointed person is engaged in the conduct of an examination under the Planning and Compulsory Purchase Act 2004 s 8 or work connected with it (Town and Country Planning (Regional Spatial Strategies) (Examinations

in Public) (Remuneration and Allowances) (England) Regulations 2004, SI 2004/2209, reg 2) and (2) various travelling and subsistence allowances (see regs 3, 4, Schedule).

7 Planning and Compulsory Purchase Act 2004 s 8(3).

8 Ibid s 8(4). At the date at which this title states the law, no such regulations had been made. As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 2004 Act see the Constitutional Reform Act 2005 s 19.

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

79 Examination in public

NOTE 6--SI 2004/2209 revoked: SI 2006/3320.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/80. Report of examination in public.

80. Report of examination in public.

The person appointed to hold the examination in public¹ must make a report of the examination to the Secretary of State²; and the Secretary of State may by regulations make provision as to the procedure to be followed in connection with the recommendations of the person so appointed³.

Where an examination in public has been held⁴, the Secretary of State must:

- 417 (1) as soon as reasonably practicable after receipt of the report of the person appointed to hold the examination, publish the report on his website⁵;
- 418 (2) publish on his website a statement that the report is available for inspection⁶ and of the places and times at which it can be inspected;
- 419 (3) send to any person who requested to be notified of the publication by the Secretary of State of the report a copy of the statement referred to in head (2) above⁷.

As soon as reasonably practicable after the Secretary of State complies with heads (1) to (3) above:

- 420 (a) the regional planning body (the 'RPB')⁸ must:
- 33 47. (i) publish on its website the report of the person appointed to hold the examination;
- 48. (ii) make the report available for inspection during office hours at the places at which draft revision documents⁹ were made available¹⁰;

49. (iii) publish on its website a statement that the report is available for inspection and of the places and times it can be inspected¹¹;
- 34 421 (b) each prescribed authority or council¹² must make available for inspection during office hours at its principal office the report of the person appointed to hold the examination¹³.

- 1 le the person appointed under the Planning and Compulsory Purchase Act 2004 s 8(2): see PARA 79 ante.
- 2 Ibid s 8(5).
- 3 Ibid s 8(6).
- 4 le pursuant to ibid s 7(3): see PARA 78 ante.
- 5 For the meaning of 'website' in relation to the Secretary of State see PARA 78 note 11 ante.
- 6 For the meaning of 'inspection' see PARA 72 note 21 ante.
- 7 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 15(1).
- 8 As to regional planning bodies see PARA 24 ante.
- 9 For the meaning of 'draft revision documents' see PARA 76 note 10 ante.
- 10 le under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(1): see PARA 76 ante.
- 11 Ibid reg 15(2).
- 12 le each authority or council to which ibid reg 13(2) applies (see PARA 76 ante): reg 15(3).
- 13 Ibid reg 15(3).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/81. Further procedure; publication of the revision.

81. Further procedure; publication of the revision.

If no examination in public is held¹ the Secretary of State² must consider any representations made³ on the draft revision⁴ of the regional spatial strategy (the 'RSS')⁵.

If an examination in public is held the Secretary of State must consider:

- 422 (1) the report of the person appointed to hold the examination⁶;
- 423 (2) any representations which are not considered by the person appointed to hold the examination⁷.

If after proceeding as described above the Secretary of State proposes to make any changes to the draft he must publish the changes he proposes to make and his reasons for doing so⁸. Where he publishes proposed changes to the draft revision in accordance with this requirement, he must:

- 424 (a) send to the submission consultees⁹, and to any other person who has made representations on the draft revision¹⁰ and not withdrawn those representations, copies of the proposed changes and a statement of his reasons for proposing them, and notice of the specified matters referred to as 'proposed changes matters'¹¹; and
- 425 (b) publish on his website¹²;
- 35
- 50. (i) the proposed changes and statement of reasons;
- 51. (ii) the proposed changes matters; and
- 52. (iii) a statement that the changes and statement of reasons are available for inspection¹³ and of the places and times at which they can be inspected¹⁴; and
- 36
- 426 (c) send to any person who requested to be notified of the publication by the Secretary of State of any proposed changes a notice of the proposed changes matters and a statement that the changes and statement of reasons are available for inspection and of the places and times at which they can be inspected¹⁵.

When the Secretary of State has complied with heads (a) to (c) above, the regional planning body (the 'RPB')¹⁶ must make copies of the changes and statement of reasons and the proposed changes matters available for inspection during office hours at the places at which the draft revision documents¹⁷ were made available¹⁸ and must publish on its website:

- 427 (A) the proposed changes and statement of reasons;
- 428 (B) the proposed changes matters; and
- 429 (C) a statement that the proposed changes and statement of reasons are available for inspection and of the places and times at which they can be inspected¹⁹.

Similarly, each prescribed authority or council²⁰ must make available for inspection during office hours at its principal office copies of the proposed changes and statement of reasons and the proposed changes matters²¹.

Any person may make representations on the proposed changes²² and the Secretary of State must consider any such representations²³.

The Secretary of State must then publish the revision of the RSS incorporating such changes as he thinks fit and his reasons for making the changes²⁴. As soon as reasonably practicable after the Secretary of State so publishes a revision, the RPB must make available for inspection at the places at which the draft revision documents were made available²⁵ a publication statement²⁶ and a copy of the revision²⁷. The RPB must publish on its website the publication statement and a statement that a copy of the revision is so available for inspection and of the places and times at which the copy can be inspected²⁸. The Secretary of State must publish on his website the above-mentioned documents²⁹ and a statement that a copy of the revision is available for inspection, and of the places and times at which the copy can be inspected³⁰; and he must send a copy of the publication statement to any person who has asked to be notified of the publication of the revision³¹. Furthermore, each prescribed authority or council³² must make a copy of the revision available for inspection during office hours at its principal office³³.

- 1 As to examination in public see PARA 79 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 Ie under the Planning and Compulsory Purchase Act 2004 s 7(2): see PARA 78 ante.
- 4 For the meaning of 'draft revision' see PARA 75 note 1 ante.
- 5 Planning and Compulsory Purchase Act 2004 s 9(1). As to the RSS see PARA 72 ante.
- 6 As to the report see PARA 80 ante.
- 7 Planning and Compulsory Purchase Act 2004 s 9(2).
- 8 Ibid s 9(3).
- 9 For the meaning of 'submission consultees' see PARA 78 note 8 ante.
- 10 Ie in accordance with the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(4): see PARA 76 ante.
- 11 Ibid reg 16(1)(a). 'Proposed changes matters' means: (1) the period within which representations on the changes mentioned in the Planning and Compulsory Purchase Act 2004 s 9(3) must be made in accordance with the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 16(3)(a) (see note 22 infra); (2) the address to which and where appropriate the person to whom written representations and representations by electronic communications must be sent in accordance with reg 16(3)(b) (see note 22 infra); and (3) a statement that any representations made may be accompanied by a request to be notified at a specified address of the publication of the revision to the RSS: reg 2(1). For the meaning of 'electronic communications' see PARA 74 note 16 ante; and for the meaning of 'address' in relation to such communications see PARA 76 note 10 ante.
- 12 For the meaning of 'website' in relation to the Secretary of State see PARA 78 note 11 ante.
- 13 For the meaning of 'inspection' see PARA 72 note 21 ante.
- 14 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 16(1)(b).
- 15 Ibid reg 16(1)(c).
- 16 As to regional planning bodies see PARA 24 ante.
- 17 For the meaning of 'draft revision documents' see PARA 76 note 10 ante.
- 18 Ie under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(1): see PARA 76 ante.
- 19 Ibid reg 16(2)(a).
- 20 Ie each authority or council to which ibid reg 13(2) applies (see PARA 76 ante): reg 16(2)(b).
- 21 Ibid reg 16(2)(b).
- 22 Planning and Compulsory Purchase Act 2004 s 9(4). Representations on the proposed changes must be made within the period, and sent to the address and, where appropriate, the person, specified pursuant to the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 16(1): reg 16(3). The period so referred to must not be less than eight weeks starting on the day the Secretary of State publishes his proposed changes under the Planning and Compulsory Purchase Act 2004 s 9(3): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 16(4).
- 23 Planning and Compulsory Purchase Act 2004 s 9(5). The Secretary of State is not, however, required to have regard to a representation on a draft revision unless that representation is made in accordance with the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 16(3) (see note 22 supra): reg 16(5).
- 24 Planning and Compulsory Purchase Act 2004 s 9(6).
- 25 Ie under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(1): see PARA 76 ante.

26 'Publication statement' means a statement (1) of the date a revision to the RSS is published; (2) that any person aggrieved by the revision may make an application to the High Court under the Planning and Compulsory Purchase Act 2004 s 113 (see PARA 42 ante) and (a) the grounds on which such an application can be made; (b) the time within which such an application must be made: Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 2(1). As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

27 Ibid reg 17(a)(i).

28 Ibid reg 17(a)(ii).

29 Ie the documents referred to in ibid reg 17(a)(i): see the text and notes 25-27 supra.

30 Ibid reg 17(b)(i).

31 Ibid reg 17(b)(ii).

32 See note 20 supra.

33 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 17(c).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/A. REVISION PREPARED BY REGIONAL PLANNING BODY/82. Withdrawal of the draft revision by the Secretary of State.

82. Withdrawal of the draft revision by the Secretary of State.

The Secretary of State¹ may withdraw a draft revision² of a regional spatial strategy (an 'RSS')³ at any time before he publishes⁴ the revision of the RSS⁵. As soon as reasonably practicable after a draft revision is so withdrawn:

- 430 (1) the regional planning body (the 'RPB')⁶ must publish on its website a statement that the Secretary of State has withdrawn the draft revision and remove all copies, documents, matters or statements made available or published⁷ under the relevant statutory provisions⁸;
- 431 (2) each prescribed authority or council⁹ must similarly remove any copies, document or matters¹⁰ made available¹¹; and
- 432 (3) the Secretary of State must:

37

53. (a) publish on his website¹² a statement that he has withdrawn the draft revision;

54. (b) notify the submission consultees¹³ and any other person who has made representations¹⁴ and not withdrawn those representations that he has withdrawn the draft revision; and

55. (c) remove all documents, matters or statements¹⁵ published¹⁶.

38

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'draft revision' see PARA 75 note 1 ante.
- 3 As to the RSS see PARA 72 ante.
- 4 Ie under the Planning and Compulsory Purchase Act 2004 s 9(6): see PARA 81 ante.
- 5 Ibid s 9(7).
- 6 As to regional planning bodies see PARA 24 ante.
- 7 Ie made available or published under the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, regs 13(1)(a), (b), 14(1)(b)(ii), (2)(b), 16(2)(a) (see PARAS 76, 78, 81 ante), or published under the Planning and Compulsory Purchase Act 2004 s 5(8)(a) (see PARA 76 ante): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 18(2)(a)(ii).
- 8 Ibid reg 18(2)(a).
- 9 Ie each authority or council to which ibid reg 13(2) applies (see PARA 76 ante): reg 18(2)(b).
- 10 Ie any copies, document or matters made available under ibid reg 13(2) and regs 14(1)(b)(iii), 16(2)(b) (see PARAS 76, 78, 81 ante): reg 18(2)(b)(ii).
- 11 Ibid reg 18(2)(b).
- 12 For the meaning of 'website' in relation to the Secretary of State see PARA 78 note 11 ante.
- 13 For the meaning of 'submission consultees' see PARA 78 note 8 ante.
- 14 Ie in accordance with the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 13(4) (see PARA 76 ante) or reg 16(3) (see PARA 81 ante): reg 18(2)(c)(ii)(bb).
- 15 Ie all documents, matters or statements published under ibid regs 14(1)(a), (2)(a)(ii), 16(1)(b) (see PARAS 78, 81 ante) or under the Planning and Compulsory Purchase Act 2004 s 9(3) (see PARA 81 ante): Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 18(2)(c)(iii).
- 16 Ibid reg 18(2)(c).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/B. REVISION PREPARED OR PROVIDED BY THE SECRETARY OF STATE/83. Secretary of State's default powers to prepare draft revision.

B. REVISION PREPARED OR PROVIDED BY THE SECRETARY OF STATE

83. Secretary of State's default powers to prepare draft revision.

The Secretary of State¹ may prepare a draft revision² of the regional spatial strategy (the 'RSS')³ if the regional planning body (the 'RPB')⁴ fails to comply with:

- 433 (1) a direction given to it⁵ to prepare a draft revision;
 - 434 (2) the duty to prepare a draft revision at the prescribed time⁶; or
 - 435 (3) regulations making provision:
- 39
- 56. (a) as to the subject matter of a draft revision, further documents to be prepared in connection with it and the form and content of any draft, report or other document prepared in that connection⁷;
 - 57. (b) in connection with the exercise by any person of functions⁸ under Part 1⁹ of the Planning and Compulsory Purchase Act 2004¹⁰.
- 40

If the Secretary of State so prepares a draft revision, any person may make representations on the draft¹¹ and the statutory provisions with regard to examination in public¹² and further procedure¹³ apply¹⁴.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'draft revision' see PARA 75 note 1 ante.
- 3 As to the RSS see PARA 72 ante.
- 4 As to regional planning bodies see PARA 24 ante.
- 5 Ie a direction under the Planning and Compulsory Purchase Act 2004 s 10(1): see PARA 74 ante.
- 6 Ie under ibid s 5(1)(b): see PARA 74 ante.
- 7 Ie regulations under ibid s 5(7): see PARA 74 note 6 ante.
- 8 Ie regulations under ibid s 11: see PARA 73 ante.
- 9 Ie under ibid Pt 1 (ss 1-12): see PARAS 24-25, 72 et seq ante, PARAS 84-85 post.
- 10 Ibid s 10(3). The Secretary of State may by regulations make provision as to the procedure to be followed for the purposes of s 10(3): s 10(6). As to the exercise of this power see note 14 infra.
- 11 See ibid s 7(1), (2) (applied by s 10(4)(a)); and PARA 78 ante.
- 12 Ibid s 7(1), (3), (4) (power to arrange for examination in public and matters to which Secretary of State must have regard in deciding whether such an examination is held) applies as it does if the Secretary of State receives a draft revision from the RPB: s 10(4)(a). See further PARA 78 ante. Section 8 (examination in public) (see PARAS 79-80 ante) applies: s 10(4)(b).
- 13 Ibid s 9 (see PARAS 81-82 ante) applies: s 10(4)(b).
- 14 Ibid s 10(4). If the Secretary of State prepares a draft revision under s 10(3), the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 7 (see PARA 75 ante), regs 9-11 (see PARAS 74-76 ante), regs 13-17 (see PARAS 76, 78, 80-81 ante), reg 18 (see PARA 82 ante) (ignoring reg 18(1), as to which see PARA 77 ante) and reg 20 (see PARA 74 note 9 ante) apply so far as practicable and with any necessary modifications: reg 23.

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iii) Revision of Regional Spatial Strategy/B. REVISION PREPARED OR PROVIDED BY THE SECRETARY OF STATE/84. Power to provide for part of regional planning guidance to have effect as a revision.

84. Power to provide for part of regional planning guidance to have effect as a revision.

If any step has been taken in connection with the preparation of any part of regional planning guidance¹, and the Secretary of State² thinks that the step corresponds to a step which must be taken³ in connection with the preparation and publication of a revision⁴ of the regional spatial strategy (the 'RSS')⁵, he may by order provide for the part of the regional planning guidance to have effect as a revision of the RSS⁶.

1 For the meaning of 'regional planning guidance' see PARA 72 note 10 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Ie under the Planning and Compulsory Purchase Act 2004 Pt 1 (ss 1-12): see PARAS 24-25, 72 et seq ante.

4 For the meaning of 'revision' see PARA 74 note 2 ante.

5 As to the RSS see PARA 72 ante.

6 Planning and Compulsory Purchase Act 2004 s 10(7), (8). For examples of the exercise of this power see the Town and Country Planning (Regional Planning Guidance as Revision of Regional Spatial Strategy) Order 2004, SI 2004/2208, art 2, Schedule.

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (iv) Revocation of Regional Spatial Strategy/85. Secretary of State's power of revocation.

(iv) Revocation of Regional Spatial Strategy

85. Secretary of State's power of revocation.

If the Secretary of State¹ thinks it necessary or expedient to do so he may at any time revoke a regional spatial strategy (an 'RSS')² or such parts of an RSS as he thinks appropriate³.

Where the Secretary of State revokes an RSS in its entirety the regional planning body (the 'RPB')⁴ for the region⁵ concerned must cease to make it available for inspection⁶, whether on its website or at its principal office⁷.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the RSS see PARA 72 ante.
- 3 Planning and Compulsory Purchase Act 2004 s 10(5).
- 4 As to regional planning bodies see PARAS 24-25 ante.
- 5 For the meaning of 'region' see PARA 24 note 4 ante.
- 6 For the meaning of 'inspection' see PARA 72 note 21 ante.
- 7 Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 21(2).

UPDATE

72-85 Regional Planning in England

Planning and Compulsory Purchase Act 2004 ss 1-12 repealed: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(1) REGIONAL PLANNING IN ENGLAND/ (v) Spatial Development Strategy for Greater London/86. The Mayor of London's spatial development strategy.

(v) Spatial Development Strategy for Greater London

86. The Mayor of London's spatial development strategy.

The Mayor of London¹ must prepare and publish a document to be known as the 'spatial development strategy'² which must include a statement formulating the Mayor's strategy for spatial development in Greater London³. For these purposes⁴, the Mayor's strategy for spatial development includes his general policies in respect of the development and use of land in Greater London⁵. The spatial development strategy must, however, include statements dealing with the general spatial development aspects of:

- 436 (1) such of the other strategies prepared and published, or to be prepared and published, under the specified enactments⁶ as involve considerations of spatial development; and
- 437 (2) such of the Mayor's other policies or proposals as involve such considerations,

whether or not the strategy, policy or proposal relates to the development or use of land⁷.

The spatial development strategy must deal only with matters which are of strategic importance to Greater London⁸. It may make different provision for different cases or for different parts of Greater London⁹.

In exercising his functions relating to the spatial development strategy for Greater London, the Mayor must have regard to the regional spatial strategy¹⁰ for a region which adjoins Greater London and to such other matters as the Secretary of State¹¹ may prescribe¹².

The preparation of the spatial development strategy¹³, its publication and operation¹⁴, the Mayor's duty to keep it under review¹⁵ and its alteration or replacement¹⁶ are all discussed in detail elsewhere in this work¹⁷.

1 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

2 Greater London Authority Act 1999 s 334(1). As to the matters to which the Mayor must have regard in preparing the strategy see the text and notes 10-12 *infra*; see also s 41(4)-(11); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 177.

3 *Ibid* s 334(2). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 *Ie* for the purposes of *ibid* Pt VIII (ss 334-350) (as amended): see the text and notes 1-3 *supra*, 5-16 *infra*; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 *et seq.*

5 *Ibid* s 334(3).

6 *Ie* under the enactments mentioned in *ibid* 41(1): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 177.

7 *Ibid* s 334(4).

8 *Ibid* s 334(5). In determining for the purposes of *ibid* Pt VIII (as amended) whether a matter is of strategic importance to Greater London, it is immaterial whether or not the matter affects the whole area of Greater London: s 334(6).

9 *Ibid* s 334(8).

10 As to regional spatial strategy see PARA 72 *ante*.

11 As to the Secretary of State see PARA 19 *ante*.

12 Greater London Authority Act 1999 s 342(1) (amended by the Planning and Compulsory Purchase Act 2004 s 118(2), Sch 7 para 22(1), (3)). The matters to which the Mayor is to have regard by virtue of the Greater London Authority Act 1999 s 342(1) (as so amended) are in addition to the matters to which he is to have regard by virtue of s 41(4) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 177): s 342(2).

In formulating the strategy for spatial development in Greater London the Mayor must, in addition to the matters specified in ss 41, 342(1)(a) (as amended), have regard to: (1) any statement which contains the Secretary of State's policies in relation to the recovery and disposal of waste in England and which is made under the Environmental Protection Act 1990 s 44A (as added) (National Waste Strategy, England and Wales: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 627); (2) the objectives of preventing major accidents and limiting the consequences of such accidents; and (3) the need (a) in the long term, to maintain appropriate distances between establishments and residential areas, areas of public use and areas of particular natural sensitivity or interest; and (b) in the case of existing establishments, for additional technical measures in accordance with EC Council Directive 96/82 (OJ L10, 14.01.97, p 13), art 5 on the control of major-accident hazards involving dangerous substances so as not to increase the risks to people (see PARA 1211 *post*); and expressions appearing both in heads (1)-(3) *supra* and in EC Council Directive 96/82 (as amended) have the same meanings as in that Directive: see the Town and Country Planning (London Spatial Development Strategy) Regulations 2000, SI 2000/1491, reg 6(1), (2).

13 See *ibid* regs 3-5, 7-8; the Greater London Authority Act 1999 ss 334(7), 335, 336, 338; and LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 189-192.

14 See *ibid* s 337 (as amended); the Town and Country Planning (London Spatial Development Strategy) Regulations 2000, SI 2000/1491, reg 9-12; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 193.

15 See the Greater London Authority Act 1999 ss 339, 340; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 194.

16 See *ibid* s 341; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 195.

17 See LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 *et seq.*

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(2) THE WALES SPATIAL PLAN/87. The Wales Spatial Plan.

(2) THE WALES SPATIAL PLAN

87. The Wales Spatial Plan.

There must be a spatial plan for Wales to be known as the 'Wales Spatial Plan'¹ which must set out such of the policies, however expressed, of the National Assembly for Wales² as it thinks appropriate in relation to the development³ and use⁴ of land⁵ in Wales⁶. The Assembly must prepare and publish the plan⁷ and must consult such persons or bodies as it considers appropriate in preparing the plan⁸.

The plan must be approved by the Assembly⁹ which must not delegate this function¹⁰.

The first Wales Spatial Plan, entitled 'People, Places, Futures' was published in November 2004¹¹.

1 Planning and Compulsory Purchase Act 2004 s 60(1).

2 As to the Assembly see PARA 20 ante.

3 For the meaning of 'development' see PARA 217 post (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

4 For the meaning of 'use' see PARA 221 note 4 post (definition as applied: see note 4 supra).

5 For the meaning of 'land' see PARA 2 note 10 ante (definition as applied: see note 4 supra).

6 Planning and Compulsory Purchase Act 2004 s 60(2).

7 Ibid s 60(3)(a); and see note 8 infra.

8 Ibid s 60(5). Any step taken by the Assembly in relation to the preparation of the Wales Spatial Plan, including any consultation with any person in relation to the provisions of the plan, is to be regarded as having been taken pursuant to the duties imposed on the Assembly under s 60, whether that step was taken before, on or after the day appointed for the commencement of s 60 (ie 14 July 2004): see the Planning and Compulsory Purchase Act 2004 (Commencement No 1 and Transitional Provision) (Wales) Order 2004, SI 2004/1814, arts 2, 3. Work on the plan, including public consultation, had been begun under the Assembly's general powers prior to the coming into force of the Planning and Compulsory Purchase Act 2004 s 60. As to the Assembly's general powers see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 Ibid s 60(6).

10 Ibid s 60(7).

11 See *People, Places, Futures--The Wales Spatial Plan* (Welsh Assembly Government, 2004). At the date at which this title states the law, the text of the plan was accessible at www.wales.gov.uk.

UPDATE

87 The Wales Spatial Plan

TEXT AND NOTES--References to National Assembly for Wales are now to Welsh Ministers: 2004 Act s 60(2), (3), (5), (6) (amended by the Government of Wales Act 2006 Sch 10 para 66).

TEXT AND NOTES 9, 10--2004 Act s 60(6), (7) now s 60(6) (substituted by 2006 Act Sch 10 para 66).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/2. REGIONAL AND WELSH NATIONAL PLANNING/(2) THE WALES SPATIAL PLAN/88. Revision of the Wales Spatial Plan.

88. Revision of the Wales Spatial Plan.

The National Assembly for Wales¹ must keep the Wales Spatial Plan² under review³ and must consider from time to time whether it should be revised⁴. If the Assembly revises the plan, it must publish, as it considers appropriate, either the whole plan as revised, or the revised parts⁵.

The Assembly must consult such persons or bodies as it considers appropriate in revising the plan⁶.

Any revision of the plan must be approved by the Assembly⁷ which must not delegate this function⁸.

- 1 As to the Assembly see PARA 19 ante.
- 2 As to the Wales Spatial Plan see PARA 87 ante.
- 3 Planning and Compulsory Purchase Act 2004 s 60(3)(b).
- 4 Ibid s 60(3)(c).
- 5 Ibid s 60(4).
- 6 Ibid s 60(5).
- 7 Ibid s 60(6).
- 8 Ibid s 60(7).

UPDATE

88 Revision of the Wales Spatial Plan

TEXT AND NOTES--References to National Assembly for Wales are now to Welsh Ministers: 2004 Act s 60(3)-(6) (amended by the Government of Wales Act 2006 Sch 10 para 66).

TEXT AND NOTES 7, 8--2004 Act s 60(6), (7) now s 60(6) (substituted by 2006 Act Sch 10 para 66).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(1) AREA SURVEY UNDER THE 2004 ACT/89. Survey of area by local planning authority.

3. LOCAL DEVELOPMENT PLANNING

(1) AREA SURVEY UNDER THE 2004 ACT

89. Survey of area by local planning authority.

The local planning authority¹ must keep under review the matters which may be expected to affect the development² of its area or the planning of that development³. These matters include:

- 438 (1) the principal physical, economic, social and environmental characteristics of the area of the authority;
- 439 (2) the principal purposes for which land⁴ is used in the area;
- 440 (3) the size, composition and distribution of the population of the area;
- 441 (4) the communications, transport system and traffic of the area;
- 442 (5) any other considerations which may be expected to affect those matters;
- 443 (6) such other matters as may be prescribed⁵ or as the Secretary of State⁶ or the National Assembly for Wales⁷ may, in a particular case, direct⁸.

These matters also include:

- 444 (a) any changes which the authority thinks may occur in relation to any other matter;
- 445 (b) the effect such changes are likely to have on the development of the authority's area or on the planning of such development⁹.

The local planning authority may also keep under review and examine the matters mentioned above¹⁰ in relation to any neighbouring area to the extent that those matters may be expected to affect the area of the authority¹¹. In exercising such a function a local planning authority must consult with the local planning authority¹² for the neighbouring area in question¹³.

1 For the purposes of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (local development in England: see the text and notes 2-13 *infra*; and PARA 90 *et seq post*), local planning authorities are: (1) district councils; (2) London borough councils; (3) metropolitan district councils; (4) county councils in relation to any area in England for which there is no district council; (5) the Broads Authority: s 37(4). A National Park authority is, however, the local planning authority for the whole of its area and s 37(4) must be construed subject to that: s 37(5). As to district, metropolitan district, London borough and county councils see PARA 28 *ante*; as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 *et seq*; and as to the Broads Authority see **WATER AND WATERWAYS** vol 101 (2009) PARA 734. The Secretary of State may direct that Pt 2 does not apply to the area of an urban development corporation: s 33. As to urban development corporations see PARA 1428 *et seq post*.

For the purposes of Pt 6 (ss 60-78) (development in Wales: see PARAS 87-88 *ante*; the text and notes 2-13 *infra*; and PARA 133 *et seq post*), local planning authorities are county councils in Wales and county borough councils: s 78(2). A National Park authority is, however, the local planning authority for the whole of its area and s 78(2) must be construed subject to that: s 78(3).

2 For the meaning of 'development' see PARA 217 *post* (definition applied by *ibid* s 117(1), (5)).

3 *Ibid* ss 13(1), 61(1).

4 For the meaning of 'land' see PARA 2 note 10 *ante* (definition as applied: see note 2 *supra*).

5 *Ie* prescribed by regulations: see PARA 5 *ante*.

6 As to the Secretary of State see PARA 19 ante.

7 As to the Assembly see PARA 20 ante.

8 Planning and Compulsory Purchase Act 2004 ss 13(2), 61(2).

9 Ibid ss 13(3), 61(3).

10 Ie the matters mentioned in ibid ss 13(2), (3), 61(2), (3): see the text and notes 4-9 supra.

11 Ibid ss 13(4), 61(4).

12 In relation to England, if a neighbouring area is in Wales references to the local planning authority for that area must be construed in accordance with Pt 6: s 13(6). In relation to Wales, if a neighbouring area is in England references to the local planning authority for that area must be construed in accordance with Pt 2: s 61(6). See further note 1 supra.

13 Ibid ss 13(5), 61(5).

UPDATE

89 Survey of area by local planning authority

NOTE 1--See also Planning and Compulsory Purchase Act 2004 s 37(5A), (5B) (added by Housing and Regeneration Act 2008 Sch 8 para 81).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(1) AREA SURVEY UNDER THE 2004 ACT/90. Survey of area by county council in England.

90. Survey of area by county council in England.

In relation to England, a county council¹ in respect of so much of its area for which there is a district council² must keep under review the matters which may be expected to affect development³ of that area or the planning of its development in so far as the development relates to a county matter⁴.

The Secretary of State⁵ may by regulations require or, in a particular case, may direct a county council to keep under review in relation to so much of its area as is mentioned above such of the specified matters⁶ as he prescribes⁷ or directs, as the case may be⁸. For these purposes, it is immaterial whether any development relates to a county matter⁹. If a matter which is prescribed or in respect of which the Secretary of State gives a direction relates to any neighbouring area¹⁰ the county council must consult the local planning authority¹¹ for the area in question¹². Each county council must keep under review, in relation to that part of its area for which there is a district council, the following matters:

- 446 (1) the principal physical, economic, social and environmental characteristics of the authority;
- 447 (2) the size, composition and distribution of the population of the area;
- 448 (3) the communications, transport system and traffic of the area;
- 449 (4) any other considerations which may be expected to affect those matters¹³.

The county council must make available the results of its review of the required matters¹⁴ to such persons as the Secretary of State prescribes or directs, as the case may be¹⁵. The persons prescribed for these purposes are:

- 450 (a) any local planning authority any part of whose area lies within the area of the county council; and
- 451 (b) if the regional planning body¹⁶ within whose area the area of the county council lies requests a copy of the results of that review, that body¹⁷.

1 As to county councils see PARA 28 ante.

2 As to district councils see PARA 28 ante.

3 For the meaning of 'development' see PARA 217 post (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

4 Ibid s 14(1). For these purposes, references to a county matter must be construed in accordance with the Town and Country Planning Act 1990 s 1, Sch 1 para 1 (as amended), ignoring Sch 1 para 1(1)(i) (see PARA 38 ante); Planning and Compulsory Purchase Act 2004 s 14(6). Section 13(2)-(6) (see PARA 89 ante) applies for the purposes of s 14(1) as it applies for the purposes of s 13; and references to the local planning authority must be construed as references to the county council: s 14(2).

5 As to the Secretary of State see PARA 19 ante.

6 I.e. the matters mentioned in the Planning and Compulsory Purchase Act 2004 s 13(1)-(4): see PARA 89 ante.

7 I.e. as he prescribes by regulations: see PARA 5 ante. As to the exercise of this power see heads (1)-(4) in the text.

8 Planning and Compulsory Purchase Act 2004 s 14(3).

9 Ibid s 14(4)(a).

10 I.e. if such a matter falls within ibid s 13(4): see PARA 89 the text and notes 10-11 ante.

11 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

12 Planning and Compulsory Purchase Act 2004 s 14(4)(b).

13 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 5(1).

14 I.e. its review under the Planning and Compulsory Purchase Act 2004 s 14(3): see the text and notes 5-8 supra.

15 Ibid s 14(5).

16 As to regional planning bodies see PARAS 24-25 ante.

17 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 5(2).

UPDATE

90 Survey of area by county council in England

TEXT AND NOTE 13--SI 2004/2204 reg 5(1) amended: SI 2008/1371.

PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(i) In general/91. Meaning of 'development plan'.

(2) DEVELOPMENT PLANS UNDER THE 2004 ACT

(i) In general

91. Meaning of 'development plan'.

A reference to the development plan in any of the specified enactments¹ must be construed in accordance with the following provisions². For the purposes of:

- 452 (1) any area in Greater London³, the development plan is:
- 41
58. (a) the spatial development strategy⁴; and
59. (b) the development plan documents, taken as a whole, which have been adopted or approved in relation to that area⁵;
- 42
- 453 (2) any other area in England, the development plan is:
- 43
60. (a) the regional spatial strategy⁶ for the region in which the area is situated; and
61. (b) the development plan documents, taken as a whole, which have been adopted or approved in relation to that area⁷;
- 44
- 454 (3) any area in Wales, the development plan is the local development plan adopted or approved in relation to that area⁸.

If to any extent a policy contained in a development plan⁹ for an area conflicts with another policy in the development plan, the conflict must be resolved in favour of the policy which is contained in the last document to be adopted, approved or published, as the case may be¹⁰.

If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts, the determination must be made in accordance with the plan unless material considerations¹¹ indicate otherwise¹².

1 Ie any enactment mentioned in the Planning and Compulsory Purchase Act 2004 s 38(7): s 38(1). The enactments there mentioned are: (1) the Planning and Compulsory Purchase Act 2004; (2) the planning Acts; (3) any other enactment relating to town and country planning; (4) the Land Compensation Act 1961 (see COMPULSORY ACQUISITION OF LAND); (5) the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES): Planning and Compulsory Purchase Act 2004 s 38(7). For the meaning of 'the planning Acts' see PARA 2 ante; and for the meaning of 'enactment' see PARA 2 note 11 ante (definition applied by s 117(1), (5)).

2 Ibid s 38(1).

3 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

4 As to the spatial development strategy for Greater London see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.

5 Planning and Compulsory Purchase Act 2004 s 38(2). For the meaning of 'development plan document' see PARA 96 note 4 post.

6 As to the regional spatial strategy see PARA 72 ante.

7 Planning and Compulsory Purchase Act 2004 s 38(3).

8 Ibid s 38(4). During the transitional period, however, a reference in an enactment mentioned in s 38(7) (see note 1 supra) to the development plan for an area in Wales is a reference to the development plan for that area for the purposes of the Town and Country Planning Act 1990 s 27A (as added: repealed with savings) (see PARA 150 post); and for these purposes the transitional period is the period starting on 15 October 2005 and ending for each area on the date that a local development plan is adopted or approved for that area: Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 3(1), (2).

9 For this purpose, references to a development plan include a development plan for the purposes of ibid Sch 8 para 1 (transitional provisions: see PARAS 126-127 post): s 38(8).

10 Ibid s 38(5).

11 As to what are material considerations see PARA 485 post.

12 Planning and Compulsory Purchase Act 2004 s 38(6).

UPDATE

91 Meaning of 'development plan'

TEXT AND NOTES--A development plan document must be construed in accordance with the 2004 Act s 37(3) (see PARA 96): Planning and Compulsory Purchase Act 2004 s 38(9) (added by the Planning Act 2008 s 180(1), (7)). Local authorities have powers to set requirements for energy use and energy efficiency in their development plans: see Planning and Energy Act 2008; and PARA 91A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(i) In general/91A. Requirements for energy use and efficiency in development plans.

91A. Requirements for energy use and efficiency in development plans.

A local planning authority in England may in its development plan documents, and a local planning authority in Wales may in its local development plan, include policies imposing reasonable requirements for (1) a proportion of energy used in development in their area to be energy from renewable sources in the locality of the development; (2) a proportion of energy used in development in their area to be low carbon energy from sources in the locality of the development; and (3) development in their area to comply with energy efficiency standards that exceed the energy requirements of building regulations: Planning and Energy Act 2008 s 1(1). 'Development plan document' has the same meaning as in the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see PARA 96 NOTE 4); and 'local planning authority' has the same meaning as in the Town and Country Planning Act 1990 (see PARAS 28-36): Planning and Energy Act 2008 s 2. 'Energy efficiency standards' means standards for the purpose of furthering energy efficiency that are set out or referred to in regulations made by the appropriate national authority under or by virtue of any other enactment, or set out or indorsed in national policies or guidance issued by the appropriate national authority; and 'energy requirements', in relation to building regulations, means requirements of building regulations in respect of energy performance or conservation of fuel and power: Planning and Energy Act 2008 s 1(2). 'Appropriate national authority' means the Secretary of State, in the case of a local planning authority in England, or the Welsh Ministers, in the case of a local planning authority in Wales: Planning and Energy Act 2008 s 1(3).

Policies included in development plan documents under the powers so conferred must not be inconsistent with relevant national policies for England or Wales and those powers are subject to the Planning and Compulsory Purchase Act 2004 ss 19 (in the case of a local planning authority in England) (see PARA 104) and 62 (in the case of a local planning authority in Wales) (see PARA 135): Planning and Energy Act 2008 s 1(4)-(6). 'Relevant national policies' are (a) national policies relating to energy from renewable sources, in the case of policies included by virtue of head (1) above; (b) national policies relating to low carbon energy, in the case of policies included by virtue of head (2); and (c) national policies relating to furthering energy efficiency, in the case of policies included by virtue of head (3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/A. EXERCISE OF FUNCTIONS BY LOCAL PLANNING AUTHORITIES AND JOINT COMMITTEES/92. Exercise of local development functions; in general.

(ii) Local Development in England

A. EXERCISE OF FUNCTIONS BY LOCAL PLANNING AUTHORITIES AND JOINT COMMITTEES

92. Exercise of local development functions; in general.

The Secretary of State¹ may by regulations make provision in connection with the exercise by any person of functions² under Part 2³ of the Planning and Compulsory Purchase Act 2004⁴. The regulations may in particular make provision as to:

- 455 (1) the procedure to be followed by the local planning authority⁵ in carrying out the required sustainability appraisal⁶;
- 456 (2) the procedure to be followed in the preparation of local development documents⁷;
- 457 (3) requirements about the giving of notice and publicity⁸;
- 458 (4) requirements about inspection by the public of a local development document or any other document⁹;
- 459 (5) the nature and extent of consultation with and participation by the public in anything done under that Part of the Act¹⁰;
- 460 (6) the making of representations about any matter to be included in a local development document¹¹;
- 461 (7) consideration of any such representations¹²;
- 462 (8) the remuneration and allowances payable to a person appointed to carry out an independent examination¹³;
- 463 (9) the determination of the time at which anything must be done for the purposes of that Part¹⁴;
- 464 (10) the manner of publication of any draft, report or other document published under that Part¹⁵;
- 465 (11) monitoring the exercise by local planning authorities of their functions under that Part¹⁶;
- 466 (12) the making of reasonable charges for the provision of copies of documents required by or under that Part¹⁷.

In the exercise of any function conferred under or by virtue of Part 2 of the Act, the local planning authority must have regard to any guidance issued by the Secretary of State¹⁸. Furthermore, any person or body must, in exercising any function under that Part in relation to local development documents, exercise that function with the objective of contributing to the achievement of sustainable development¹⁹.

Any step taken or purportedly taken for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004 before 28 September 2004²⁰ must be treated²¹, on and after that date, as having been taken after that date²².

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'functions' see PARA 2 note 1 ante (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

3 Ie under ibid Pt 2 (ss 13-37): see PARAS 89-90 ante, PARA 93 et seq post.

4 Ibid s 36(1).

5 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

6 Planning and Compulsory Purchase Act 2004 s 36(2)(a). The appraisal referred to in head (1) in the text is the appraisal under s 19: see PARA 104 post.

7 Ibid s 36(2)(b). 'Local development document' is to be construed in accordance with s 17 (see PARA 101 post): s 37(2). Such a document may be either a development plan document or a supplementary planning document: see further PARA 96 notes 4, 9 post.

8 Ibid s 36(2)(c).

9 Ibid s 36(2)(d).

10 Ibid s 36(2)(e).

11 Ibid s 36(2)(f).

12 Ibid s 36(2)(g).

13 Ibid s 36(2)(h). The independent examination referred to in head (8) in the text is such an examination under s 20: see PARA 108 post.

14 Ibid s 36(2)(i).

15 Ibid s 36(2)(j).

16 Ibid s 36(2)(k).

17 Ibid s 36(2)(l).

18 Ibid s 34. As to such guidance see PARA 9 ante. See also the Countryside Agency, Environment Agency, English Heritage and English Nature guidance *Environmental Quality in Spatial Planning* (June 2005) which is intended to supplement guidance issued by the Office of the Deputy Prime Minister.

19 Planning and Compulsory Purchase Act 2004 s 39(1)(b), (2). For these purposes, the person or body must have regard to national policies and advice contained in guidance issued by the Secretary of State: s 39(3)(a).

20 Ie before the date on which the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, came into force: see regs 1(1), 6(1).

21 Ie subject to ibid reg 6(2): see PARAS 108 note 15, 109 note 6 post.

22 Ibid reg 6(1).

UPDATE

92 Exercise of local development functions; in general

NOTE 7--Planning and Compulsory Purchase Act 2004 s 37(2) amended: Planning Act 2008 s 180(1), (6)(a).

NOTE 19--For the purposes of the 2004 Act s 39(2), the person or body must (in particular) have regard to the desirability of achieving good design: Planning and Compulsory Purchase Act 2004 s 39(2A) (added by the Planning Act 2008 s 183 (in force in relation to England)).

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93. Annual monitoring report by local planning authority.

Every local planning authority¹ must make an annual report to the Secretary of State². The annual report must contain such information as is prescribed³ as to:

- 467 (1) the implementation of the local development scheme⁴;
- 468 (2) the extent to which the policies set out in the local development documents⁵ are being achieved⁶.

The annual report must:

- 469 (a) be in respect of such period of 12 months as is prescribed⁷;
- 470 (b) be made at such time as is prescribed⁸;
- 471 (c) be in such form as is prescribed⁹;
- 472 (d) contain such other matter as is prescribed¹⁰.

As soon as reasonably practicable after an authority makes an annual report to the Secretary of State it must publish the report on its website¹¹.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 35(1). As to the Secretary of State see PARA 19 ante.

3 Ie prescribed by regulations: see PARA 5 ante.

4 Planning and Compulsory Purchase Act 2004 s 35(2)(a). 'Local development scheme' is to be construed in accordance with s 15 (see PARA 96 et seq post): s 37(1).

5 For the meaning of 'local development document' see PARA 92 note 7 ante.

6 Planning and Compulsory Purchase Act 2004 s 35(2)(b). Where an authority is not implementing a policy specified in a development plan document ('DPD') or an old policy as defined in Sch 8 para 1(4) (see PARA 126 post), the annual report must identify that policy: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(4). Where an annual report identifies a policy pursuant to reg 48(4) the report must include a statement of (1) the reasons why the authority is not implementing the policy; (2) the steps (if any) that the authority intends to take to secure that the policy is implemented; and (3) whether the authority intends to prepare a DPD or a revision of the DPD (as the case may be) to replace or amend the

policy: reg 48(5). Regulation 48(7) applies where a policy specified in a DPD or an old policy specifies (a) an annual number; or (b) a number relating to any other period specified in the DPD or the development plan for the purposes of the Planning and Compulsory Purchase Act 2004 Sch 8 para 1(1) (transitional provisions: see PARAS 126-127 post) of net additional dwellings in any part of the area of the authority: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(6). Where this provision applies, the annual report must specify the number of dwellings built in the part of the authority's area concerned (i) in the period in respect of which the report is made; and (ii) since the policy referred to in reg 48(6) was first published, adopted or approved: reg 48(7).

7 Planning and Compulsory Purchase Act 2004 s 35(3)(a). The period prescribed for these purposes is the period of 12 months commencing on 1 April in each year and ending on 31 March in the following year: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(1).

8 Planning and Compulsory Purchase Act 2004 s 35(3)(b). The time prescribed for these purposes is nine months after the end of the period in respect of which the report is made: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(2).

9 Planning and Compulsory Purchase Act 2004 s 35(3)(c).

10 Ibid s 35(3)(d). An annual report must contain the following information (Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(3), ie:

- 120 (1) the title of the documents specified in the authority's local development scheme;
- 121 (2) in relation to each of those documents:
- 13. (a) the timetable specified in the authority's scheme for the document's preparation;
13
- 14. (b) the information referred to in reg 8(b)(i) and (ii) or (c)(ii) (as the case may be) (see PARA 96 post at heads (b), (c)(ii) in the text);
14
- 15. (c) where, within the period in respect of which the report is made, the first step has been taken in the preparation of the document, (i) the stage the document has reached in its preparation, (ii) if the document's preparation is behind the timetable mentioned in head (a) supra, the reasons for this, and (iii) a timetable relating to the further steps that are likely to be taken for the preparation of the document;
15
 - 122 (3) where any document specified in the authority's local development scheme has been adopted or approved within the period in respect of which the report is made, a statement of that fact and of the date of adoption or approval;
 - 123 (4) the title of any local development order adopted by the authority under the Town and Country Planning Act 1990 s 61A (as added) (see PARA 419 post);
 - 124 (5) in relation to any such order:
- 16. (a) a statement of the authority's reasons for making the order;
16
- 17. (b) a statement about the effect of the order and a comparison of that with the reasons given in the statement to be provided pursuant to head (a) supra;
17
 - 125 (6) where the authority has revoked any local development order, a statement of the title of the order and the authority's reasons for revoking it.

11 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 48(8).

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94. Constitution of joint committees and additional functions.

If one or more local planning authorities¹ agree with one or more county councils² in relation to any area of such a council for which there is also a district council³ to establish a joint committee to be, for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004⁴, the local planning authority:

- 473 (1) for the area specified in the agreement;
- 474 (2) in respect of such matters as are so specified,

the following provisions apply⁵. The Secretary of State⁶ may by order constitute a joint committee to be the local planning authority:

- 475 (a) for the area;
- 476 (b) in respect of those matters⁷.

Such an order must specify the authority or authorities and county council or councils (the 'constituent authorities') which are to constitute the joint committee⁸ and may make provision as to such other matters as the Secretary of State thinks are necessary or expedient to facilitate the exercise by the joint committee of its functions⁹. Nothing in these provisions¹⁰, however, confers on a local planning authority constituted by virtue of such an order any function¹¹ in relation to survey¹².

The policies adopted by the joint committee in the exercise of its functions under Part 2 of the 2004 Act must be taken for the purposes of the planning Acts¹³ to be the policies of each of the constituent authorities which is a local planning authority¹⁴. If, however, an order constituting a joint committee under the above provisions is annulled in pursuance of a resolution of either House of Parliament, then:

- 477 (i) with effect from the date of the resolution the joint committee ceases to be the local planning authority as mentioned in heads (a) and (b) above;
- 478 (ii) anything which the joint committee, as the local planning authority, was required to do for the purposes of Part 2 of the Act must be done for its area by each local planning authority which was a constituent authority of the joint committee;
- 479 (iii) each of those local planning authorities must revise its local development scheme accordingly¹⁵.

If the constituent authorities to a joint committee agree that the joint committee is to be, for the purposes of Part 2 of the Act, the local planning authority for any area or matter which is not the subject of an order under the above provisions, or an earlier such agreement¹⁶, then each of the constituent authorities and the joint committee must revise its local development scheme in accordance with the agreement¹⁷. With effect from the date when the last such revision takes effect the joint committee is, for the purposes of that Part, the local planning authority for that area or matter¹⁸.

1 For the meaning of 'local planning authority' see PARA 89 note 1 ante.

2 As to county councils see PARA 28 note 1 ante.

3 As to district councils see PARA 28 note 2 ante.

4 le for the purposes of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37): see PARA 89 et seq ante, PARA 95 et seq post. See, however, the text and notes 10-12 infra.

5 Ibid s 29(1).

6 As to the Secretary of State see PARA 19 ante.

7 Planning and Compulsory Purchase Act 2004 s 29(2). As to the exercise of this power see eg the North Northamptonshire Joint Committee Order 2005, SI 2005/1552, which came into force on 7 July 2005 (art 1(2)).

8 Planning and Compulsory Purchase Act 2004 s 29(3)(a).

9 Ibid s 29(3)(b). Provision under s 29(3)(b): (1) may include provision corresponding to provisions relating to joint committees in the Local Government Act 1972 Pt VI (ss 101-109) (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370 et seq); (2) may apply (with or without modifications) such enactments relating to local authorities as the Secretary of State thinks appropriate: Planning and Compulsory Purchase Act 2004 s 29(4). For these purposes, a local authority is any of the following: (a) a county council; (b) a district council; (c) a London borough council: s 29(10).

10 le nothing in ibid s 29 or in s 30 (see the text and notes 16-18 infra): s 29(6).

11 le any function in relation to ibid s 13 or s 14: see PARAS 89-90 ante. For the meaning of 'function' see PARA 2 note 1 ante (definition applied by s 117(1), (5)).

12 Ibid s 29(6).

13 For the meaning of 'the planning Acts' see PARA 2 ante.

14 Planning and Compulsory Purchase Act 2004 s 29(7). Section 29(9) applies to any function (1) which is conferred on a local planning authority (within the meaning of the Town and Country Planning Act 1990: see PARA 28 et seq ante) under or by virtue of the planning Acts; and (2) which relates to the authority's local development scheme or local development documents: s 29(8). If the authority is a constituent authority of a joint committee references to the authority's local development scheme or local development documents must be construed as including references to the scheme or documents of the joint committee: s 29(9). For the meaning of 'local development scheme' see PARA 93 note 4 ante; and for the meaning of 'local development document' see PARA 92 note 7 ante.

15 Ibid s 29(5).

16 le an earlier agreement under ibid s 30.

17 Ibid s 30(1), (2).

18 Ibid s 30(3).

UPDATE

94 Constitution of joint committees and additional functions

NOTE 7--See also the Cambridge City Fringes Committee Order 2009, SI 2009/1254.

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95. Dissolution of joint committee.

If a constituent authority¹ requests the Secretary of State² to revoke an order constituting a joint committee³ as the local planning authority⁴ for any area or in respect of any matter, the

following provisions apply⁵. The Secretary of State may revoke the order⁶; and any step taken by the joint committee in relation to a local development scheme⁷ or a local development document⁸ must be treated for the purposes of any corresponding scheme or document⁹ as a step taken by a successor authority¹⁰. If the revocation takes effect at any time when an independent examination is being carried out¹¹ in relation to a local development document the examination must be suspended¹²; but if before the end of the period prescribed¹³ for these purposes, a specified successor authority¹⁴ requests the Secretary of State to do so he may direct that:

- 480 (1) the examination is resumed in relation to the corresponding document;
- 481 (2) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination¹⁵.

1 As to constituent authorities see PARA 94 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to joint committees see PARA 94 ante.

4 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

5 Planning and Compulsory Purchase Act 2004 s 31(1).

6 Ibid s 31(2).

7 For the meaning of 'local development scheme' see PARA 93 note 4 ante.

8 For the meaning of 'local development document' see PARA 92 note 7 ante.

9 The Secretary of State may by regulations make provision as to what is a corresponding scheme or document: Planning and Compulsory Purchase Act 2004 s 31(7). Subject to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 47(5), for the purposes of the Planning and Compulsory Purchase Act 2004 s 31(3), (6) a corresponding document is a document which (1) does not relate to any part of the area of the constituent authority which requested the revocation of the order; and (2) with respect to the area of the successor authority, has substantially the same effect as the original local development document ('LDD'): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 47(2). Head (1) supra does not apply where the constituent authority is a county council for which there is also a district council: reg 47(5).

For the purposes of the Planning and Compulsory Purchase Act 2004 s 31(3), a corresponding scheme is a scheme of a successor authority which (a) specifies a document that is a corresponding document for the purposes of s 31(3); but (b) does not specify the original LDD, as a document which is to be an LDD; and in head (b) supra, 'original LDD' means an LDD prepared by the joint committee constituted by the order under s 29: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 47(3), (4).

10 Planning and Compulsory Purchase Act 2004 s 31(3). A successor authority is (1) a local planning authority which was a constituent authority of the joint committee; (2) a joint committee constituted by order under s 29 for an area which does not include an area which was not part of the area of the joint committee mentioned in s 31(1): s 31(4).

11 As to independent examinations see PARA 108 post.

12 Planning and Compulsory Purchase Act 2004 s 31(5).

13 I.e. prescribed by regulations: see PARA 5 ante. The period prescribed for these purposes is three months starting on the day on which the Secretary of State revokes under s 31(2) an order under s 29 (joint committees): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 47(1).

14 I.e. a successor authority falling within the Planning and Compulsory Purchase Act 2004 s 31(4)(a): see note 10 head (1) supra.

15 Ibid s 31(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/B. DEVELOPMENT SCHEMES/(A) Local Development Schemes/96. Preparation of local development scheme.

B. DEVELOPMENT SCHEMES

(A) LOCAL DEVELOPMENT SCHEMES

96. Preparation of local development scheme.

The local planning authority¹ must prepare and maintain a scheme to be known as its local development scheme². The scheme must specify:

- 482 (1) the documents which are to be local development documents³;
- 483 (2) the subject matter and geographical area to which each document is to relate;
- 484 (3) which documents are to be development plan documents⁴;
- 485 (4) which documents, if any, are to be prepared jointly with one or more other local planning authorities⁵;
- 486 (5) any matter or area in respect of which the authority has agreed, or proposes to agree, to the constitution of a joint committee⁶;
- 487 (6) the timetable for the preparation and revision of the documents;
- 488 (7) such other matters as are prescribed⁷.

The matters, in addition to those mentioned in heads (1) to (7) above, to be specified in a local development scheme or any revision of such a scheme⁸ are:

- 489 (a) in relation to each document to be specified in the scheme or revision as a local development document (an 'LDD'):
- 45 62. (i) its proposed title;
- 63. (ii) its proposed subject matter; and
- 64. (iii) the area proposed to be covered by the document;
- 46 490 (b) in relation to each document to be specified in the scheme or revision as a supplementary planning document (an 'SPD')⁹, the month and year in which the local planning authority or county council, as the case may be, intends to comply with the prescribed requirements for public participation¹⁰ and to adopt the document;
- 491 (c) in relation to each document to be specified in the scheme or revision as a development plan document (a 'DPD') and the local planning authority's statement of community involvement¹¹, the date on which the local planning authority intends to comply with:
- 47 65. (i) the prescribed requirements for pre-submission public participation¹²;
- 66. (ii) the statutory requirements for submission to the Secretary of State for independent examination¹³;
- 48

- 492 (d) in relation to proposals to which any of the specified transitional provisions applies¹⁴:
- 49
67. (i) the timetable for the preparation of the proposals, including the month and year in which the local planning authority intends to adopt the proposals; and
68. (ii) where the proposals are for the alteration of a plan, the area and subject matter of the proposals¹⁵.
- 50

The local planning authority must prepare the scheme in accordance with such other requirements as are prescribed¹⁶. When a local development scheme is prepared it must specify that the adopted proposals map¹⁷ will be revised:

- 493 (A) at the same time as any DPD is adopted;
- 494 (B) so as to illustrate geographically the application of the policies in the DPD or revision¹⁸.

The local planning authority must submit the scheme to the Secretary of State at such time as is prescribed¹⁹ or as the Secretary of State, in a particular case, directs²⁰. It must also at that time send a copy of the scheme to the regional planning body (the 'RPB')²¹ or, if the authority is a London borough council²², to the Mayor of London²³.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 15(1).

3 For the meaning of 'local development document' see PARA 92 note 7 ante; and as to local development documents see PARA 105 et seq post.

4 A development plan document is a document which is a local development document and forms part of the development plan: Planning and Compulsory Purchase Act 2004 s 37(3). Documents which must be development plan documents ('DPDs') are: (1) core strategies; (2) area action plans; and (3) any other document which includes a site allocation policy: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 7. 'Core strategy' means a document of the description referred to in reg 6(3) (see PARA 105 post); and 'site allocation policy' means a policy which allocates a site for a particular use or development: reg 2(1).

5 As to joint local development documents see PARA 106 post.

6 Ie under the Planning and Compulsory Purchase Act 2004 s 29: see PARA 94 ante.

7 Ibid s 15(2). 'Prescribed' means prescribed by regulations made by the Secretary of State: see PARA 5 ante. As to the exercise of this power see the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204; and the text and notes 8-20 infra.

8 As to revision of a local development scheme see PARA 99 post.

9 'Supplementary planning document' means an LDD which is not a DPD, but does not include the local planning authority's statement of community involvement: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1). As to SPDs see further PARA 102 et seq post.

10 Ie with ibid reg 17: see PARA 109 post.

11 As to the statement of community involvement see PARA 103 post.

12 Ie with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26: see PARA 110 post.

13 Ie with the Planning and Compulsory Purchase Act 2004 s 20(1): see PARA 108 post.

14 Ie any of ibid Sch 8 paras 4, 5, 9 and 10: see PARAS 129-130 post.

- 15 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 8.
- 16 Planning and Compulsory Purchase Act 2004 s 15(3)(a).
- 17 'Adopted proposals map' means a document of the description referred to in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 6(6) (see PARA 101 note 11 post): reg 2(1).
- 18 Ibid reg 9.
- 19 The time prescribed for these purposes is six months after the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (ie six months after 28 September 2004: see PARA 4 ante): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 10(1).
- 20 Planning and Compulsory Purchase Act 2004 s 15(3)(b). A local development scheme must be submitted to the Secretary of State by (1) sending it to him electronically; and (2) sending to him four copies of the scheme in paper form: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 10(2).
- 21 As to regional planning bodies see PARAS 24-25 ante.
- 22 As to London borough councils see PARA 28 note 7 ante.
- 23 Planning and Compulsory Purchase Act 2004 s 15(3)(c). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

UPDATE

96 Preparation of local development scheme

TEXT AND NOTES 3-7--Planning and Compulsory Purchase Act 2004 s 15(2) amended: Planning Act 2008 s 15(1), (2).

NOTE 4--Planning and Compulsory Purchase Act 2004 s 37(3) substituted: Planning Act 2008 s 180(1), (6)(b).

TEXT AND NOTES 8-15--SI 2004/2204 reg 8 amended: SI 2008/1371, SI 2009/401.

NOTE 18--SI 2004/2204 reg 9 amended: SI 2008/1371.

NOTE 20--SI 2004/2204 reg 10 substituted: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/B. DEVELOPMENT SCHEMES/(A) Local Development Schemes/97. Secretary of State's powers in relation to local development schemes.

97. Secretary of State's powers in relation to local development schemes.

The Secretary of State¹ may direct the local planning authority² to make such amendments to the local development scheme³ as he thinks appropriate⁴. Such a direction must contain the Secretary of State's reasons for giving it⁵. The local planning authority must comply with a direction so given⁶.

The Secretary of State may make regulations⁷ as to the following matters:

- 495 (1) publicity about the scheme⁸;
- 496 (2) making the scheme available for inspection by the public⁹;
- 497 (3) requirements to be met for the purpose of bringing the scheme into effect¹⁰.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 3 As to preparation of the local development scheme see PARA 96 ante.
- 4 Planning and Compulsory Purchase Act 2004 s 15(4).
- 5 Ibid s 15(5).
- 6 Ibid s 15(6).
- 7 As to the making of regulations see PARA 5 ante.
- 8 Planning and Compulsory Purchase Act 2004 s 15(7)(a).
- 9 Ibid s 15(7)(b). As to the exercise of this power see PARA 98 post.
- 10 Ibid s 15(7)(c). As to the exercise of this power see PARA 98 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/B. DEVELOPMENT SCHEMES/(A) Local Development Schemes/98. Bringing local development schemes into effect.

98. Bringing local development schemes into effect.

For the purpose of bringing a local development scheme¹ or any revision of such a scheme² into effect, the requirements of one of heads (1) to (4) below must be met and the local planning authority³ must resolve that the scheme is to have effect and must specify in that resolution the date from which the scheme is to have effect⁴. The specified requirements are as follows:

- 498 (1) that, before the end of the relevant period⁵, the local planning authority has received from the Secretary of State⁶ notice that he does not intend to give the authority a direction⁷ to amend the scheme⁸;
- 499 (2) that the relevant period has ended and the local planning authority has not received any of the following:
 - 51
 - 69. (a) notice that the Secretary of State does not intend to give the authority a direction to amend the scheme⁹;
 - 70. (b) a direction to amend the scheme; or
 - 71. (c) notice that the Secretary of State requires more time to consider the scheme¹⁰;
 - 52
 - 500 (3) that the local planning authority has received a direction to amend the scheme and has either complied with the direction or received notice that it has been withdrawn¹¹;
 - 501 (4) that the local planning authority has received notice that the Secretary of State requires more time to consider the scheme, and either:
- 53

72. (a) the authority has subsequently received notice that the Secretary of State does not intend to give it a direction to amend the scheme: or
73. (b) the requirements of head (3) above are satisfied¹².
- 54

Where a local development scheme takes effect in accordance with the above provisions, a local planning authority must make a copy of the scheme available for inspection¹³ at its principal office during normal office hours and must publish the scheme on its website¹⁴.

- 1 As to the preparation of a local development scheme see PARA 96 ante.
- 2 As to revision of such a scheme see PARA 99 post.
- 3 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 4 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 11(1).
- 5 For these purposes, 'relevant period' means the period of four weeks starting on the day on which the authority submits the scheme to the Secretary of State under the Planning and Compulsory Purchase Act 2004 s 15(3)(b) (see PARA 96 ante): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 11(6).
- 6 As to the Secretary of State see PARA 20 ante.
- 7 I.e. a direction under the Planning and Compulsory Purchase Act 2004 s 15(4): see PARA 96 ante.
- 8 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 11(2).
- 9 See note 7 supra.
- 10 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 11(3).
- 11 Ibid reg 11(4).
- 12 Ibid reg 11(5).
- 13 'Inspection' means inspection by the public: ibid reg 2(1).
- 14 Ibid reg 12(1).

Copies, documents, representations, directions, matters, notices or statements which under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, are made available for inspection or published on a website may be removed at the time specified in reg 49(3): reg 49(2). The time mentioned in reg 49(2): (1) where the copies, documents, representations, directions, matters, notices or statements relate to a supplementary planning document (an 'SPD') or to the local planning authority's statement of community involvement (see PARA 103 post), is three months after the day on which the SPD or statement of community involvement is adopted; (2) where the copies, documents, representations, directions, matters, notices or statements relate to a development plan document (a 'DPD'), is the end of the period of six weeks referred to in the Planning and Compulsory Purchase Act 2004 s 113(4) (period for challenging the validity of relevant documents: see PARA 42 ante) that applies as regards the DPD concerned: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 49(3). Regulation 49 does not, however, apply to a document or revision which is made available or published under reg 50 (see PARAS 122-124 post): reg 49(1). For the meanings of 'development plan document' and 'supplementary planning document' see PARA 96 notes 4, 9 ante.

Where (a) a person makes a document available for inspection under the 2004 Regulations; (b) that document is not published pursuant to a requirement of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37); and (c) the person is asked by another person for a copy of that document, the person first-mentioned must provide a copy of the document to that other person as soon as reasonably practicable after receipt of that other person's request: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 51(1). Any person who provides a copy under reg 51(1), or a copy of a document published as required by or under the Planning and Compulsory Purchase Act 2004 Pt 2, may make a reasonable charge for the copy: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 51(2).

UPDATE

98 Bringing local development schemes into effect

TEXT AND NOTES 1-12--SI 2004/2204 reg 11 now regs 11, 11A (substituted by SI 2008/1371).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/B. DEVELOPMENT SCHEMES/(A) Local Development Schemes/99. Revision of a local development scheme.

99. Revision of a local development scheme.

The local planning authority¹ must revise its local development scheme²:

- 502 (1) at such time as it considers appropriate;
- 503 (2) when directed to do so by the Secretary of State³.

The specified statutory provisions⁴ apply to the revision of a scheme as they apply to the preparation of the scheme⁵.

Where a revision to a local development scheme takes effect⁶, then within two weeks a local planning authority must incorporate the revision into the scheme previously made available for inspection⁷ and published⁸.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 As to preparation of a local development scheme see PARA 96 ante.

3 Planning and Compulsory Purchase Act 2004 s 15(8). As to the Secretary of State see PARA 19 ante.

4 *Ie* *ibid* s 15(2)-(7): see PARAS 96-97 ante.

5 *Ibid* s 15(9).

6 *Ie* in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 11: see PARA 98 ante.

7 *Ie* under *ibid* reg 12(1): see PARA 98 ante. For the meaning of 'inspection' see PARA 98 note 13 ante.

8 See *ibid* reg 12(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/B. DEVELOPMENT SCHEMES/(B) Minerals and Waste Development Schemes/100. Preparation etc of minerals and waste development scheme.

(B) MINERALS AND WASTE DEVELOPMENT SCHEMES

100. Preparation etc of minerals and waste development scheme.

A county council¹ in respect of any part of its area for which there is a district council² must prepare and maintain a scheme to be known as its minerals and waste development scheme³. The specified statutory provisions regarding preparation and revision⁴ and, subject to prescribed exceptions⁵, the relevant regulations⁶ apply in relation to a minerals and waste development scheme as they apply in relation to a local development scheme⁷.

Where the prescribed requirement of availability⁸ applies to a minerals and waste development scheme, within two weeks the county council must send a copy of the scheme, or of the scheme incorporating the revision⁹, to any local planning authority¹⁰ any part of whose area is within so much of the area of the county council as is mentioned¹¹ above¹².

With certain exceptions¹³, Part 2 of the Planning and Compulsory Purchase Act 2004¹⁴ applies to a minerals and waste development scheme as it applies to a local development scheme and for that purpose:

- 504 (1) references to a local development scheme include references to a minerals and waste development scheme;
- 505 (2) references to a local planning authority include references to a county council¹⁵.

1 As to county councils see PARA 28 note 1 ante.

2 As to district councils see PARA 28 note 2 ante.

3 Planning and Compulsory Purchase Act 2004 s 16(1).

4 *le ibid* s 15 (ignoring s 15(1), (2)(e)): see PARAS 96-97, 99 ante.

5 The Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 5 (see PARA 90 ante), reg 47 (see PARA 95 ante) have no effect in relation to minerals and waste development schemes: reg 3(2).

6 *le the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204: see PARA 90 et seq ante, PARA 105 et seq post.*

7 Planning and Compulsory Purchase Act 2004 s 16(2); Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 3(1)(b).

8 *le ibid* reg 12(1) or (2): see PARAS 98-99 ante.

9 As to revision of the scheme see PARA 99 ante.

10 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

11 *le mentioned in the Planning and Compulsory Purchase Act 2004 s 16(1): see the text and notes 1-3 supra.*

12 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 12(3).

Where within the 2004 Regulations: (1) a person is required to (a) send a document, a copy of a document or any notice to another person; (b) notify another person of any matter; and (2) that other person has an address for the purposes of electronic communications, the document, copy, notice or notification may be sent or made by way of electronic communications: reg 4(1). Where an electronic communication is used as so mentioned or as mentioned in reg 4(2) (see PARA 109 note 18 post), and the communication is received by the recipient outside his office hours, it is to be taken to have been received on the next working day, and for these purposes 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 4(3). 'Address' in relation to electronic communications means any number or address used for the purposes of such communications; and 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING

vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1).

13 The Planning and Compulsory Purchase Act 2004 s 16(3) (see the text and notes 14-15 *infra*) does not apply to: (1) s 17(3) (see PARA 101 *post*); (2) s 24(1)(b), (4), (7) (see PARA 105 *post*); (3) the references in s 24(5) (see PARA 105 *post*) to s 24(4) and the Mayor; (4) ss 29-31 (see PARAS 94-95 *ante*): s 16(4).

14 *Ibid* Pt 2 (ss 13-37): see PARA 89 *et seq ante*, PARA 101 *et seq post*.

15 *Ibid* s 16(3). See also the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 3(1)(b), which provides that, subject to reg 3(2) (see note 5 *supra*), the 2004 regulations apply to a minerals and waste development scheme as they have effect in relation to a local development scheme and for that purpose (1) references to a local development scheme include references to a minerals and waste development scheme; and (2) references to a local planning authority include references to a county council within the meaning of the Planning and Compulsory Purchase Act 2004 s 16(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/101. Local development documents; in general.

C. LOCAL DEVELOPMENT DOCUMENTS

(A) IN GENERAL

101. Local development documents; in general.

A document is a local development document only in so far as it or any part of it:

506 (1) is adopted by resolution of the local planning authority¹ as a local development document;

507 (2) is approved² by the Secretary of State³.

Documents which must be specified in the local development scheme⁴ as local development documents are documents of such descriptions as are prescribed⁵ and the local planning authority's statement of community involvement⁶. The local planning authority may also specify in the scheme such other documents as it thinks are appropriate⁷.

The descriptions of document prescribed for these purposes which must be specified as local development documents ('LDDs') in a local development scheme are:

508 (a) a core strategy, that is to say any document containing statements of:

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74. (i) the development and use of land which the local planning authority wishes to encourage during any specified period;

75. (ii) objectives relating to design and access which the local planning authority wishes to encourage during any specified period;

76. (iii) any environmental, social and economic objectives which are relevant to the attainment of the development and use of land mentioned in head (i) above;

77. (iv) the authority's general policies in respect of the matters referred to in heads (i) to (iii) above⁸; and

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509 (b) where a document of the description mentioned in head (a) above contains policies applying to sites or areas by reference to an Ordnance Survey map⁹, a

submission proposals map, that is to say an LDD which accompanies a development plan document (a 'DPD')¹⁰ and shows how the adopted proposals map¹¹ is to be amended as a result of the submission¹² of that DPD to the Secretary of State¹³.

The descriptions of other documents prescribed for these purposes which, if prepared, must be specified as LDDs in a local development scheme are:

- 510 (A) an area action plan, that is to say any document which relates to part of the area of the local planning authority, identifies that area as an area of significant change or special conservation and contains the authority's policies relevant to areas of significant change or special conservation¹⁴; and
- 511 (B) any other document which includes a site allocation policy¹⁵.

The local development documents must, taken as a whole, set out the authority's policies, however expressed, relating to the development¹⁶ and use¹⁷ of land¹⁸ in its area¹⁹. In the case of the documents which are included in a minerals and waste development scheme²⁰ they must also, taken as a whole, set out the authority's policies, however expressed, in relation to development which is²¹ a county matter²².

If to any extent a policy set out in a local development document conflicts with any other statement or information in the document the conflict must be resolved in favour of the policy²³.

The authority must keep under review its local development documents having regard to the results of any review²⁴ carried out²⁵.

Regulations under these provisions may prescribe which descriptions of local development documents are development plan documents²⁶. They may also prescribe the form and content of the local development documents²⁷ and the time at which any step in the preparation of any such document must be taken²⁸.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Ie under the Planning and Compulsory Purchase Act 2004 s 21 (see PARAS 113, 116-117 post) or s 27 (see PARA 118 post): s 17(8).

3 Ibid s 17(8).

4 As to the local development scheme see PARA 96 et seq ante.

5 Ie prescribed by regulations made by the Secretary of State: see PARA 5 ante. As to the exercise of this power see the text and notes 8-14 infra.

6 Planning and Compulsory Purchase Act 2004 s 17(1). As to the statement of community involvement see PARA 103 post.

7 Ibid s 17(2).

8 See the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 6(1)(a), (3).

9 'Ordnance Survey map' means a map produced by Ordnance Survey or a map on a similar base at a registered scale: reg 2(1).

10 For the meaning of 'development plan document' see PARA 96 note 4 ante.

11 For these purposes, 'the adopted proposals map' means a document which (1) when first adopted shows the matters specified in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 14(4); (2) is revised in the manner specified in reg 9 (see PARA 96 ante); and (3) consists of text and maps, of which the text prevails if the map and text conflict: regs 2(1), 6(6). The adopted proposals map

must be comprised of or contain a map of the local planning authority's area which must (a) be reproduced from, or based on, an Ordnance Survey map; (b) show National Grid lines and reference numbers; and (c) include an explanation of any symbol or notation which it uses: reg 14(1). The adopted proposals map may contain a map, called an inset map, which must (i) comply with the requirements in heads (a)-(c) supra; (ii) be drawn to a larger scale than the map referred to in reg 14(1); and (iii) show the application of the local planning authority's policies to part of the authority's area: reg 14(2). Where the adopted proposals map includes an inset map, the area covered by the inset map must be identified on the map referred to in reg 14(2), and the application of the local planning authority's policies to that area must be shown on the inset map only: reg 14(3). When the adopted proposals map is first adopted it must illustrate geographically the application of the policies in any DPD adopted at the same time and an old policy which applies at that time: reg 14(4).

12 Ie under ibid reg 28: see PARA 108 post.

13 See ibid reg 6(1)(b), (5). Part 6 (regs 24-45) (see PARA 103 et seq post) applies to a submission proposals map as it applies to a DPD; and accordingly, with the exception of regs 25 and 26 (see PARA 110 post), any reference in that Part to a DPD includes a reference to a submission proposals map: reg 24(2). 'Submission proposals map' means a document of the description referred to in reg 6(5): reg 2(1).

14 See ibid reg 6(2)(a), (4).

15 Ibid reg 6(2)(b). For the meaning of 'site allocation policy' see PARA 96 note 4 ante.

16 For the meaning of 'development' see PARA 217 post (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

17 For the meaning of 'use' see PARA 221 note 4 post (definition as applied: see note 16 supra).

18 For the meaning of 'land' see PARA 2 note 10 ante (definition as applied: see note 16 supra).

19 Planning and Compulsory Purchase Act 2004 s 17(3).

20 As to minerals and waste development schemes see PARA 100 ante.

21 Ie within the meaning of the Town and Country Planning Act 1990 s 1, Sch 1 para 1 (as amended) (ignoring Sch 1 para 1(1)(i)): see PARA 38 ante.

22 Planning and Compulsory Purchase Act 2004 s 17(4).

23 Ibid s 17(5).

24 Ie under ibid s 13 or s 14: see PARAS 89-90 ante.

25 Ibid s 17(6).

26 Ibid s 17(7)(a). As to the exercise of this power see the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 7; and PARA 96 ante.

27 Planning and Compulsory Purchase Act 2004 s 17(7)(b). As to the exercise of this power see PARA 102 post. See also note 11 supra.

28 Ibid s 17(7)(c). As to the exercise of this power see PARA 102 post.

UPDATE

101 Local development documents; in general

TEXT AND NOTES 4-7--Planning and Compulsory Purchase Act 2004 s 17(1), (2) omitted: Planning Act 2008 s 180(1), (3)(a).

TEXT AND NOTES 8-15--SI 2004/2204 reg 6(1) amended: SI 2008/1371, SI 2009/401. SI 2004/2204 reg 6(2) amended: SI 2009/401.

NOTE 13--SI 2004/2204 reg 24 substituted: see PARA 110-112.

TEXT AND NOTES 16-19--Planning and Compulsory Purchase Act 2004 s 17(3) amended: Planning Act 2008 s 180(1), (3)(b).

TEXT AND NOTES 20-22--Planning and Compulsory Purchase Act 2004 s 17(4) amended: Planning Act 2008 s 180(1), (3)(c).

TEXT AND NOTES 26-28--Planning and Compulsory Purchase Act 2004 s 17(7)(za) added: Planning Act 2008 s 180(1), (3)(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/102. Form and content of local development documents; in general.

102. Form and content of local development documents; in general.

Except in the case of the submission proposals map or the adopted proposals map¹:

- 512 (1) a local development document (an 'LDD')² must contain a reasoned justification of the policies contained in it³;
- 513 (2) those parts of an LDD which comprise the policies of the LDD and those parts which comprise the reasoned justification required by head (1) above must be clearly identified⁴;
- 514 (3) and only if it includes a site allocation policy⁵, a development plan document (a 'DPD')⁶ must include a submission proposals map showing the changes which will result to the adopted proposals map if the DPD is adopted⁷.

An LDD must contain a title which must name the local planning authority⁸ by which the LDD is prepared⁹ and indicate whether the document is a DPD or a supplementary planning document (an 'SPD')¹⁰. An LDD must also contain a sub-title which must indicate the subject matter of the document and the date on which the document is adopted¹¹.

Where a DPD contains a policy that is intended to supersede another policy, it must state that fact and identify the superseded policy¹². Except for the core strategy¹³, and subject to other prescribed exceptions¹⁴, the policies contained in a DPD must be in conformity with either:

- 515 (a) where a core strategy has been adopted, the policies in the core strategy, or
- 516 (b) in any other case, the policies¹⁵ in the development plan¹⁶.

The policies in an SPD must be in conformity with:

- 517 (i) the policies in the core strategy;
- 518 (ii) the policies in any other DPD; or
- 519 (iii) if neither head (i) nor head (ii) applies, an old policy¹⁷.

1 The subject to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(9): reg 13(1), (2), (4). Regulation 13(1), (2), (4) and (6) does not apply to the submission proposals map or the adopted proposals map: reg 13(9). As to the form and content of those maps see PARA 101 ante.

2 As to local development documents generally see PARA 101 ante.

3 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(1).

4 Ibid reg 13(2).

- 5 For the meaning of 'site allocation policy' see PARA 96 note 4 ante.
- 6 For the meaning of 'development plan document' see PARA 96 note 4 ante.
- 7 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(4).
- 8 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 9 As to preparation of LDDs see PARA 104 post.
- 10 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(3)(a). For the meaning of 'supplementary planning document' see PARA 96 note 9 ante.
- 11 Ibid reg 13(3)(b).
- 12 Ibid reg 13(5).
- 13 Ie subject to ibid reg 13(10); reg 13(6). Ibid reg 13(6) does not apply to the core strategy: reg 13(10). For the meaning of 'core strategy' see PARA 96 note 4 ante.
- 14 Ie subject to ibid reg 13(7), (9); reg 13(6). Regulation 13(6) does not apply in a case falling within reg 13(6)(b) (see head (b) in the text) where the policies in the DPD are intended to supersede an old policy as defined in the Planning and Compulsory Purchase Act 2004 Sch 8 para 1(4) (see PARA 126 post): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(7). As to reg 13(9) see note 1 supra.
- 15 Ie the policies in the development plan as referred to in the Planning and Compulsory Purchase Act 2004 Sch 8 para 1(1)(b): see PARA 127 post.
- 16 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(6).
- 17 Ibid reg 13(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/103. Statement of community involvement.

103. Statement of community involvement.

The local planning authority¹ must prepare a statement of community involvement². The statement of community involvement is a statement of the authority's policy as to the involvement in the exercise of specified functions of the authority³ of persons who appear to the authority to have an interest in matters relating to development⁴ in its area⁵. For certain statutory purposes⁶ the statement of community involvement is not a local development document⁷. With certain modifications, however, the requirement for independent examination⁸ applies to the statement of community involvement as if it were a development plan document⁹. Furthermore, in the specified statutory provisions¹⁰ references to a development plan document include references to the statement of community involvement¹¹; and Part 6 of the relevant regulations¹² applies to a local planning authority's statement of community involvement as it applies to a development plan document (a 'DPD')¹³.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 18(1).

3 le the authority's functions under *ibid* ss 19, 26 and 28 (see PARAS 104, 106-107, 123 post) and under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 213 et seq post): Planning and Compulsory Purchase Act 2004 s 18(2). For the meaning of 'functions' see PARA 2 note 1 ante (definition applied by s 117(1), (5)).

4 For the meaning of 'development' see PARA 217 post (definition as applied: see note 3 supra).

5 Planning and Compulsory Purchase Act 2004 s 18(2).

6 le for the purposes of *ibid* ss 19(2), 24: see PARAS 104-105 post.

7 *Ibid* s 18(3). For the meaning of 'local development document' see PARA 92 note 7 ante.

8 le *ibid* s 20: see PARA 108 post.

9 See *ibid* s 18(4). In s 20(5)(a), however: (1) the reference to s 19 must be construed as if it does not include a reference to s 19(2); (2) the reference to s 24(1) must be ignored: s 18(5).

10 le in ss 22, 23(2)-(5): see PARAS 119-121 post.

11 *Ibid* s 18(6).

12 le the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, Pt 6 (regs 24-45): see PARA 110 et seq post.

13 *Ibid* reg 24(1). Accordingly, unless otherwise indicated, any reference in Pt 6 to a DPD includes a reference to a statement of community involvement: reg 24(1).

UPDATE

103 Statement of community involvement

TEXT AND NOTES 6, 7--Planning and Compulsory Purchase Act 2004 s 18(3) substituted, s 18(3A) added: Planning Act 2008 s 180(1), (4)(a), (b).

TEXT AND NOTES 8-11--Planning and Compulsory Purchase Act 2004 s 18(4)-(6) omitted: Planning Act 2008 s 180(1), (4)(c).

TEXT AND NOTES 12, 13--SI 2004/2204 reg 24 substituted: see PARA 110-112.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/104. Preparation of local development documents.

104. Preparation of local development documents.

Local development documents¹ must be prepared in accordance with the local development scheme². In preparing a local development document the local planning authority³ must have regard to:

520 (1) national policies and advice contained in guidance issued by the Secretary of State⁴;

521 (2) the regional spatial strategy (the 'RSS')⁵ for the region⁶ in which the area of the authority is situated, if the area is outside Greater London⁷;

522 (3) the spatial development strategy⁸ if the authority is a London borough⁹ or if any part of the authority's area adjoins Greater London;

- 523 (4) the RSS for any region which adjoins the area of the authority;
- 524 (5) the Wales Spatial Plan¹⁰ if any part of the authority's area adjoins Wales;
- 525 (6) the community strategy¹¹ prepared by the authority;
- 526 (7) the community strategy for any other authority whose area comprises any part of the area of the local planning authority;
- 527 (8) any other local development document which has been adopted by the authority¹²;
- 528 (9) the resources likely to be available for implementing the proposals in the document;
- 529 (10) such other matters as the Secretary of State prescribes¹³.

The matters additional to those specified in heads (1) to (10) above which are prescribed for these purposes are:

- 530 (a) the strategy prepared under the Regional Development Agencies Act 1998¹⁴ for the region in which the area of the local planning authority is situated;
- 531 (b) any local transport plan¹⁵, the policies of which affect any part of the local planning authority's area;
- 532 (c) any other policies prepared under the Transport Act 2000¹⁶ which affect any part of the local planning authority's area;
- 533 (d) the objectives of preventing major accidents¹⁷ and limiting the consequences of such accidents;
- 534 (e) the need:
- 57 78. (i) in the long term, to maintain appropriate distances between establishments¹⁸ and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest; and
- 79. (ii) in the case of existing establishments¹⁹, for additional technical measures²⁰ so as not to increase the risks to people;
- 58 535 (f) the national waste strategy²¹;
- 536 (g) where a local planning authority's area or part of the area adjoins Scotland, the National Planning Framework for Scotland, published by the Scottish Executive in April 2004²².

In preparing the other local development documents the authority must also comply with its statement of community involvement²³; but this does not apply at any time before the authority has adopted that statement²⁴.

The local planning authority must also carry out an appraisal of the sustainability of the proposals in each document and prepare a report of the findings of the appraisal²⁵.

The Secretary of State may by regulations make provision as to any further documents which must be prepared by the authority in connection with the preparation of a local development document and as to the form and content of such documents²⁶.

1 For the meaning of 'local development document' see PARA 92 note 7 ante.

2 Planning and Compulsory Purchase Act 2004 s 19(1). As to local development schemes see PARA 96 et seq ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

4 As to such guidance see PARA 9 ante; and as to the Secretary of State see PARA 19 ante.

- 5 As to the RSS see PARA 72 ante.
- 6 For the meaning of 'region' see PARA 24 note 4 ante.
- 7 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 8 As to the spatial development strategy for Greater London see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.
- 9 As to London borough councils see PARA 28 note 7 ante.
- 10 As to the Wales Spatial Plan see PARAS 87-88 ante.
- 11 The community strategy is the strategy prepared by an authority under the Local Government Act 2000 s 4 (see LOCAL GOVERNMENT vol 69 (2009) PARA 464): Planning and Compulsory Purchase Act 2004 s 19(7).
- 12 As to adoption of local development documents see PARA 119 et seq post.
- 13 Planning and Compulsory Purchase Act 2004 s 19(2). 'Prescribes' means prescribes by regulations: see PARA 5 ante.
- 14 Ie under the Regional Development Agencies Act 1998 s 7 (as amended): see TRADE AND INDUSTRY vol 97 (2010) PARA 988.
- 15 For these purposes, 'local transport plan' has the same meaning as in the Transport Act 2000 s 108(3) (ie a document containing the local transport authority's policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within its area: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1190): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 15(3).
- 16 Ie under the Transport Act 2000 s 108(1), (2): see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1190.
- 17 For the meaning of 'major accident' see PARA 1211 note 2 post (definition applied by virtue of the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 15(2)).
- 18 For the meaning of 'establishment' see PARA 1211 note 2 post (definition as applied: see note 17 supra).
- 19 As to existing establishments see PARA 1211 note 4 post.
- 20 Ie in accordance with EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) on the control of major accident hazards involving dangerous substances, art 5: see PARA 1211 post.
- 21 'National waste strategy' means any statement which contains the Secretary of State's policies in relation to the recovery and disposal of waste in England, and which is made under the Environmental Protection Act 1990 s 44A (as added) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 627), or pending the publication of the first such statement, any relevant waste disposal plan prepared under s 50 (repealed): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1).
- 22 Ibid reg 15(1).
- 23 Planning and Compulsory Purchase Act 2004 s 19(3). As to the statement of community involvement see PARA 103 ante.
- 24 Ibid s 19(4).
- 25 Ibid s 19(5).
- 26 Ibid s 19(6).

UPDATE

104 Preparation of local development documents

TEXT AND NOTES--Planning and Compulsory Purchase Act 2004 s 19(1), (2), (3), (5) amended: Planning Act 2008 s 180(1), (5). Development plan documents must (taken

as a whole) include policies designed to secure that the development and use of land in the local planning authority's area contribute to the mitigation of, and adaptation to, climate change: Planning and Compulsory Purchase Act 2004 s 19(1A) (added by the Planning Act 2008 s 182).

TEXT AND NOTES 11, 13--Heads (6), (7). For 'community strategy' read 'sustainable community strategy': Planning and Compulsory Purchase Act 2004 s 19(2)(f), (g), (7) (amended by Sustainable Communities Act 2007 s 7(2)(b)). As to sustainability of local communities see LOCAL GOVERNMENT vol 69 (2009) PARAS 465-468.

NOTE 13--As to the compliance of an affordable housing policy with s 19(2) see *Barratt Developments plc v City of Wakefield MDC* [2009] EWHC 3208 (Admin), [2009] All ER (D) 113 (Dec).

NOTE 15--Transport Act 2000 s 108(3) amended: Transport (Wales) Act 2006 s 3, Schedule para 2(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/105. Conformity with regional strategy.

105. Conformity with regional strategy.

The local development documents¹ must be in general conformity with:

- 537 (1) the regional spatial strategy (the 'RSS')² if the area of the local planning authority³ is in a region other than London⁴;
- 538 (2) the spatial development strategy⁵ if the local planning authority is a London borough council⁶.

A local planning authority whose area is in a region other than London:

- 539 (a) must request the opinion in writing of the regional planning body (the 'RPB')⁷ as to the general conformity of a development plan document⁸ with the RSS;
- 540 (b) may request the opinion in writing of the RPB as to the general conformity of any other local development document with the RSS⁹.

Not later than the end of the period prescribed¹⁰ for these purposes the RPB must send its opinion to the Secretary of State and to the local planning authority¹¹.

A local planning authority which is a London borough council:

- 541 (i) must request the opinion in writing of the Mayor of London¹² as to the general conformity of a development plan document with the spatial development strategy;
- 542 (ii) may request the opinion in writing of the Mayor as to the general conformity of any other local development document with the spatial development strategy¹³.

Whether or not the local planning authority makes a request for an opinion as mentioned above, the RPB or the Mayor, as the case may be, may give an opinion as to the general

conformity of a local development document with the RSS or the spatial development strategy, as the case may be¹⁴.

If in the opinion of the RPB a document is not in general conformity with the RSS, the RPB must be taken to have made representations¹⁵ seeking a change to the document¹⁶; but the Secretary of State may in any case direct that this provision must be ignored¹⁷. If in the opinion of the Mayor a document is not in general conformity with the spatial development strategy the Mayor must be taken to have made representations seeking a change to the document¹⁸.

1 For the meaning of 'local development document' see PARA 92 note 7 ante.

2 As to the RSS see PARA 72 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

4 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 As to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.

6 Planning and Compulsory Purchase Act 2004 s 24(1). As to London borough councils see PARA 28 note 7 ante.

7 As to regional planning bodies see PARAS 24-25 ante. If at any time no body is recognised as the RPB under *ibid* s 2 (see PARA 24 ante) the functions of the RPB under s 24 (see the text and notes 8-18 *infra*) must be exercised by the Secretary of State and s 24(3)(a), (6), (8) must be ignored: s 24(9). As to the Secretary of State see PARA 19 ante.

8 For the meaning of 'development plan document' see PARA 96 note 4 ante.

9 Planning and Compulsory Purchase Act 2004 s 24(2).

10 *Ie* prescribed by regulations: see PARA 5 ante. The prescribed period for the purposes of an opinion under *ibid* s 24(2)(a) or s 24(4)(a) (conformity of development plan documents: see heads (a), (i) in the text) is six weeks starting on the day the request is made: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 30(2). A local planning authority must make such a request on the same day that it submits a development plan document (a 'DPD') to the Secretary of State: reg 30(1). At the date at which this title states the law, no corresponding period was prescribed for the purposes of an opinion as to the conformity of other local development documents.

11 Planning and Compulsory Purchase Act 2004 s 24(3).

12 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

13 Planning and Compulsory Purchase Act 2004 s 24(4). See also note 10 *supra*.

14 *Ibid* s 24(5).

15 As to the making of representations see PARA 110 et seq post.

16 Planning and Compulsory Purchase Act 2004 s 24(6).

17 *Ibid* s 24(8).

18 *Ibid* s 24(7).

UPDATE

105 Conformity with regional strategy

TEXT AND NOTES--Planning and Compulsory Purchase Act 2004 s 24 amended: Local Democracy, Economic Development and Construction Act 2009 Sch 7.

NOTE 6--As to the compliance of an affordable housing policy with s 24(1) see *Barratt Developments plc v City of Wakefield MDC* [2009] EWHC 3208 (Admin), [2009] All ER (D) 113 (Dec).

NOTE 10--SI 2004/2204 reg 30 substituted: see PARA 110-112.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/106. Joint local development documents.

106. Joint local development documents.

Two or more local planning authorities¹ may agree to prepare one or more joint local development documents². A joint local development document is a local development document prepared jointly by two or more local planning authorities³.

Part 2 of the Planning and Compulsory Purchase Act 2004⁴ applies for the purposes of any step which may be or is required to be taken in relation to a joint local development document as it applies for the purposes of any step which may be or is required to be taken in relation to a local development document⁵; and for those purposes anything which must be done by or in relation to a local planning authority in connection with a local development document must be done by or in relation to each of the authorities mentioned above in connection with a joint local development document⁶.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 28(1). For the meaning of 'local development document' see PARA 92 note 7 ante. As to withdrawal from such an agreement see PARA 107 post.

3 Ibid s 28(10).

4 Ie ibid Pt 2 (ss 13-37): see PARA 89 et seq ante, PARA 107 et seq post.

5 Ibid s 28(2).

6 Ibid s 28(3). Any requirement of Pt 2 in relation to the regional spatial strategy (the 'RSS') is a requirement in relation to the RSS for the region in which each authority mentioned in s 28(1) is situated; and if those authorities include one or more London borough councils the requirements of Pt 2 in relation to the spatial development strategy also apply: s 28(4), (5). As to the RSS see PARA 72 ante; and as to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq. As to London borough councils see PARA 28 note 7 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(A) In general/107. Withdrawal from an agreement to prepare joint local development documents.

107. Withdrawal from an agreement to prepare joint local development documents.

The following provisions apply if a local planning authority¹ withdraws from an agreement² to prepare one or more joint local development documents³. Any step taken in relation to the document must be treated as a step taken by:

- 543 (1) an authority which was a party to the agreement for the purposes of any corresponding document⁴ prepared by it;
- 544 (2) two or more other authorities who were parties to the agreement for the purposes of any corresponding joint local development document⁵.

Any independent examination⁶ of a local development document to which the agreement relates must be suspended⁷. If before the end of the period prescribed⁸ for these purposes, however, an authority which was a party to the agreement requests the Secretary of State to do so, he may direct that the examination is resumed in relation to the corresponding document and any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination⁹.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 I.e. such an agreement as is mentioned in the Planning and Compulsory Purchase Act 2004 s 28(1): see PARA 106 ante.

3 Ibid s 28(6). For the meaning of 'local development document' see PARA 92 note 7 ante.

4 The Secretary of State may by regulations make provision as to what is a corresponding document: ibid s 28(11). As to the making of regulations generally see PARA 5 ante; and as to the Secretary of State see PARA 19 ante.

A corresponding document for these purposes is a document which (1) does not relate to any part of the area of the authority that has withdrawn from the agreement; and (2) with respect to the areas of the local planning authorities which prepared it, has substantially the same effect as the original joint document; and 'original joint document' means a joint local development document ('LDD') prepared pursuant to the agreement: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 46(2), (3).

5 Planning and Compulsory Purchase Act 2004 s 28(7).

6 As to independent examination see PARA 108 post.

7 Planning and Compulsory Purchase Act 2004 s 28(8).

8 I.e. prescribed by regulations: see PARA 5 ante. The period prescribed for these purposes is three months starting on the day on which any local planning authority which is a party to the agreement withdraws from it: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 46(1).

9 Planning and Compulsory Purchase Act 2004 s 28(9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(B) Independent Examination of Development Plan Documents/108. Submission for independent examination.

(B) INDEPENDENT EXAMINATION OF DEVELOPMENT PLAN DOCUMENTS

108. Submission for independent examination.

The local planning authority¹ must submit every development plan document² to the Secretary of State³ for independent examination⁴. The purpose of an independent examination is to determine in respect of the development plan document:

- 545 (1) whether it satisfies the specified statutory requirements⁵;
- 546 (2) whether it is sound⁶.

The authority must not, however, submit such a document unless it has complied with any relevant requirements contained in regulations under Part 2 of the Planning and Compulsory Purchase Act 2004⁷ and it thinks the document is ready for independent examination⁸.

The authority must also send to the Secretary of State, in addition to the development plan document, such other documents, or copies of documents, as are prescribed and such information as is prescribed⁹. The documents prescribed for these purposes are:

- 547 (a) the sustainability appraisal report¹⁰;
- 548 (b) if the authority has adopted its statement of community involvement¹¹, that statement;
- 549 (c) a statement setting out:
 - 59 80. (i) which of the specified bodies the authority has consulted¹²;
 - 81. (ii) how these bodies, and any other persons whom the authority has consulted, were consulted;
 - 82. (iii) a summary of the main issues raised in those consultations; and
 - 83. (iv) how those main issues have been addressed in the development plan document (the 'DPD');
 - 60
- 550 (d) a statement setting out:
 - 61 84. (i) if representations were made¹³, the number of representations made, a summary of the main issues raised in those representations, and how those main issues have been addressed in the DPD; or
 - 85. (ii) that no such representations were made;
 - 62
- 551 (e) such supporting documents as in the opinion of the authority are relevant to the preparation of the DPD¹⁴.

The examination must be carried out by a person appointed by the Secretary of State¹⁵. Any person who makes representations seeking to change a development plan document¹⁶ must, if he so requests, be given the opportunity to appear before and be heard by the person carrying out the examination¹⁷. Where a person requests such an opportunity, the local planning authority must, at least six weeks before the opening of an independent examination, publish on its website the time and place at which the examination is to be held and the name of the person appointed to carry out the examination¹⁸. It must also notify any person who has made a representation¹⁹ and not withdrawn it of those matters²⁰ and must give notice by local advertisement²¹ of those matters²².

The person appointed to carry out the examination must make recommendations and give reasons for the recommendations²³; and the local planning authority must publish the recommendations and the reasons²⁴. When the local planning authority complies with this requirement for publication it must:

- 552 (A) make the recommendations of the person appointed and his reasons for those recommendations available for inspection²⁵ during normal office hours at the places at which the pre-submission proposals documents²⁶ were made available²⁷;
- 553 (B) publish the recommendations and reasons on its website; and
- 554 (C) give notice to those persons who requested to be notified of the publication of the recommendations of the person appointed that they have been so published²⁸.

1 For the meaning of 'local planning authority' for these purposes see PARA see PARA 89 note 1 ante.

2 For the meaning of 'development plan document' see PARA 96 note 4 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Planning and Compulsory Purchase Act 2004 s 20(1). An examination of any document or plan for the purposes of Pt 2 (ss 13-37) (see PARA 89 et seq ante, PARA 109 et seq post) is a statutory inquiry within the meaning of the Tribunals and Inquiries Act 1992: Planning and Compulsory Purchase Act 2004 s 114. See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15.

5 Ie whether it satisfies the requirements of ibid ss 19, 24(1) (see PARAS 104-105 ante), regulations under s 17(7) (see PARA 101 ante) and any regulations under s 36 relating to the preparation of development plan documents (see PARAS 92, 101 et seq ante, PARA 109 et seq post): s 20(5)(a).

6 Ibid s 20(5).

7 Ie regulations under ibid Pt 2: see PARA 89 et seq ante, PARA 109 et seq post.

8 Ibid s 20(2).

9 Ibid s 20(3).

10 For the meaning of 'sustainability appraisal report' see PARA 109 note 10 post.

11 As to the statement of community involvement see PARA 103 ante.

12 Ie pursuant to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(1): see PARA 110 post.

13 Ie under ibid reg 27(2): see PARA 110 post.

14 Ibid reg 28(1). Of the documents and statements mentioned or referred to in reg 28(1), four copies of each must be sent in paper form and one copy of those mentioned or referred to in reg 28(1)(a)-(d) (see heads (a)-(d) in the text) and, if practicable, of those referred to in reg 28(1)(e) (see head (e) in the text), must be sent electronically: reg 28(2).

A local planning authority which has, before 28 September 2004, taken or purportedly taken any step for the purposes of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) which is treated as having been taken after that date by virtue of the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(1) (see PARA 92 the text and notes 20-22 ante) must: (1) prepare as described in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 28(1)(c), a statement about pre-submission consultation matters required for the preparation of a local development document (referred to in those Regulations as a development plan document); and (2) prepare, as described in reg 28(1)(d), a statement about representations made on proposals for a development plan document; (3) take, as regards the statements referred to in heads (1)-(2) supra, such other steps as are required by reg 28 to be taken as regards development plan documents; but nothing in this provision requires the authority to satisfy the requirements of the Planning and Compulsory Purchase Act 2004 s 19(1) (see PARA 104 ante): Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(2)(c), (d), (3).

15 Planning and Compulsory Purchase Act 2004 s 20(4). As to the remuneration etc of the person appointed to conduct the examination see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (England) Regulations 2004, SI 2004/421; and PARA 658 post.

16 As to such representations see PARA 112 post.

17 Planning and Compulsory Purchase Act 2004 s 20(6).

- 18 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 34(1), (2)(a), (3).
- 19 le in accordance with ibid reg 29(1) (see PARA 111 post) or reg 33(1) (see PARA 112 post): reg 34(2)(b).
- 20 Ibid reg 34(2)(b).
- 21 'By local advertisement' means by publication on at least one occasion in a local newspaper circulating in the whole of the area of the local planning authority: ibid reg 2(1).
- 22 Ibid reg 34(2)(c).
- 23 Planning and Compulsory Purchase Act 2004 s 20(7).
- 24 Ibid s 20(8). The local planning authority must comply with s 20(8): (1) as soon as reasonably practicable after the day on which the DPD is adopted (see PARA 121 post); or (2) if the Secretary of State gives a direction under s 21(1) or (4) (see PARAS 113, 116 post) after the person appointed has complied with s 20(7), as soon as reasonably practicable after receipt of the direction: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 35(1).
- 25 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 26 For the meaning of 'pre-submission proposals documents' see PARA 110 note 17 post.
- 27 le under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 post.
- 28 Ibid reg 35(2).

UPDATE

108 Submission for independent examination

NOTE 14--SI 2004/2204 regs 24-33 substituted: see PARA 110-112.

NOTE 15--See also Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006, SI 2006/3227.

NOTES 19, 20--SI 2004/2204 reg 34(2)(b) amended: SI 2008/1371.

NOTE 28--SI 2004/2204 reg 35(2) amended: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(C) Consultation and Public Participation/109. Public participation before adoption of a supplementary planning document.

(C) CONSULTATION AND PUBLIC PARTICIPATION

109. Public participation before adoption of a supplementary planning document.

Before a local planning authority¹ adopts a supplementary planning document (an 'SPD')² it must:

- 555 (1) make copies of the SPD documents³ and a statement of the SPD matters⁴
available for inspection during normal office hours at its principal office and at such
other places within its area as the authority considers appropriate⁵; and
- 556 (2) prepare a statement setting out:
- 63
86. (a) the names of any persons whom the authority consulted in connection with the
preparation of the SPD;
87. (b) how those persons were consulted;
88. (c) a summary of the main issues raised in those consultations;
89. (d) how those issues have been addressed in the SPD⁶.
- 64

At the time the authority complies with head (1) above it must publish on its website the SPD documents, the SPD matters, and a statement of the fact that the SPD documents are available for inspection and of the places and times at which they can be inspected⁷. At that time it must also send to each of the specific consultation bodies⁸, to the extent that the local planning authority thinks that the SPD affects the body, and to such of the general consultation bodies⁹ as the local planning authority considers appropriate:

- 557 (i) the SPD;
- 558 (ii) the sustainability appraisal report¹⁰;
- 559 (iii) the consultation statement¹¹;
- 560 (iv) such of the supporting documents as are relevant to the body to which the
documents are being sent;
- 561 (v) notice of the SPD matters; and
- 562 (vi) the statement¹² of the fact that the SPD documents are available for
inspection and of the places and times at which they can be inspected¹³.

The authority must also give notice at that time by local advertisement¹⁴ of the SPD matters and of the fact that the SPD documents are available for inspection and the places and times at which they can be inspected¹⁵; and must make a request¹⁶ for an opinion as to conformity with regional strategy¹⁷.

Any person may make representations¹⁸ about an SPD¹⁹. Any such representations must be made within the period²⁰, and sent to the address and, where appropriate, the person, specified²¹ pursuant to the above provisions²². A local planning authority must not adopt an SPD until it has considered any representations so made and has prepared a statement setting out a summary of the main issues raised in those representations and how those main issues have been addressed in the SPD which the authority intends to adopt²³. If, however, a local planning authority thinks that a representation made in relation to a local development document²⁴ is in substance a representation or objection in respect of anything which is done or proposed to be done in pursuance of certain specified statutory provisions²⁵ then the authority may disregard the objection²⁶.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 For the meaning of 'SPD' see PARA 96 note 9 ante; and as to adoption of an SPD see PARA 120 post.

3 For these purposes, 'SPD documents' means (1) the SPD; (2) the sustainability appraisal report (see note 10 infra); (3) the consultation statement (see note 11 infra); and (4) such supporting documents as in the opinion of the authority are relevant to the preparation of the SPD: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 16(1), (2).

4 For these purposes, 'SPD matters' means (1) the title of the SPD; (2) the subject matter of, and the area covered by, the SPD; (3) the period within which representations about the SPD must be made in accordance with *ibid* reg 18(2)(a) (see PARA 110 post); (4) the address to which and, where appropriate, the person to whom

representations (whether made by way of electronic communications or otherwise) must be sent in accordance with reg 18(2)(b) (see PARA 110 post); (5) a statement that any representations may be accompanied by a request to be notified at a specified address of the adoption of the SPD: reg 16(1), (2).

5 Ibid reg 17(1)(a).

6 Ibid reg 17(1)(b). A local planning authority which has, before 28 September 2004, taken or purportedly taken any step for the purposes of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) which is treated as having been taken after that date by virtue of the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(1) (see PARA 92 the text and notes 20-22 ante) must: (1) prepare, as described in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(1), a statement about the participation of the public in the preparation of a local development document (referred to in those Regulations as a supplementary planning document); (2) as described in reg 18(4)(b) (see the text to note 23 infra), prepare a statement about representations made on a supplementary planning document; (3) make that statement available for inspection and arrange for its publication, as described in such other provisions of regs 17-19 as they relate to supplementary planning documents; but nothing in this provision requires the authority to satisfy the requirements of the Planning and Compulsory Purchase Act 2004 s 19(1) (see PARA 104 ante): Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(2)(a), (b), (3).

7 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(2)(a).

8 'Specific consultation bodies', in relation to a local planning authority whose area is in a region other than London, means the regional planning body (see PARA 24 ante) and the bodies specified or described in heads (1) to (10) infra, ie (1) the Countryside Agency; (2) the Environment Agency; (3) the Historic Buildings and Monuments Commission for England ('English Heritage'); (4) English Nature; (5) the Strategic Rail Authority; (6) the Highways Agency; (7) a relevant authority any part of whose area is in or adjoins the area of the local planning authority; (8) a regional development agency whose area is in or adjoins the area of the local planning authority; (9) any person (a) to whom the electronic communications code applies by virtue of a direction given under the Communications Act 2003 s 106(3)(a) (see TELECOMMUNICATIONS vol 97 (2010) PARA 151); and (b) who owns or controls electronic communications apparatus situated in any part of the area of the local planning authority; (10) if it exercises functions in any part of the local planning authority's area: (a) a strategic health authority; (b) a person to whom a licence has been granted under the Electricity Act 1989 s 6(1)(b) or (c) (as substituted and amended); (c) a person to whom a licence has been granted under the Gas Act 1986 s 7(2) (as substituted and amended); (d) a sewerage undertaker; (e) a water undertaker: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1). If the authority is a London borough council, 'specific consultation bodies' means the Mayor of London and the bodies specified or described in heads (1)-(10) supra: reg 2(1). 'Relevant authority' means a local planning authority, a county council referred to in the Planning and Compulsory Purchase Act 2004 s 16(1) (see PARA 100 ante) or a parish council: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1). 'Electronic communications apparatus' has the same meaning as in PARA 1(1) of the electronic communications code; and 'electronic communications code' has the same meaning as in the Communications Act 2003 s 106(1) (see TELECOMMUNICATIONS vol 97 (2010) PARA 151): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1).

As to the Countryside Agency and English Nature see PARA 70 ante; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq; as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; as to regional development agencies see TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq; as to the Strategic Rail Authority see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 5, 46 and as to its prospective abolition see the Railways Act 2005 s 1, Sch 1; as to strategic health authorities see HEALTH SERVICES vol 54 (2008) PARA 94 et seq; and as to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq. As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81; and as to the Highways Agency see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 52.

9 'General consultation bodies' means the following bodies: (1) voluntary bodies some or all of whose activities benefit any part of the authority's area; (2) bodies which represent the interests of different racial, ethnic or national groups in the authority's area; (3) bodies which represent the interests of different religious groups in the authority's area; (4) bodies which represent the interests of disabled persons in the authority's area; (5) bodies which represent the interests of persons carrying on business in the authority's area: ibid reg 2(1). For these purposes, 'disabled person' has the same meaning as in the Disability Discrimination Act 1995 s 1(2) (see DISCRIMINATION vol 13 (2007 Reissue) PARA 511): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1).

10 'Sustainability appraisal report' means the report prepared pursuant to the Planning and Compulsory Purchase Act 2004 19(5)(b) (see PARA 104 ante): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 2(1).

- 11 For these purposes, 'consultation statement' means the statement prepared under *ibid* reg 17(1): reg 16(1), (2).
- 12 *Ie* the statement referred to in *ibid* reg 17(2)(a)(iii): see the text to note 7 *supra*.
- 13 *Ibid* reg 17(2)(b), (3).
- 14 'By local advertisement' means by publication on at least one occasion in a local newspaper circulating in the whole of the area of the local planning authority: *ibid* reg 2(1).
- 15 *Ibid* reg 17(2)(c).
- 16 *Ie* under the Planning and Compulsory Purchase Act 2004 s 24(2)(b) or (4)(b): see PARA 105 *ante*.
- 17 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(2)(d).
- 18 Where within the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, a person may make representations on any matter or document, those representations may be made either in writing or by way of electronic communications: reg 4(2).
- 19 *Ibid* reg 18(1).
- 20 The period referred to in the text must be a period of not less than four weeks or more than six weeks starting on the day on which the local planning authority complies with reg 17(1): reg 18(3).
- 21 *Ie* specified pursuant to *ibid* reg 17(2).
- 22 *Ibid* reg 18(2).
- 23 *Ibid* reg 18(4). For transitional provisions see note 6 *supra*.
- 24 For the meaning of 'local development document' see PARA 92 note 7 *ante*.
- 25 *Ie* a representation to which the Planning and Compulsory Purchase Act 2004 s 32 applies. Section 32 applies to any representation or objection in respect of anything which is done or is proposed to be done in pursuance of: (1) an order or scheme under the Highways Act 1980 s 10 (as amended) (trunk roads), s 14 (as amended) (roads crossing or joining trunk or classified roads), s 16 (special roads), s 18 (as amended) (supplementary orders relating to special roads), s 106(1) or (3) (bridges or tunnels under or over navigable waters) or s 108(1) (diversion of navigable watercourses) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703 et seq, 710, 731 et seq, 878 et seq); (2) an order or scheme under the Highways Act 1959 s 7, s 9, s 11, s 13 or s 20 (all repealed), the Highways (Miscellaneous Provisions) Act 1961 s 3 (repealed) or the Highways Act 1971 s 1 or s 10 (both repealed) (which provisions were replaced by the provisions mentioned in head (1) *supra*); (3) an order under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 *post*): Planning and Compulsory Purchase Act 2004 s 32(1).
- 26 *Ibid* s 32(2).

UPDATE

109 Public participation before adoption of a supplementary planning document

NOTE 3--SI 2004/2204 reg 16(2) amended: SI 2009/401.

NOTE 8--Strategic Rail Authority abolished: SI 2006/2925. Definition of 'specific consultation bodies' amended: SI 2009/401 (in force in part on 6 April 2010).

NOTE 13--SI 2004/2204 reg 17(2)(b) amended: SI 2009/401.

2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(C) Consultation and Public Participation/110. Development plan documents; pre-submission consultation and public participation.

110. Development plan documents; pre-submission consultation and public participation.

Subject to the following provisions¹, before a local planning authority² complies with the requirements for pre-submission public participation³ it must consult:

- 563 (1) each of the specific consultation bodies⁴ to the extent that the local planning authority thinks that the proposed subject matter of the development plan document (the 'DPD')⁵ affects the body; and
- 564 (2) such of the general consultation bodies⁶ as the local planning authority considers appropriate⁷.

If, however, the document is the local planning authority's statement of community involvement⁸, the requirement referred to in head (1) above is satisfied:

- 565 (a) by an authority whose area is in a region⁹ other than London, if the authority consults the regional planning body¹⁰, each relevant authority¹¹ any part of whose area is in or adjoins the area of the local planning authority, and the Highways Agency¹²;
- 566 (b) by a London borough council¹³, if it consults the Mayor of London¹⁴, each relevant authority any part of whose area is in or adjoins the area of the local planning authority and the Highways Agency¹⁵.

Before a local planning authority prepares and submit a DPD to the Secretary of State¹⁶ it must make copies of the pre-submission proposals documents¹⁷ and a statement of the proposals matters¹⁸ available for inspection¹⁹ during normal office hours at its principal office and at such other places within its area as the authority considers appropriate²⁰. The authority must also publish on its website:

- 567 (i) the pre-submission proposals documents;
- 568 (ii) the proposals matters;
- 569 (iii) a statement of the fact that the pre-submission proposals documents are available for inspection and the places and times at which they can be inspected²¹.

It must send to the DPD bodies²² the authority's proposals for a DPD, such supporting documents as are relevant to the body to which the documents are being sent, notice of the proposals matters and the statement referred to in head (iii) above²³ and must give notice by local advertisement²⁴ of the proposals matters and of the fact that the pre-submission proposals documents are available for inspection and the places and times at which they can be inspected²⁵.

Any person may make representations about a local planning authority's proposals for a DPD²⁶. Any such representations must be made within a period of six weeks starting on the day the local planning authority complies with the requirement set out above to make copies of the pre-submission proposals documents and a statement of the proposals matters available for inspection²⁷ and must be sent to the address and, where appropriate, the person specified²⁸ pursuant to the above provisions²⁹. A local planning authority must not prepare and submit the DPD to the Secretary of State until it has considered any representations³⁰ so made³¹. If, however, a local planning authority thinks that a representation made in relation to a local

development document³² is in substance a representation or objection in respect of anything which is done or proposed to be done in pursuance of certain specified statutory provisions³³ then the authority may disregard the objection³⁴.

1 le subject to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(2): see the text and notes 8-15 *infra*.

2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 *ante*.

3 le complies with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26: see the text and notes 16-25 *infra*.

4 For the meaning of 'specific consultation bodies' see PARA 109 note 8 *ante*.

5 For the meaning of 'development plan document' see PARA 96 note 4 *ante*.

6 For the meaning of 'general consultation bodies' see PARA 109 note 9 *ante*.

7 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(1).

8 As to the statement of community involvement see PARA 103 *ante*.

9 For the meaning of 'region' see PARA 24 note 4 *ante*.

10 As to regional planning bodies see PARA 24 *ante*.

11 For the meaning of 'relevant authority' see PARA 109 note 8 *ante*.

12 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(2)(a). As to the Highways Agency see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 52.

13 As to London borough councils see PARA 28 note 7 *ante*.

14 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

15 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 25(2)(b).

16 As to submission to the Secretary of State see PARA 108 *ante*.

17 For these purposes, 'pre-submission proposals documents' means the authority's proposals for the DPD and such supporting documents as in the opinion of the authority are relevant to those proposals: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4).

18 For these purposes, 'proposals matters' means the following matters: (1) the proposed title of the DPD; (2) the proposed subject matter and area of the DPD; (3) the period within which representations on the proposals may be made in accordance with *ibid* reg 27(2)(a) (see the text to note 27 *infra*); (4) the address to which and, where appropriate, the person to whom representations (whether made by way of electronic communications or otherwise) must be sent in accordance with reg 27(2)(b) (see the text to notes 28-29 *infra*); (5) a statement that any representations may be accompanied by a request to be notified at a specified address that the DPD has been submitted to the Secretary of State for independent examination under the Planning and Compulsory Purchase Act 2004 s 20 (see PARA 108 *ante*) and of the adoption of the DPD (see PARA 121 *post*): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4).

19 For the meaning of 'inspection' see PARA 98 note 13 *ante*.

20 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a).

21 *Ibid* reg 26(b).

22 'DPD bodies' means the bodies consulted by a local planning authority under *ibid* reg 25 (see the text and notes 1-15 *supra*): reg 24(4).

23 *Ibid* reg 26(c).

24 For the meaning of 'by local advertisement' see PARA 109 note 14 *ante*.

- 25 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(d).
- 26 Ibid reg 27(1).
- 27 Ie the requirement under ibid reg 26(a): see the text and notes 16-20 supra.
- 28 Ie specified pursuant to ibid reg 26(b)-(d): see the text and notes 21-25 supra.
- 29 Ibid reg 27(2).
- 30 Ie any representations made in accordance with ibid reg 27(2): see the text and notes 27-29 supra.
- 31 Ibid reg 27(3).
- 32 For the meaning of 'local development document' see PARA 92 note 7 ante.
- 33 Ie the provisions referred to in the Planning and Compulsory Purchase Act 2004 s 32(1): see PARA 109 note 25 ante.
- 34 Ibid s 32(2).

UPDATE

110-112 Development plan documents; pre-submission consultation and public participation ... Development plan documents; post-submission site allocation representations

SI 2004/2204 regs 24-33 now regs 24-31 (substituted by SI 2008/1371; SI 2004/2204 regs 24, 26, 27, 30 amended by SI 2009/401) which provide new duties relating to public participation in the preparation of development plan documents and statements of community involvement.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(C) Consultation and Public Participation/111. Development plan documents; post-submission publicity and representations.

111. Development plan documents; post-submission publicity and representations.

As soon as reasonably practicable after the local planning authority¹ submits a development plan document (a 'DPD')² to the Secretary of State³ it must:

- 570 (1) make copies of the DPD documents⁴ and a statement of the DPD matters⁵ available for inspection⁶ during normal office hours at the places at which the pre-submission proposals documents⁷ were made available⁸;
- 571 (2) publish on its website:
65
 - 90. (a) the DPD documents;
 - 91. (b) the DPD matters; and
 - 92. (c) a statement of the fact that the DPD documents are available for inspection and of the places and times at which they can be inspected;
- 66 572 (3) send to each of the DPD bodies⁹ copies of:
67

- 93. (a) the DPD;
 - 94. (b) the sustainability appraisal report;
 - 95. (c) the pre-submission consultation statement;
 - 96. (d) such of the supporting documents sent to the Secretary of State¹⁰ as are relevant to that body;
 - 97. (e) notice of the DPD matters; and
 - 98. (f) the statement referred to in head (2)(c) above;
- 68
- 573 (4) give notice by local advertisement¹¹ of the DPD matters and of the fact that the DPD documents are available for inspection and of the places and times at which they can be inspected; and
 - 574 (5) give notice to those persons who requested to be notified of the submission of the DPD to the Secretary of State that it has been so submitted¹².

Subject to certain exceptions¹³, a person may make representations about a DPD by sending them to the address and, where appropriate, the person specified pursuant to the above provisions within the period of six weeks starting on the date on which the DPD is submitted¹⁴ to the Secretary of State¹⁵. Before the person appointed to carry out the independent examination¹⁶ complies with the duty to make recommendations¹⁷ he must consider any representations¹⁸ so made¹⁹. Except in the case of a site allocation representation²⁰, as soon as reasonably practicable after a local planning authority has received a representation on a DPD under these provisions it must:

- 575 (i) make a copy of the representation available at the places at which the pre-submission proposals documents were made available²¹;
- 576 (ii) where practicable, publish the representation on its website;
- 577 (iii) send to the Secretary of State either a statement of the total number of representations made, copies of the representations and a summary of the main issues raised in the representations, or a statement that no representation has been made²².

A local planning authority need not, however, comply with heads (i) to (iii) above if the representation is made after the specified²³ period²⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 For the meaning of 'development plan document' see PARA 96 note 4 ante

3 As to submission to the Secretary of State see PARA 108 ante.

4 For these purposes, 'DPD documents' means the following documents: (1) the DPD; (2) the sustainability appraisal report; (3) the pre-submission consultation statement; (4) such supporting documents as in the opinion of the authority are relevant to the preparation of the DPD; and 'pre-submission consultation statement' means the statement prepared pursuant to reg 28(1)(c) (see PARA 108 ante); Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4). For the meaning of 'sustainability appraisal report' see PARA 109 note 10 ante.

5 For these purposes, 'DPD matters' means the following matters: (1) the title of the DPD; (2) the subject matter of, and the area covered by, the DPD; (3) the period within which representations about the DPD must be made in accordance with *ibid* reg 29(1) (see PARA 111 post); (4) the address to which and, where appropriate, the person to whom representations (whether made by way of electronic communications or otherwise) must be sent in accordance with reg 29(1); (5) a statement that representations may be accompanied by a request to be notified at a specified address of the publication of the recommendations of the person appointed to carry out an examination under the Planning and Compulsory Purchase Act 2004 s 20 (see PARA 108 ante) or the adoption of the DPD (see PARA 121 post) or both: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4).

6 For the meaning of 'inspection' see PARA 98 note 13 ante.

- 7 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.
- 8 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.
- 9 For the meaning of 'DPD bodies' see PARA 110 note 22 ante.
- 10 Ie pursuant to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 28(1)(e): see PARA 108 ante.
- 11 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.
- 12 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 28(3).
- 13 Ie subject to ibid reg 29(3): reg 29(1). Regulation 29(1) (see the text and notes 14-15 infra) does not apply to representations taken to have been made as mentioned in the Planning and Compulsory Purchase Act 2004 s 24(6) or (7) (non-conformity opinions of regional planning bodies and the Mayor of London: see PARA 105 ante): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 29(3).
- 14 Ie under the Planning and Compulsory Purchase Act 2004 s 20(1): see PARA 108 ante.
- 15 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 29(1).
- 16 As to such appointment see PARA 108 ante.
- 17 Ie complies with the Planning and Compulsory Purchase Act 2004 s 20(7): see PARA 108 ante.
- 18 Ie any representations made in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 29(1): see the text and notes 13-15 supra.
- 19 Ibid reg 29(2).
- 20 As to site allocation representations and their handling see PARA 112 post.
- 21 Ie were made available under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.
- 22 Ibid reg 31(1), (2). The documents mentioned in reg 31(2)(c) (see head (iii) in the text) must be submitted to the Secretary of State by sending four copies of each in paper form and one copy electronically: reg 31(4).
- 23 Ie the period specified in ibid reg 29(1): see the text and notes 13-15 supra.
- 24 Ibid reg 31(3).

UPDATE

110-112 Development plan documents; pre-submission consultation and public participation ... Development plan documents; post-submission site allocation representations

SI 2004/2204 regs 24-33 now regs 24-31 (substituted by SI 2008/1371; SI 2004/2204 regs 24, 26, 27, 30 amended by SI 2009/401) which provide new duties relating to public participation in the preparation of development plan documents and statements of community involvement.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(C)

Consultation and Public Participation/112. Development plan documents; post-submission site allocation representations.

112. Development plan documents; post-submission site allocation representations.

The following provisions apply to a site allocation representation¹. As soon as reasonably practicable after the specified period² the local planning authority³ must:

- 578 (1) make a site allocation representation and a statement of the prescribed matters⁴ available for inspection⁵ during normal office hours at the places at which the pre-submission proposals documents⁶ were made available⁷;
- 579 (2) publish on its website:
- 69
 - 99. (a) where practicable, the site allocation representation;
 - 100. (b) the prescribed matters⁸;
 - 101. (c) a statement of the fact that the site allocation representation is available for inspection and the places and times at which it can be inspected;
- 70
 - 580 (3) send to the DPD bodies⁹:
- 71
 - 102. (a) the address of the site to which the site allocation representation relates;
 - 103. (b) notice of the prescribed matters¹⁰;
 - 104. (c) a statement of the fact that the site allocation representation is available for inspection and the places and times at which it can be inspected; and
- 72
 - 581 (4) give notice by local advertisement¹¹ of the prescribed matters¹² and of the fact that the site allocation representation is available for inspection and the places and times at which it can be inspected¹³.

Any person may make representations on a site allocation representation by sending them to the address and, where appropriate, the person specified pursuant to heads (1) to (4) above within the period of six weeks starting on the day the local planning authority complies with the provisions set out above¹⁴. As soon as reasonably practicable after the authority has received a representation on a site allocation representation the local planning authority must send to the Secretary of State¹⁵ either a statement of the number of representations made, copies of all the representations and a summary of the main issues raised in those representations, or a statement that no such representations have been made¹⁶. Before the person appointed to carry out the independent examination¹⁷ complies with the duty to make recommendations¹⁸ he must consider any representations¹⁹ so made²⁰.

1 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 32(1). For these purposes, 'site allocation representation' means any representation which seeks to change a development plan document (a 'DPD') by (1) adding a site allocation policy to the DPD; or (2) altering any site allocation policy in the DPD: reg 24(4). For the meaning of 'site allocation policy' see PARA 96 note 4 ante.

2 I.e. the period in *ibid* reg 29(1): see PARA 111 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

4 I.e. the matters in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 32(3): reg 32(2). The matters so referred to are: (1) the period within which representations on the site allocation representation must be made; (2) the address to which and, where appropriate, the person to whom (a) written representations, and (b) representations by way of electronic communications must be sent: reg 32(3).

5 For the meaning of 'inspection' see PARA 98 note 13 ante.

- 6 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.
- 7 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.
- 8 Ie the matters in ibid reg 32(3): see note 4 supra.
- 9 For the meaning of 'the DPD bodies' see PARA 110 note 22 ante.
- 10 See note 8 supra.
- 11 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.
- 12 See note 8 supra.
- 13 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 32(2).
- 14 Ibid reg 33(1).
- 15 As to the Secretary of State see PARA 19 ante.
- 16 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 33(2). The documents mentioned in reg 33(2) must be submitted to the Secretary of State by sending four copies of each in paper form and one copy electronically: reg 33(3).
- 17 See PARA 108 ante.
- 18 Ie complies with the Planning and Compulsory Purchase Act 2004 s 20(7): see PARA 108 ante.
- 19 Ie any representations made in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 33(1): see the text and note 14 supra.
- 20 Ibid reg 33(4).

UPDATE

110-112 Development plan documents; pre-submission consultation and public participation ... Development plan documents; post-submission site allocation representations

SI 2004/2204 regs 24-33 now regs 24-31 (substituted by SI 2008/1371; SI 2004/2204 regs 24, 26, 27, 30 amended by SI 2009/401) which provide new duties relating to public participation in the preparation of development plan documents and statements of community involvement.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/ (D) Intervention by the Secretary of State; Default Power/113. Direction to modify local development document.

(D) INTERVENTION BY THE SECRETARY OF STATE; DEFAULT POWER

113. Direction to modify local development document.

If the Secretary of State¹ thinks that a local development document² is unsatisfactory he may, at any time before the document is adopted³, direct the local planning authority⁴ to modify the document in accordance with the direction⁵. If he gives such a direction he must state his reasons for doing so⁶. The authority must comply with the direction⁷ and must not adopt the document unless the Secretary of State gives notice that he is satisfied that the authority has so complied⁸; but this does not apply if the Secretary of State withdraws the direction⁹. In the exercise of any function under these provisions the Secretary of State must have regard to the local development scheme¹⁰.

If the Secretary of State gives such a direction in respect of a supplementary planning document (an 'SPD')¹¹, the local planning authority must:

- 582 (1) make the direction available for inspection¹² during normal office hours at the places at which the SPD was made available¹³;
- 583 (2) publish the direction on its website; and
- 584 (3) at the time it complies with the prescribed procedure following adoption of the SPD¹⁴, make available for inspection during normal office hours at the places at which the SPD was made available¹⁵ and publish on its website either a statement that the Secretary of State has withdrawn the direction or the Secretary of State's notice¹⁶ that he is satisfied as mentioned above¹⁷.

If the Secretary of State gives such a direction in respect of a development plan document (a 'DPD')¹⁸, the local planning authority must:

- 585 (a) make the direction available for inspection during normal office hours at the places at which the pre-submission proposals documents¹⁹ were made available²⁰;
- 586 (b) publish the direction on its website; and
- 587 (c) at the time it complies with the prescribed procedure following adoption of the DPD²¹ publish and make available for inspection in accordance with that prescribed procedure either a statement that the Secretary of State has withdrawn the direction or the Secretary of State's notice²² that he is satisfied as mentioned above²³.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'local development document' see PARA 92 note 7 ante.

3 Ie under the Planning and Compulsory Purchase Act 2004 s 23: see PARA 120-121 post.

4 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

5 Planning and Compulsory Purchase Act 2004 s 21(1)(a).

6 Ibid s 21(1)(b).

7 Ibid s 21(2)(a).

8 Ibid s 21(2)(b).

9 Ibid s 21(3).

10 Ibid s 21(10). For the meaning of 'local development scheme' see PARA 93 note 4 ante.

11 For the meaning of 'supplementary planning document' see PARA 96 note 9 ante.

12 For the meaning of 'inspection' see PARA 98 note 13 ante.

13 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(1)(a): see PARA 109 ante.

- 14 It complies with *ibid* reg 19: see PARA 120 *post*.
- 15 See note 13 *supra*.
- 16 It is the notice under the Planning and Compulsory Purchase Act 2004 s 21(2)(b): see the text and note 6 *supra*.
- 17 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 23.
- 18 For the meaning of 'development plan document' see PARA 96 note 4 *ante*.
- 19 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 *ante*.
- 20 It is under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 *ante*.
- 21 It complies with *ibid* reg 36: see PARA 121 *post*.
- 22 See note 16 *supra*.
- 23 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 39.

UPDATE

113 Direction to modify local development document

TEXT AND NOTES 18-23--SI 2004/2204 reg 39 amended: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/ (D) Intervention by the Secretary of State; Default Power/114. Direction not to adopt a supplementary planning document.

114. Direction not to adopt a supplementary planning document.

The Secretary of State¹ may at any time direct a local planning authority²:

- 588 (1) not to adopt a supplementary planning document (an 'SPD')³ until he has decided whether to give a direction that it is to be modified⁴; and
- 589 (2) to send to him a copy of the SPD made available⁵ for inspection by the public⁶.

If the Secretary of State issues the direction first mentioned above, then if the direction is made before the authority has complied with the requirements for public participation⁷, the authority must, at the time it so complies:

- 590 (a) publish the direction and make it available for inspection⁸ during normal office hours at its principal office and at such other places within its area as the authority considers appropriate; and
- 591 (b) send a copy of the SPD to the Secretary of State⁹.

If the direction is made after the authority has so complied, the authority must make the direction available for inspection during normal office hours at the places at which the SPD was made available¹⁰ and must publish the direction on its website¹¹.

The direction first mentioned above is to be treated as withdrawn on the date on which the authority either receives notice that the Secretary of State does not intend to give a modification direction¹² or receives the Secretary of State's direction¹³ to modify the SPD¹⁴.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 3 For the meaning of 'supplementary planning document' see PARA 96 note 9 ante; and as to adoption of such documents see PARA 120 post.
- 4 I.e. a direction under the Planning and Compulsory Purchase Act 2004 s 21(1): see PARA 114 ante.
- 5 I.e. made available under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(1)(a): see PARA 109 ante.
- 6 Ibid reg 22(1).
- 7 I.e. complied with ibid reg 17: see PARA 109 ante.
- 8 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 9 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 22(2)(a).
- 10 See note 5 supra.
- 11 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 22(2)(b).
- 12 See note 4 supra.
- 13 I.e. the direction under the Planning and Compulsory Purchase Act 2004 s 21(1): see PARA 113 ante.
- 14 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 22(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/ (D) Intervention by the Secretary of State; Default Power/115. Direction not to adopt a development plan document.

115. Direction not to adopt a development plan document.

Where, in relation to a development plan document (a 'DPD')¹, the person appointed to carry out an independent examination² has complied with the duty to make recommendations³, the Secretary of State⁴ may at any time direct the local planning authority⁵ not to adopt that DPD⁶ until he has decided whether to give a direction that it should be modified⁷ or a direction that it is to be submitted to him⁸ for his approval⁹. If the Secretary of State gives such a direction not to adopt the DPD the authority must make the direction available for inspection¹⁰ during normal office hours at the places at which the pre-submission proposals documents¹¹ were made available¹² and must publish the direction on its website¹³. The authority must not adopt the DPD until the Secretary of State has notified it of his decision under the above provisions¹⁴.

- 1 For the meaning of 'development plan document' see PARA 96 note 4 ante.
- 2 Ie an examination under the Planning and Compulsory Purchase Act 2004 s 20: see PARA 108 ante.
- 3 Ie has complied with ibid s 20(7): see PARA 108 ante.
- 4 As to the Secretary of State see PARA 19 ante.
- 5 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 6 As to adoption of a DPD see PARA 121 post.
- 7 Ie a direction under the Planning and Compulsory Purchase Act 2004 s 21(1): see PARA 113 ante.
- 8 Ie a direction under ibid s 21(4): see PARA 116 post.
- 9 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 38(1).
- 10 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 11 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.
- 12 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.
- 13 Ibid reg 38(2)(a), (b).
- 14 Ibid reg 38(2)(c).

UPDATE

115 Direction not to adopt a development plan document

TEXT AND NOTES--SI 2004/2204 reg 38 amended: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/ (D) Intervention by the Secretary of State; Default Power/116. Calling in of development plan document.

116. Calling in of development plan document.

At any time before a development plan document¹ is adopted² by a local planning authority³ the Secretary of State⁴ may direct that the document, or any part of it, is submitted to him for his approval⁵. In the exercise of this function the Secretary of State must have regard to the local development scheme⁶.

The following provisions apply if the Secretary of State gives such a direction:

- 592 (1) the authority must not take any step in connection with the adoption of the document until the Secretary of State gives his decision;
- 593 (2) if the direction is given before the authority has submitted the document for independent examination⁷ the Secretary of State must hold an independent examination⁸;

- 594 (3) if the direction is given after the authority has submitted the document but before the person appointed to carry out the examination has made his recommendations he must make his recommendations to the Secretary of State;
- 595 (4) the document has no effect unless it or, if the direction relates to only part of a document, the part has been approved by the Secretary of State⁹.

If the direction is given¹⁰ before the local planning authority submits to the Secretary of State the development plan document (the 'DPD') to which the direction relates, the Secretary of State must carry out an appraisal of the sustainability of the proposals in the DPD or, where his direction relates to part only of the DPD, the proposals in that part and must prepare a report of the findings of the appraisal¹¹. He must also comply with the prescribed procedure for handling representations¹². If the direction is given before the local planning authority has complied with the prescribed requirements for pre-submission public participation¹³, the authority must publish the direction and make it available for inspection¹⁴ when it complies with, and in accordance with, those requirements¹⁵. If, however, the direction is given after the authority has complied with those requirements, it must make the direction available for inspection during normal office hours at the places at which the pre-submission proposals documents¹⁶ were made available¹⁷ and must publish the direction on its website¹⁸. Subject to any necessary modifications, the authority must comply with the relevant regulations¹⁹ as if it were preparing the DPD²⁰; but nothing in this provision requires a local planning authority to take again any step taken before receipt of the direction²¹.

The Secretary of State must publish the recommendations made to him by virtue of head (2) or head (3) above and the reasons of the person making the recommendations²². As soon as reasonably practicable after the Secretary of State complies with this provision, the local planning authority must make the recommendations and reasons of the person appointed to carry out the examination available for inspection during normal office hours at the places at which the pre-submission proposals documents were made available²³ and must publish the recommendations and reasons on its website²⁴.

In considering a document or part of a document submitted under the above provisions²⁵ the Secretary of State may take account of any matter which he thinks is relevant²⁶; and it is immaterial whether any such matter was taken account of by the local planning authority²⁷. If the Secretary of State proposes to depart from the recommendations of the person appointed to carry out an independent examination, he must publish the changes he proposes to make and his reasons for doing so²⁸. As soon as reasonably practicable after the Secretary of State complies with this requirement the local planning authority must:

- 596 (a) make copies of the changes and reasons and a statement of the prescribed matters²⁹ available for inspection during normal office hours at the places at which the pre-submission proposals documents were made available³⁰;
- 597 (b) publish on its website the changes and reasons, the prescribed matters referred to in head (a) above and a statement of the fact that the changes and reasons are available for inspection and the places and times at which they can be inspected;
- 598 (c) send copies of the changes and reasons to the specified bodies³¹ and notify these bodies of the prescribed matters referred to in head (a) above; and
- 599 (d) give notice by local advertisement³² of those prescribed matters and of the fact that the changes and reasons are available for inspection and the places and times at which they can be inspected³³.

Any person may make representations on the changes the Secretary of State proposes to make by sending them to the address and, where appropriate, the person specified pursuant to heads (a) to (d) above within the period of six weeks starting on the day on which the Secretary

of State complies with the requirement³⁴ to publish those changes³⁵. Before the Secretary of State makes his decision³⁶ he must consider any representations³⁷ so made³⁸, unless he thinks that any such representation is in substance a representation in respect of anything which is done or proposed to be done in pursuance of specified statutory provisions³⁹, in which case he may disregard it⁴⁰.

1 For the meaning of 'development plan document' see PARA 96 note 4 ante.

2 As to adoption of a development plan document see PARA 121 post.

3 For the meaning of 'local authority' for these purposes see PARA 89 note 1 ante.

4 As to the Secretary of State see PARA 19 ante.

5 Planning and Compulsory Purchase Act 2004 s 21(4).

6 Ibid s 21(10). For the meaning of 'local development scheme' see PARA 93 note 4 ante.

7 Ie under ibid s 20(1): see PARA 108 ante.

8 Ibid s 20(4)-(7) (see PARA 108 ante) applies accordingly: s 21(5)(b).

9 Ibid s 21(5)(a)-(d).

10 The Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, regs 40-44 (see the text and notes 11-38 infra; and PARA 117 post) apply where the Secretary of State gives a direction under the Planning and Compulsory Purchase Act 2004 21(4): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 40(1). They apply to any part of a development plan document (a 'DPD') as they apply to the whole of a DPD: reg 24(3). Regulation 45(b) (see PARA 118 post) does not, however, so apply: reg 24(3).

11 Ibid reg 40(2)(a)(i).

12 Ie he must comply with ibid reg 30 (see PARA 105 ante) as if references in that regulation to the local planning authority were references to the Secretary of State: reg 40(2)(a)(ii).

13 Ie before it has complied with ibid reg 26 (see PARA 110 ante): reg 40(2)(b)(i).

14 For the meaning of 'inspection' see PARA 98 note 13 ante.

15 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 40(2)(b)(i).

16 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.

17 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.

18 Ibid reg 40(2)(b)(ii).

19 Ie the regulations in ibid reg 40(3): reg 40(2)(b)(iii). The regulations referred to in reg 40(2)(b)(iii) are regs 26-34 (see PARA 110 et seq ante) (with the exception of reg 30) and reg 37 (see PARA 119 post) (ignoring reg 37(1)): reg 40(3).

20 Ibid reg 40(2)(b)(iii).

21 Ibid reg 40(4).

22 Planning and Compulsory Purchase Act 2004 s 21(6).

23 See note 17 supra.

24 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 43.

25 Ie a document or part of a document submitted under the Planning and Compulsory Purchase Act 2004 s 21(4): see the text and notes 1-5 supra.

26 Ibid s 21(7).

27 Ibid s 21(8).

28 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 41(1).

29 Ie the matters in ibid reg 41(3); reg 41(2)(a). The matters referred to in reg 41(2) are: (1) the period within which representations on the changes must be made; (2) the address to which and, where appropriate, the person to whom representations (whether made by way of electronic communications or otherwise) must be sent; and (3) a statement that any representations made may be accompanied by a request to be notified at a specified address of the Secretary of State's decision under the Planning and Compulsory Purchase Act 2004 s 21(9)(a) (see PARA 117 post): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 41(3).

30 See note 17 supra.

31 Ie the bodies in the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 41(4); reg 41(2)(c). The bodies referred to in reg 41(2)(c) are: (1) each of the specific consultation bodies to the extent that the Secretary of State thinks the changes affect the body; and (2) such of the general consultation bodies as the Secretary of State considers appropriate: reg 41(4). For the meanings of 'specific consultation bodies' and 'general consultation bodies' see PARA 109 notes 8-9 ante.

32 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.

33 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 41(2)(a)-(d).

34 Ie complies with ibid reg 41(1): see the text and note 28 supra.

35 Ibid reg 42(1).

36 Ie before he complies with the Planning and Compulsory Purchase Act 2004 s 21(9)(a): see PARA 117 post.

37 Ie any representations made in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 42(1): see the text and notes 34-35 supra.

38 Ibid reg 42(2).

39 Ie a representation to which the Planning and Compulsory Purchase Act 2004 s 32 applies: see PARA 109 note 25 ante.

40 See ibid s 32(2).

UPDATE

116 Calling in of development plan document

NOTES 10, 19--SI 2004/2204 regs 24-33 substituted: see PARA 110-112.

NOTES 11-38--SI 2004/2204 reg 40 substituted: SI 2008/1371.

NOTE 24--SI 2004/2204 reg 43 amended: SI 2008/1371.

NOTES 28-33--SI 2004/2204 reg 41(1), (2) amended: SI 2008/1371.

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117. Secretary of State's decision on called-in development plan document.

In relation to a called-in development plan document or part of such a document¹ the Secretary of State² may approve, approve subject to specified modifications or reject the document or part³. He must give reasons for his decision⁴; and in the exercise of any function under these provisions he must have regard to the local development scheme⁵.

As soon as reasonably practicable after the Secretary of State approves, approves subject to modifications or rejects a development plan document (a 'DPD') or part of it, as the case may be, in accordance with the above provisions, the local planning authority⁶ must:

- 600 (1) make available for inspection⁷ during normal office hours at the places at which the pre-submission proposals documents⁸ were made available⁹ the DPD and the reasons given by the Secretary of State¹⁰ and a decision statement¹¹;
- 601 (2) publish the decision statement on its website;
- 602 (3) give notice by local advertisement¹² of the decision statement and of the fact that the DPD and the Secretary of State's reasons are available for inspection and the places where and times when the document and reasons can be inspected; and
- 603 (4) send the decision statement to any person who has asked to be notified¹³ of the Secretary of State's decision¹⁴.

1 Ie a document or part of a document submitted under the Planning and Compulsory Purchase Act 2004 s 21(4): see PARA 116 ante. For the meaning of 'development plan document' see PARA 96 note 4 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Ibid s 21(9)(a).

4 Ibid s 21(9)(b).

5 Ibid s 21(10). For the meaning of 'local development scheme' see PARA 93 note 4 ante.

6 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

7 For the meaning of 'inspection' see PARA 98 note 13 ante.

8 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.

9 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.

10 Ie the reasons given pursuant to the Planning and Compulsory Purchase Act 2004 s 21(9)(b): see the text to note 4 supra.

11 For these purposes, 'decision statement' means: (1) a statement that the Secretary of State has decided to approve, approve subject to modifications, or reject a DPD (as the case may be); (2) where the Secretary of State decides to approve a DPD, or to approve a DPD subject to modifications, a statement: (a) of the date on which the DPD is adopted; (b) that a person aggrieved by the DPD may make an application to the High Court under ibid s 113 (see PARA 42 ante); and (c) of the grounds on which, and the time within which, such an application may be made: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4).

12 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.

13 Ie who has asked to be notified of the Secretary of State's decision under the Planning and Compulsory Purchase Act 2004 s 21(9)(a): Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 44(d). As to such persons see PARA 116 note 29 ante.

14 Ibid reg 44(a)-(d).

UPDATE

117 Secretary of State's decision on called-in development plan document

NOTES 9, 11--SI 2004/2204 regs 24, 26 substituted: see PARA 110-112.

NOTES 13, 14--SI 2004/2204 reg 44(a) amended, reg 44A (removal of documents after rejection of a development plan document) added: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/ (D) Intervention by the Secretary of State; Default Power/118. Development plan documents; Secretary of State's default power.

118. Development plan documents; Secretary of State's default power.

The following provisions apply if the Secretary of State¹ thinks that a local planning authority² is failing or omitting to do anything it is necessary for the authority to do in connection with the preparation, revision or adoption of a development plan document³.

The Secretary of State must hold an independent examination⁴ and must publish the recommendations and reasons of the person appointed to hold the examination⁵. The Secretary of State may:

- 604 (1) prepare or revise, as the case may be, the document; and
- 605 (2) approve the document as a local development document⁶,

and must give reasons for anything he does in pursuance of heads (1) and (2) above⁷.

The authority must reimburse the Secretary of State for any expenditure he incurs in connection with anything which is done by him under those heads and which the authority failed or omitted to do as mentioned above⁸.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

3 Planning and Compulsory Purchase Act 2004 s 27(1). For the meaning of 'development plan document' see PARA 96 note 4 ante; as to the preparation of such documents see PARA 104 ante; as to their revision see PARA 123 post; and as to their adoption see PARA 121 post.

4 Ibid s 27(2). Section 20(4)-(7) (see PARA 108 ante) applies accordingly: s 27(2).

5 Ibid s 27(3).

6 Ibid s 27(4). For the meaning of 'local development document' see PARA 92 note 7 ante. Where the Secretary of State prepares or revises a development plan document (a 'DPD') under s 27: (1) he must comply with such provisions of Pt 2 (ss 13-37) (see PARA 89 et seq ante, PARA 119 et seq post) and such provisions of the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, as are relevant to the preparation of the DPD or revision, and as if references in those provisions to the local planning authority were references to the Secretary of State; (2) regs 41-44 (see PARAS 116-117 ante) apply, subject to any necessary modifications and as if references to a local planning authority were references to the Secretary of State: reg 45.

7 Planning and Compulsory Purchase Act 2004 s 27(5).

8 Ibid s 27(6).

UPDATE

118 Development plan documents; Secretary of State's default power

NOTE 6--SI 2004/2204 reg 45 substituted: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(E) Adoption of Local Development Documents/119. Withdrawal of local development documents before adoption.

(E) ADOPTION OF LOCAL DEVELOPMENT DOCUMENTS

119. Withdrawal of local development documents before adoption.

A local planning authority¹ may at any time before a local development document² is adopted³ withdraw the document⁴; but this does not apply to a development plan document⁵ at any time after the document has been submitted for independent examination⁶ unless:

- 606 (1) the person carrying out the examination recommends that the document is withdrawn and that recommendation is not overruled by a direction given by the Secretary of State⁷; or
- 607 (2) the Secretary of State directs that the document must be withdrawn⁸.

If a supplementary planning document (an 'SPD')⁹ is withdrawn the local planning authority must:

- 608 (a) publish a statement of that fact on its website;
- 609 (b) notify any body to which notification was given and to whom documents were sent under the prescribed procedure for public participation¹⁰, and any person who has made a representation¹¹, of that fact; and
- 610 (c) remove any copies, documents, matters and statements made available or published¹² under the relevant regulations¹³.

As soon as reasonably practicable after a development plan document (a 'DPD') which has not been submitted for independent examination is withdrawn¹⁴ the local planning authority must:

- 611 (i) publish a statement of that fact on its website;
- 612 (ii) give notice of that fact by local advertisement¹⁵;
- 613 (iii) notify any body to which notification was given under the prescribed procedure for public participation¹⁶ of that fact;
- 614 (iv) remove any copies, documents, matters and statements made available or published¹⁷ under the relevant regulations¹⁸.

As soon as reasonably practicable after a DPD which has been submitted for independent examination is withdrawn¹⁹ the local planning authority must comply with heads (i) to (iv) above and in addition must notify any person who has made a post-submission representation²⁰, and not withdrawn that representation, of that fact²¹. It must also remove any copies, documents, representations, matters and statements made available or published²² under the relevant regulations²³.

- 1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 2 For the meaning of 'local development document' see PARA 92 note 7 ante.
- 3 Ie under the Planning and Compulsory Purchase Act 2004 s 23: see PARA 120 post.
- 4 Ibid s 22(1).
- 5 For the meaning of 'development plan document' see PARA 96 note 4 ante.
- 6 Ie under the Planning and Compulsory Purchase Act 2004 s 20: see PARA 108 ante.
- 7 As to the Secretary of State see PARA 19 ante; as to calling in of development plan documents by the Secretary of State see PARAS 116-117 ante; and as to his default powers see PARA 118 ante.
- 8 Planning and Compulsory Purchase Act 2004 s 22(2).
- 9 For the meaning of 'supplementary planning document' see PARA 96 note 9 ante.
- 10 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(2)(b): see PARA 109 ante.
- 11 Ie in accordance with ibid reg 18(2): see PARA 109 ante.
- 12 Ie made available or published under ibid reg 17(1)(a), (2)(a): see PARA 109 ante.
- 13 Ibid reg 20.
- 14 Ie is withdrawn under the Planning and Compulsory Purchase Act 2004 s 22(1): see the text and notes 1-4 supra.
- 15 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.
- 16 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(c): see PARA 110 ante.
- 17 Ie made available or published under ibid reg 26(a), (b): see PARA 110 ante.
- 18 Ibid reg 37(1).
- 19 Ie is withdrawn under the Planning and Compulsory Purchase Act 2004 s 22(2): see the text and notes 5-8 supra.
- 20 Ie made a representation in accordance with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 29(1) or reg 33(1): see PARAS 111-112 ante.
- 21 Ibid reg 37(2)(a).
- 22 Ie made available or published under ibid regs 28(3)(a), (b), 31(2), 32(2)(a), (b), 34(2)(a): see PARAS 108, 111-112 ante.
- 23 Ibid reg 37(2)(b).

UPDATE

119 Withdrawal of local development documents before adoption

TEXT AND NOTES 14-23--SI 2004/2204 reg 37 substituted: SI 2008/1371.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(E) Adoption of Local Development Documents/120. Adoption of supplementary planning documents.

120. Adoption of supplementary planning documents.

The local planning authority¹ may adopt² a local development document³, other than a development plan document⁴, either as originally prepared or as modified to take account of any representations made in relation to the document⁵ and any other matter the authority thinks is relevant⁶.

As soon as reasonably practicable after the local planning authority adopts a supplementary planning document (an 'SPD')⁷ the authority must make available for inspection⁸ during normal office hours at the places at which the SPD was made available under the prescribed procedure for public participation⁹:

- 615 (1) the statement setting out a summary of the main issues raised in representations on the SPD and how these main issues have been addressed in the SPD¹⁰;
- 616 (2) an adoption statement¹¹; and
- 617 (3) the SPD¹².

The authority must also publish on its website the statement referred to in head (1) above and the adoption statement¹³ and must send the adoption statement to any person who has asked to be notified of the adoption of the SPD¹⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 A document is adopted for the purposes of the Planning and Compulsory Purchase Act 2004 s 23 if it is adopted by resolution of the authority: s 23(5).

3 For the meaning of 'local development document' see PARA 92 note 7 ante.

4 For the meaning of 'development plan document' see PARA 96 note 4 ante.

5 As to such representations see PARA 109 ante.

6 Planning and Compulsory Purchase Act 2004 s 23(1).

7 For the meaning of 'supplementary planning document' see PARA 96 note 9 ante.

8 For the meaning of 'inspection' see PARA 98 note 13 ante.

9 Ie under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 17(1)(a): see PARA 109 ante.

10 Ie the statement in ibid reg 18(4)(b): see PARA 109 ante.

11 For these purposes, 'adoption statement' means a document that specifies: (1) the date on which an SPD is adopted; and (2) that any person aggrieved by the SPD may apply to the High Court for permission to apply for judicial review of the decision to adopt the SPD; and (3) that any such application for leave must be made

promptly and in any event not later than three months after the date on which the SPD was adopted: *ibid* reg 16(1), (2). As to judicial review see PARA 650 post; and JUDICIAL REVIEW.

12 *Ibid* reg 19(a).

13 *Ibid* reg 19(b).

15 *Ibid* reg 19(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(E) Adoption of Local Development Documents/121. Adoption of development plan documents.

121. Adoption of development plan documents.

The local planning authority¹ may adopt² a development plan document³:

618 (1) as originally prepared, if the person appointed to carry out the independent examination of the document⁴ recommends that the document as originally prepared is adopted⁵;

619 (2) with modifications, if the person appointed to carry out the independent examination of the document recommends the modifications⁶.

The authority must not adopt a development plan document unless it does so in accordance with head (1) or head (2) above⁷.

As soon as reasonably practicable after the local planning authority adopts a development plan document (a 'DPD') it must make available for inspection⁸ during normal office hours at the places at which the pre-submission proposals documents⁹ were made available¹⁰:

620 (a) the DPD;

621 (b) an adoption statement¹¹; and

622 (c) the sustainability appraisal report¹².

The authority must publish the adoption statement on its website¹³ and must give notice by local advertisement¹⁴ of the adoption statement and of the fact that the DPD is available for inspection and the places and times at which the document can be inspected¹⁵. The authority must also send the adoption statement to any person who has asked to be notified of the adoption of the DPD¹⁶ and must send the DPD and the adoption statement to the Secretary of State¹⁷.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 As to the procedure by which a document is adopted for these purposes see PARA 120 note 2 ante.

3 For the meaning of 'development plan document' see PARA 96 note 4 ante.

4 As to independent examination see the Planning and Compulsory Purchase Act 2004 s 20; and PARA 108 ante.

5 *Ibid* s 23(2).

6 *Ibid* s 23(3).

- 7 Ibid s 23(4).
- 8 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 9 For the meaning of 'pre-submission proposals documents' see PARA 110 note 21 ante.
- 10 le under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 26(a): see PARA 110 ante.
- 11 For these purposes, 'adoption statement' means a statement: (1) of the date on which a DPD is adopted; (2) that a person aggrieved by the DPD may make an application to the High Court under the Planning and Compulsory Purchase Act 2004 s 113 (see PARA 42 ante); (3) of the grounds on which, and the time within which, such an application may be made; (4) that a person aggrieved by a statement of community involvement may apply to the High Court for permission to apply for judicial review of the decision to adopt the statement; and (5) that any such application must be made promptly and in any event not later than three months after the day on which the statement was adopted: Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 24(4). As to statements of community involvement see PARA 103 ante; and as to judicial review see PARA 650 post; and JUDICIAL REVIEW.
- 12 Ibid reg 36(a). For the meaning of 'sustainability appraisal report' see PARA 109 note 10 ante.
- 13 Ibid reg 36(b).
- 14 For the meaning of 'by local advertisement' see PARA 109 note 14 ante.
- 15 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 36(c).
- 16 Ibid reg 36(d).
- 17 Ibid reg 36(e).

UPDATE

121 Adoption of development plan documents

TEXT AND NOTES 8-12--SI 2004/2204 reg 36(a) amended: SI 2008/1371.

NOTES 10, 11--SI 2004/2204 regs 24-26 substituted: see PARA 110-112.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(E) Adoption of Local Development Documents/122. Availability of adopted or approved local development documents.

122. Availability of adopted or approved local development documents.

Where a local planning authority¹ adopts², or the Secretary of State³ approves⁴, a local development document (an 'LDD')⁵, then as soon as reasonably practicable after the document is adopted or approved the authority must:

- 623 (1) make a copy of the LDD available for inspection⁶ at its principal office during normal office hours;
- 624 (2) publish the LDD on its website⁷.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

- 2 As to adoption of local development documents see PARAS 120-121 ante.
- 3 As to the Secretary of State see PARA 19 ante.
- 4 As to approval by the Secretary of State see PARA 117 ante.
- 5 For the meaning of 'local development document' see PARA 92 note 7 ante.
- 6 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 7 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 50(1), (2). Regulation 49 (see PARA 98 ante) does not apply to such a document: reg 49(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(F) Revision and Revocation of Local Development Documents/123. Revision of local development documents.

(F) REVISION AND REVOCATION OF LOCAL DEVELOPMENT DOCUMENTS

123. Revision of local development documents.

The local planning authority¹ may at any time prepare a revision of a local development document².

The authority must prepare a revision of a local development document:

- 625 (1) if the Secretary of State³ directs the authority to do so; and
- 626 (2) in accordance with such timetable as he directs⁴.

If any part of the area of the local planning authority is an area to which an enterprise zone scheme⁵ relates, then as soon as practicable after the occurrence of a relevant event⁶:

- 627 (a) the authority must review every local development document in the light of the enterprise zone scheme;
- 628 (b) if the authority thinks that any modifications of the document are required in consequence of the scheme it must prepare a revised document containing the modifications⁷.

Where a local planning authority adopts, or the Secretary of State approves, a revision of a local development document (an 'LDD'), then as soon as reasonably practicable after the revision is adopted or approved the authority must incorporate the revision into the LDD made available for inspection⁸ and published⁹ as previously described¹⁰.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 26(1). Part 2 (ss 13-37) (see PARA 89 et seq ante, PARA 124 post) applies to the revision of a local development document as it applies to the preparation of the document: s 26(3). For the meaning of 'local development document' see PARA 92 note 7 ante. Subject to the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 3(2) (exclusion of certain regulations in relation to minerals and waste development schemes: see PARA 100 note 5 ante), the Town and

Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, have effect in relation to the revision of a local development document (an 'LDD') as they apply to the preparation of an LDD: reg 3(1)(a).

3 As to the Secretary of State see PARA 19 ante.

4 Planning and Compulsory Purchase Act 2004 s 26(2).

5 References to an enterprise zone and an enterprise zone scheme for these purposes must be construed in accordance with the Local Government, Planning and Land Act 1980: Planning and Compulsory Purchase Act 2004 s 26(7). As to enterprise zones and enterprise zone schemes see PARA 1491 et seq post.

6 The following are relevant events for these purposes: (1) the making of an order under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended) (designation of enterprise zone: see PARA 1495 post); (2) the giving of notification under Sch 32 para 11(1) (approval of modification of enterprise zone scheme: see PARA 1499 post): Planning and Compulsory Purchase Act 2004 s 26(6).

7 Ibid s 26(4), (5).

8 For the meaning of 'inspection' see PARA 98 note 13 ante.

9 le under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 50(2): see PARA 122 ante.

10 Ibid reg 50(3), (4). Regulation 49 (see PARA 98 ante) does not apply to such a document: reg 49(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(ii) Local Development in England/C. LOCAL DEVELOPMENT DOCUMENTS/(F) Revision and Revocation of Local Development Documents/124. Revocation of local development documents.

124. Revocation of local development documents.

The Secretary of State¹ may at any time revoke a local development document² at the request of the local planning authority³. He may also prescribe⁴ descriptions of local development document which may be revoked by the authority itself⁵.

A local planning authority may revoke a supplementary planning document (an 'SPD')⁶ if:

629 (1) it ceases to comply with the requirement for its policies to be in conformity with the other specified policies⁷; or

630 (2) it contains policies relating to the development of a site specified in the SPD, and that development has been completed⁸.

Where the Secretary of State or a local planning authority revokes a local development document (an 'LDD'), within two weeks of the date on which the LDD was revoked the authority must:

631 (a) publish a statement of that fact on its website;

632 (b) remove the copy of the LDD made available for inspection⁹ and published as previously described¹⁰;

633 (c) take such other steps as the authority considers necessary to draw the revocation of the LDD to the attention of persons living or working in its area; and

634 (d) if the document is a development plan document (a 'DPD')¹¹, give notice of the revocation of the LDD by local advertisement¹².

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'local development document' see PARA 92 note 7 ante.
- 3 Planning and Compulsory Purchase Act 2004 s 25(a). For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 4 le prescribe by regulations: see PARA 5 ante.
- 5 Planning and Compulsory Purchase Act 2004 s 25(b).
- 6 For the meaning of 'supplementary planning document' see PARA 96 note 9 ante.
- 7 le it ceases to comply with the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 13(8) (see PARA 102 ante): reg 21(a).
- 8 Ibid reg 21(a), (b).
- 9 For the meaning of 'inspection' see PARA 98 note 13 ante.
- 10 le under the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 50(2): see PARA 122 ante.
- 11 For the meaning of 'development plan document' see PARA 96 note 4 ante.
- 12 Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 50(5). For the meaning of 'by local advertisement' see PARA 109 note 14 ante. Regulation 49 (see PARA 98 ante) does not apply to a document published or made available under reg 50: reg 49(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/125. Transitional provisions; in general.

(iii) Transitional Arrangements with regard to England

125. Transitional provisions; in general.

Schedule 8 to the Planning and Compulsory Purchase Act 2004¹ makes transitional provision regarding the introduction in England of the new system of development plans². The Secretary of State³ may make provision by regulations⁴ for giving full effect to that Schedule⁵. The regulations may, in particular:

- 635 (1) make such provision as he thinks is necessary in consequence of that Schedule;
- 636 (2) make provision to supplement any modifications of the Town and Country Planning Act 1990 required by that Schedule⁶.

The Secretary of State may by order make such provision as he thinks is necessary in consequence of anything done under or by virtue of that Schedule⁷.

The Secretary of State may also make provision by regulations:

- 637 (a) for treating anything done or purported to have been done for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004⁸ before its commencement⁹ as having been done after that commencement¹⁰;

638 (b) for disregarding any requirement of the statutory provisions regarding the preparation of local development documents¹¹ in respect of anything done or purported to have been done for the purposes of any other provision of Part 2 of the 2004 Act¹².

Specified provisions of the Town and Country Planning Act 1990¹³ and of the Planning and Compensation Act 1991¹⁴ have effect, for the purposes of Schedule 8 to the Planning and Compulsory Purchase Act 2004 and of any regulations made pursuant to the provisions set out above, as if they had not been repealed by the 2004 Act¹⁵.

1 le the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 (paras 1-19): see the text and notes 3-7 infra; and PARA 126 et seq post.

2 le makes transitional provision regarding ibid Pts 1, 2 (ss 1-37): see PARAS 72 et seq, 89 et seq ante. The transitional provisions contained in Sch 8 must, where applicable, be followed unless there is very good reason not to do so: see *R (on the application of Martin Grant Homes Ltd) v Wealden District Council* [2005] EWHC 453 (Admin), (2005) Times, 18 March.

3 As to the Secretary of State see PARA 19 ante.

4 As to the making of regulations under the Planning and Compulsory Purchase Act 2004 see PARA 5 ante.

5 Ibid Sch 8 para 17(1). In the exercise of this power the Secretary of State has made the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, which came into force on 28 September 2004: see reg 1.

6 Planning and Compulsory Purchase Act 2004 s 117(5), Sch 8 para 17(2).

7 Ibid Sch 8 para 17(3). Such provision includes provisions corresponding to that which could be made by order under the Town and Country Planning Act 1990 Sch 2 (repealed in relation to England) (former transitional provisions): Planning and Compulsory Purchase Act 2004 Sch 8 para 17(4).

8 le for the purposes of ibid Pt 2 (ss 13-37): see PARA 89 et seq ante.

9 le before 28 September 2004: see PARA 4 ante.

10 Planning and Compulsory Purchase Act 2004 Sch 8 para 18(a). See the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(1), (2); and PARAS 92 the text and notes 20-22, 108 note 14, 109 note 6 ante.

11 le any requirement of the Planning and Compulsory Purchase Act 2004 s 19: see PARA 104 ante.

12 Ibid Sch 8 para 18(b). See the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 6(3); and PARAS 108 note 14, 109 note 6 ante.

13 le the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended), ss 284, 287 (both as amended), s 296(1)(a) (as substituted and prospectively repealed), s 303A (as added), Sch 1 para 2 (as substituted; repealed with savings), Sch 2 Pts I-III (as amended; Pts I, II-III repealed with savings) (excluding a street authorisation map which continued to be treated as having been adopted as a local plan by virtue of Sch 2 Pt III para 4 (as so repealed)), Sch 13 (as amended): see PARAS 11, 39, 43, 46 ante, PARAS 149 et seq, 658 post.

14 le the Planning and Compensation Act 1991 Sch 4 Pt III (transitional provisions): see PARA 153 post.

15 Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4(a), Sch 2. In relation to the Isles of Scilly, art 4(a) is revoked, but for the purposes of the Planning and Compulsory Purchase Act 2004 Sch 8 and the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, the provisions set out in the Town and Country Planning (Isles of Scilly) Order 1992, SI 1992/1620, continue to have effect as if those provisions had not been revoked: Town and Country Planning (Isles of Scilly) Order 2005, SI 2005/2085, art 5(1), (3).

UPDATE

125 Transitional provisions; in general

NOTE 2--*R (on the application of Martin Grant Homes Ltd)*, cited, reversed, [2005] EWCA Civ 1221, [2006] LGR 210.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/126. The transitional period in relation to development plans; meanings of 'old policy' and 'new policy'.

126. The transitional period in relation to development plans; meanings of 'old policy' and 'new policy'.

The transitional period is the period starting with 28 September 2004¹ and ending on whichever is the earlier of:

- 639 (1) the end of the period of three years;
- 640 (2) the day when in relation to an old policy, a new policy which expressly replaces it² is published³, adopted or approved⁴.

The Secretary of State⁵ may, however, direct that for the purposes of such policies as are specified in the direction head (1) above does not apply⁶.

An old policy is a policy which, immediately before 28 September 2004, forms part of a development plan for the purposes of the relevant provisions⁷ of the Town and Country Planning Act 1990⁸. A new policy is a policy which is contained in:

- 641 (a) a revision of a regional spatial strategy (an RSS);
- 642 (b) an alteration or replacement of the spatial development strategy;
- 643 (c) a development plan document⁹.

1 The commencement of the Planning and Compulsory Purchase Act 2004 s 38 (meaning of 'development plan'): see the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 2(c); and PARA 91 ante.

2 An old policy contained in a structure plan is replaced only by a new policy contained in a revision to a regional spatial strategy (an 'RSS'); and an old policy contained in a waste local plan or a minerals local plan is replaced in relation to any area of a county council for which there is a district council only by a new policy contained in a development plan document which is prepared in accordance with a minerals and waste development scheme: Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 1(6). A minerals and waste development scheme is a scheme prepared in accordance with s 16 (see PARA 100 ante): Sch 8 para 1(9). For these purposes, 'RSS' must be construed in accordance with Pt 1 (ss 1-12) (see PARA 72 et seq ante); and 'development plan document' must be construed in accordance with Pt 2 (ss 13-37) (see PARA 89 et seq ante): Sch 8 para 19(2), (3).

3 A new policy is published if it is contained in: (1) a revision of an RSS published by the Secretary of State under ibid s 9(6) (see PARA 81 ante); (2) an alteration or replacement of the Mayor of London's spatial development strategy published in pursuance of the Greater London Authority Act 1999 s 337 (as amended) (see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 193): Planning and Compulsory Purchase Act 2004 Sch 8 para 1(7).

4 Ibid Sch 8 para 1(2). A new policy is adopted or approved if it is contained in a development plan document which is adopted or approved for the purposes of Pt 2 (ss 13-37) (see PARA 89 et seq ante): Sch 8 para 1(8).

5 As to the Secretary of State see PARA 19 ante.

6 Planning and Compulsory Purchase Act 2004 Sch 8 para 1(3).

7 le for the purposes of the Town and Country Planning Act 1990 s 27 (meaning of 'development plan' in Greater London and metropolitan counties (repealed with savings)) or s 54 (meaning of 'development plan' outside Greater London and the metropolitan counties (as amended) (repealed with savings)): see PARAS 149, 151 post. For these purposes, references to s 27 must be construed subject to s 28(3)(a), (c) (repealed with savings: see PARA 155 post): Planning and Compulsory Purchase Act 2004 s 117(5), Sch 8 para 19(1).

8 Ibid Sch 8 para 1(4).

9 Ibid Sch 8 para 1(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/127. Meaning of 'development plan' during the transitional period.

127. Meaning of 'development plan' during the transitional period.

During the transitional period¹ a reference in a specified enactment² to the development plan for an area in England is a reference to:

- 644 (1) the regional spatial strategy (the 'RSS')³ for the region⁴ in which the area is situated or the spatial development strategy⁵ for an area in Greater London⁶; and
- 645 (2) the development plan for the area for the purposes of the relevant provisions⁷ of the Town and Country Planning Act 1990⁸;

but the development plan mentioned in head (2) above does not include a street authorisation map which continued⁹ to be treated as having been adopted as a local plan¹⁰.

The repeal by the Planning and Compulsory Purchase Act 2004 of certain provisions in the Town and Country Planning Act 1990 relating to land allocated for public authority functions in development plans¹¹ does not affect anything which is required or permitted to be done for the purposes of the provisions relating to blighted land¹² during any time when a plan mentioned in any of those repealed provisions¹³ continues¹⁴ to form part of the development plan¹⁵.

1 As to the transitional period see PARA 126 ante.

2 le in an enactment mentioned in the Planning and Compulsory Purchase Act 2004 s 38(7): see PARA 91 note 1 ante.

3 As to the RSS see PARA 72 ante.

4 For the meaning of 'region' see PARA 24 note 4 ante.

5 As to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.

6 Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 1(1)(a). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 le for the purposes of the Town and Country Planning Act 1990 s 27 (repealed with savings) (meaning of 'development plan' in Greater London and metropolitan counties) or s 54 (as amended) (repealed with savings) (meaning of 'development plan' outside Greater London and the metropolitan counties): see PARAS 149, 151 post. As to the construction of references to s 27 for these purposes see PARA 126 note 7 ante.

- 8 Planning and Compulsory Purchase Act 2004 Sch 8 para 1(1)(b).
- 9 le by virtue of the Town and Country Planning Act 1990 Sch 2 Pt III para 4 (repealed).
- 10 Planning and Compulsory Purchase Act 2004 Sch 8 para 1(10).
- 11 le the repeal of the Town and Country Planning Act 1990 Sch 13 paras 1-4 by the Planning and Compulsory Purchase Act 2004 s 120, Sch 9: see PARA 979 post.
- 12 le for the purposes of the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 987 et seq post.
- 13 References to a plan mentioned in any of the Town and Country Planning Act 1990 Sch 13 paras 1-4 (repealed) include any proposal for the alteration or replacement of the plan: Planning and Compulsory Purchase Act 2004 Sch 8 para 16(2).
- 14 le by virtue of: (1) *ibid* Sch 8 para 1 (see the text and notes 1-10 *supra*; and PARA 126 *ante*); or (2) Sch 8 para 1 as applied by any other provision of Sch 8: Sch 8 para 16(1)(a), (b).
- 15 *Ibid* Sch 8 para 16(1). The development plan is the development plan for the purposes mentioned in note 7 *supra*: see Sch 8 para 16(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/128. Transitional arrangements for structure plans.

128. Transitional arrangements for structure plans.

The following provisions apply to proposals for the alteration or replacement of a structure plan¹ for the area of a local planning authority².

If before 28 September 2004³ the authority has complied with the requirements set out in the Town and Country Planning Act 1990 for making copies of proposals and the explanatory memorandum available for inspection⁴, the relevant provisions of that Act⁵ continue to have effect in relation to the proposals⁶. If the proposals are adopted or approved by virtue this provision, the transitional arrangements regarding the development plan⁷ apply to the policies contained in the proposals as if they were policies contained in a development plan within the meaning of the 1990 Act⁸ and 24 September 2004⁹ is the date when the proposals are adopted or approved, as the case may be¹⁰.

In any other case the authority must take no further step in relation to the proposals and the proposals have no effect¹¹.

1 As to structure plans see PARA 183 post.

2 Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 2(1). As to local planning authorities see PARA 28 et seq *ante*.

3 le the commencement of *ibid* Pt 1 (ss 1-12) (see PARA 72 et seq *ante*): see PARA 4 *ante*.

4 le the requirements of the Town and Country Planning Act 1990 s 33(2) (repealed with savings).

5 le the provisions of *ibid* Pt II Ch II (ss 29-54) (as amended; repealed with savings): see PARA 176 et seq post.

6 Planning and Compulsory Purchase Act 2004 s 117(5), Sch 8 para 2(2). The Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) continue to apply to proposals to which the Planning and Compulsory Purchase Act 2004 Sch 8 para 2 applies, subject to amendments set out in

the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 3, Schedule: reg 3.

7 Ie the Planning and Compulsory Purchase Act 2004 Sch 8 para 1: see PARAS 126-127 ante.

8 Ie within the meaning of the Town and Country Planning Act 1990 s 54 (as amended; repealed with savings): see PARA 151 post.

9 Ie the date of commencement of the Planning and Compulsory Purchase Act 2004 s 38 (see PARA 91 ante): see PARA 4 ante.

10 Ibid Sch 8 para 2(4). See also note 6 supra.

11 Ibid Sch 8 para 2(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/129. Transitional arrangements for unitary development plans.

129. Transitional arrangements for unitary development plans.

The following provisions apply:

- 646 (1) to proposals for the alteration or replacement of a unitary development plan¹ for the area of a local planning authority²;
- 647 (2) to a unitary development plan³, if at 28 September 2004⁴ a local planning authority has not prepared⁵ such a plan⁶.

If before the relevant date⁷ the authority has not complied with the requirements set out in the Town and Country Planning Act 1990 for making copies of the proposals or, as the case may be, of the plan available for inspection⁸, the authority must take no further step in relation to the proposals or the plan; and the proposals have, or the plan has, no effect⁹.

In any other case either head (a) or head (b) below applies¹⁰ as follows:

- 648 (a) if either:
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 - 105. (i) before the relevant date the local planning authority is not required to cause an inquiry or other hearing to be held¹¹; or
 - 106. (ii) before 28 September 2004¹² a person is appointed¹³ to hold an inquiry or other hearing,
- 74
 - 649 then the relevant provisions of the Town and Country Planning Act 1990¹⁴ continue to have effect in relation to the proposals or the plan¹⁵;
 - 650 (b) if head (a) above does not apply the relevant provisions of the 1990 Act¹⁶ continue to have effect in relation to the proposals, or to the plan, subject to specified¹⁷ modifications¹⁸.

If proposals are, or, as the case may be, a unitary development plan is adopted or approved in pursuance of head (a) or head (b) above, transitional arrangements regarding the development plan¹⁹ apply to the policies contained in the proposals or, as the case may be, in the unitary development plan, as if they were policies contained in a development plan for the purposes of

1990 Act²⁰ and 24 September 2004²¹ is the date when the proposals or the plan are or is adopted or approved, as the case may be²².

1 As to unitary development plans see PARA 155 et seq post.

2 Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 3(1). As to local planning authorities see PARA 28 et seq ante.

3 If at the date of commencement of *ibid* Pt 1 (ss 1-12) (see PARA 72 et seq ante) (ie 28 September 2004: see PARA 4 ante), a local planning authority has not prepared a unitary development plan in pursuance of the Town and Country Planning Act 1990 s 12 (as amended; repealed with savings) (see PARA 157 post), references in the Planning and Compulsory Purchase Act 2004 Sch 8 paras 3-6 to proposals for the alteration or replacement of a plan must be construed as references to the plan: s 117(5), Sch 8 para 7(1), (2).

4 Ie the date of commencement of *ibid* Pt 1: see note 3 supra.

5 Ie in pursuance of the Town and Country Planning Act 1990 s 12 (as amended; repealed with savings): see PARA 157 post.

6 See note 3 supra.

7 The relevant date is whichever is the later of: (1) the end of any period prescribed by regulations under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings) (see PARA 156 post) for the making of objections to the proposals or the plan; (2) the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see PARA 89 note 1 ante) (ie 24 September 2004: see PARA 4 ante); Sch 8 para 4(3); and see note 3 supra.

8 Ie has not complied with the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 post.

9 Planning and Compulsory Purchase Act 2004 Sch 8 para 3(2); and see note 3 supra.

10 *Ibid* Sch 8 para 3(3).

11 Ie by virtue of the Town and Country Planning Act 1990 s 16(1) (as substituted; repealed with savings) (inquiry must be held if objections made): see PARA 165 post.

12 Ie before the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2: see note 7 supra.

13 Ie under the Town and Country Planning Act 1990 s 16 (as amended; repealed with savings): see PARA 165 post.

14 Ie the provisions of *ibid* Pt II Ch I (ss 10-28A) (as amended; repealed with savings): see PARA 155 et seq post.

15 Planning and Compulsory Purchase Act 2004 Sch 8 para 4(1), (2); and see note 3 supra. The Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) continue to apply as regards proposals in relation to which the provisions of the Town and Country Planning Act 1990 Pt II Ch I (as amended) continue to have effect by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 para 4: Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 4(1).

16 See note 14 supra.

17 Ie the modifications in the Planning and Compulsory Purchase Act 2004 Sch 8 para 5(2)-(5): see note 18 *infra*.

18 *Ibid* Sch 8 para 5(1); and see note 3 supra. The modifications referred to in the text are as follows: (1) if before the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 the local planning authority has not published revised proposals, or a revised plan, in pursuance of regulations under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings), any provision of the regulations relating to publication of revised proposals or a revised plan must be ignored and the authority must comply again with s 13(2) (as substituted; repealed with savings); (2) if before the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 the local planning authority has published revised proposals, or a revised plan, in pursuance of regulations under the Town and Country Planning Act 1990 s 26 (as amended and so repealed) the authority must comply again with s 13(2) (as substituted and so repealed); (3) any provision of regulations under s 26 (as amended and so repealed) which permits the local planning authority to modify proposals, or a

plan, after an inquiry or other hearing has been held under s 16 (as amended and so repealed) must be ignored; (4) if such an inquiry or other hearing is held the authority must adopt the proposals or the plan in accordance with the recommendations of the person appointed to hold the inquiry or other hearing: Planning and Compulsory Purchase Act 2004 Sch 8 para 5(2)-(5); and see note 3 supra.

The Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) continue to apply as regards proposals in relation to which the provisions of the Town and Country Planning Act 1990 Pt II Ch I (as amended; repealed with savings) continue to have effect by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 para 5, subject to the amendments set out in the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 4(2), Schedule: reg 4(2).

19 le the Planning and Compulsory Purchase Act 2004 Sch 8 para 1: see PARAS 126-127 ante.

20 le for the purposes of the Town and Country Planning Act 1990 s 27 (repealed with savings): see PARA 149 post.

21 le the date of commencement of the Planning and Compulsory Purchase Act 2004 s 38 (see PARA 91 ante): see PARA 4 ante.

22 Ibid Sch 8 para 6; and see note 3 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/130. Transitional arrangements for local plans.

130. Transitional arrangements for local plans.

The following provisions apply:

651 (1) to proposals for the alteration or replacement of a local plan¹ for the area of a local planning authority²;

652 (2) to a local plan³ if at 28 September 2004⁴ a local planning authority has not prepared⁵ such a plan⁶.

If before 28 September 2004⁷ the authority has not complied with the requirements set out in the Town and Country Planning Act 1990 for making copies of the proposals or, as the case may be, of the plan available for inspection⁸, the authority must take no further step in relation to the proposals or plan and the proposals have, or the plan has, no effect⁹.

In any other case either head (a) or head (b) below applies¹⁰ as follows:

653 (a) if either:

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107. (i) before the relevant date¹¹ the local planning authority is not required to cause an inquiry or other hearing to be held¹²; or

108. (ii) before 28 September 2004¹³ a person is appointed¹⁴ to hold an inquiry or other hearing,

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654 then the relevant provisions of the Town and Country Planning Act 1990¹⁵ continue to have effect in relation to the proposals or the plan¹⁶;

655 (b) if head (a) above does not apply the relevant provisions of the 1990 Act¹⁷ continue to have effect in relation to the proposals, or to the plan, subject to specified¹⁸ modifications¹⁹.

If the Secretary of State²⁰ thinks that the conformity requirement²¹ is likely to give rise to inconsistency between the proposals, or the plan, and relevant policies or guidance²², and that it is necessary or expedient to avoid such inconsistency, he may direct that to the extent specified in the direction the conformity requirement must be ignored²³. The Secretary of State must give reasons for the direction²⁴.

If proposals are or, as the case may be, a local plan is adopted or approved in pursuance of the above provisions²⁵, transitional arrangements regarding the development plan²⁶ apply to the policies contained in the proposals or, as the case may be, in the local plan, as if they were policies contained in a development plan for the purposes of the 1990 Act²⁷ and 24 September 2004²⁸ is the date when the proposals are, or the plan is, adopted or approved, as the case may be²⁹.

1 As to local plans see PARA 195 et seq post.

2 Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 8(1). As to local planning authorities see PARA 28 et seq ante.

3 If at the date of commencement of *ibid* Pt 1 (ss 1-12) (see PARA 72 et seq ante) (ie 24 September 2004: see PARA 4 ante) a local planning authority has not prepared a local plan in pursuance of the Town and Country Planning Act 1990 s 36 (as substituted; repealed with savings) (see PARA 195 post), then references in the Planning and Compulsory Purchase Act 2004 Sch 8 paras 8-12 (see the text and notes 4-29 *infra*) to proposals for the alteration or replacement of a plan must be construed as references to the plan: s 117(5), Sch 8 para 13(1), (2).

4 Ie the date of commencement of *ibid* Pt 1: see note 3 *supra*.

5 Ie in pursuance of the Town and Country Planning Act 1990 s 36 (as substituted; repealed with savings): see PARA 195 post.

6 See note 3 *supra*.

7 Ie the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see PARA 89 et seq ante): see PARA 4 ante.

8 Ie has not complied with the Town and Country Planning Act 1990 s 40(2) (as substituted; repealed with savings): see PARA 201 post.

9 Planning and Compulsory Purchase Act 2004 Sch 8 para 8(2); and see note 3 *supra*.

10 *Ibid* Sch 8 para 8(3).

11 The relevant date is whichever is the later of: (1) the end of any period prescribed by regulations under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings) for the making of objections to the proposals or to the plan (see PARA 177 post); (2) the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 (see the text and note 7 *supra*): Sch 8 para 9(3); and see note 3 *supra*.

12 Ie by virtue of the Town and Country Planning Act 1990 s 42(1) (as substituted; repealed with savings): see PARA 202 post.

13 See note 7 *supra*.

14 Ie under the Town and Country Planning Act 1990 s 42 (as amended; repealed with savings): see PARA 202 post.

15 Ie the provisions of the Town and Country Planning Act 1990 Pt II Ch II (ss 29-54) (as amended; repealed with savings): see PARA 176 et seq post.

16 Planning and Compulsory Purchase Act 2004 Sch 8 para 9(1), (2); and see note 3 *supra*. The Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) continue to apply as regards proposals in relation to which the provisions of the Town and Country Planning Act 1990 Pt II Ch II (as amended) continue to have effect by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 para 9: Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 5(1).

17 See note 15 supra.

18 Ie the modifications in *ibid* Sch 8 para 10(2)-(5): see note 19 infra.

19 *Ibid* Sch 8 para 10(1); and see note 3 supra. The modifications referred to in the text are as follows: (1) if before the commencement of Pt 2 the local planning authority has not published revised proposals, or a revised plan, in pursuance of regulations under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings) (see PARA 177 post), any provision of the regulations relating to publication of revised proposals or a revised plan must be ignored and the authority must comply again with s 40(2) (as substituted; repealed with savings); (2) if before the commencement of the Planning and Compulsory Purchase Act 2004 Pt 2 the local planning authority has published revised proposals or a revised plan in pursuance of regulations under the Town and Country Planning Act 1990 s 53 (as amended and so repealed) the authority must comply again with s 40(2) (as substituted and so repealed); (3) any provision of regulations under s 53 (as amended and so repealed) which permits the local planning authority to modify proposals after an inquiry or other hearing has been held under s 42 (as amended and so repealed) must be ignored; (4) if such an inquiry or other hearing is held the authority must adopt the proposals or the plan in accordance with the recommendations of the person appointed to hold the inquiry or other hearing: Planning and Compulsory Purchase Act 2004 Sch 8 para 10(2)-(5); and see note 3 supra. Whatever the scope of the power to abandon a local plan (see *R (on the application of Persimmon Homes (Thames Valley) Ltd) v North Hertfordshire District Council* [2001] EWHC Admin 565, [2001] 1 WLR 2393, [2001] All ER (D) 268 (Jul)), it ought not to be used to override the transitional provisions contained in the Planning and Compulsory Purchase Act 2004 Sch 8 para 10: *R (on the application of Martin Grant Homes Ltd) v Wealden District Council* [2005] EWHC 453 (Admin), (2005) Times, 18 March, [2005] All ER (D) 401 (Mar).

The Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) continue to apply as regards proposals in relation to which the provisions of the Town and Country Planning Act 1990 Pt II Ch II (as amended) continue to have effect by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 para 10, subject to the amendments set out in the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, reg 5(2), Schedule: reg 5(2).

20 As to the Secretary of State see PARA 19 ante.

21 The conformity requirement is: (1) the requirement under the Town and Country Planning Act 1990 s 36(4) (as substituted; repealed with savings) that the local plan is to be in general conformity with the structure plan (see PARA 195 post); (2) the prohibition under s 43(3) (repealed with savings) on the adoption of proposals for a local plan or for its alteration or replacement which do not conform generally with the structure plan (see PARA 204 post): Planning and Compulsory Purchase Act 2004 Sch 8 para 11(4).

22 Relevant policies and guidance are (1) national policies; (2) advice contained in guidance; (3) policies in the regional spatial strategy (the 'RSS'): *ibid* Sch 8 para 11(5). As to national policies and guidance see PARA 9 ante; and as to the RSS see PARA 72 ante.

23 *Ibid* Sch 8 para 11(1), (2).

24 *Ibid* Sch 8 para 11(3).

25 Ie in pursuance of *ibid* Sch 8 paras 9-11: see the text and notes 11-24 supra.

26 Ie *ibid* Sch 8 para 1: see PARAS 126-127 ante.

27 Ie a development plan for the purposes of the Town and Country Planning Act 1990 s 54 (repealed with savings): see PARA 151 post.

28 Ie the date of commencement of the Planning and Compulsory Purchase Act 2004 s 38 (see PARA 91 ante): see PARA 4 ante.

29 *Ibid* Sch 8 para 12; and see note 3 supra.

UPDATE

130 Transitional arrangements for local plans

NOTE 19--*R (on the application of Martin Grant Homes Ltd)*, cited, reversed, [2005] EWCA Civ 1221, [2005] All ER (D) 359 (Oct).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/131. Transitional arrangements for minerals and waste local plans.

131. Transitional arrangements for minerals and waste local plans.

The provisions set out in the previous paragraph¹ apply to a minerals local plan² and a waste local plan³ as they apply to a local plan⁴. References in those provisions to a local planning authority⁵ must be construed as including references to a mineral planning authority⁶ and an authority which is entitled to prepare a waste local plan⁷.

1 le the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 paras 8-13: see PARA 130 ante.

2 As to minerals local plans see PARA 196 post.

3 As to waste local plans see PARA 197 post.

4 Planning and Compulsory Purchase Act 2004 Sch 8 para 14. As to local plans see PARA 195 post.

5 As to local planning authorities see PARA 28 et seq ante.

6 As to mineral planning authorities see PARA 29 ante.

7 Planning and Compulsory Purchase Act 2004 Sch 8 para 14. As to authorities which are entitled to prepare waste local plans see PARA 197 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iii) Transitional Arrangements with regard to England/132. Plans and documents which must be included in schemes during the transitional period.

132. Plans and documents which must be included in schemes during the transitional period.

During the transitional period¹ the local planning authority² must include in the local development scheme³ which it is required to prepare and maintain⁴:

656 (1) any plan or document which relates to an old policy⁵ which has not been replaced by a new policy⁶;

657 (2) any proposals adopted or approved by virtue of the transitional arrangements for unitary development plans and local plans⁷,

as a development plan document⁸.

Similarly, during the transitional period the county council⁹ must include in the minerals and waste development scheme¹⁰ which it is required to prepare and maintain for any part of its area for which there is a district council¹¹:

658 (a) any such plan or document as is referred to in head (1) above;

659 (b) any such proposals as are referred to in head (2) above,

as a development plan document¹².

- 1 As to the transitional period see PARA 126 ante.
- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 As to local development schemes see PARAS 96-99 ante.
- 4 le under the Planning and Compulsory Purchase Act 2004 s 15: see PARAS 96-99 ante.
- 5 le an old policy for the purposes of ibid s 119(1), Sch 8 para 1: see PARA 126 ante.
- 6 As to when an old policy is replaced see PARA 126 note 2 ante.
- 7 le by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 paras 3-12: see PARAS 129-130 ante.
- 8 See ibid Sch 8 para 15(1)(a), (2). For the meaning of 'development plan document' see PARA 96 note 4 ante.
- 9 As to county councils see PARA 28 note 1 ante.
- 10 As to minerals and waste development schemes see PARA 100 ante.
- 11 As to district councils see PARA 28 note 2 ante.
- 12 See the Planning and Compulsory Purchase Act 2004 Sch 8 para 15(1)(b), (2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/133. Exercise of local development functions; in general.

(iv) Local Development in Wales

133. Exercise of local development functions; in general.

The National Assembly for Wales¹ may by regulations² make provision in connection with the exercise of functions conferred by Part 6 of the Planning and Compulsory Purchase Act 2004³ on any person⁴. The regulations may in particular make provision as to:

- 660 (1) the procedure to be followed by the local planning authority⁵ in carrying out the appraisal⁶ of the sustainability of the local development plan⁷;
- 661 (2) the procedure to be followed in the preparation of local development plans⁸;
- 662 (3) requirements about the giving of notice and publicity⁹;
- 663 (4) requirements about inspection by the public of a plan or any other document¹⁰;
- 664 (5) the nature and extent of consultation with and participation by the public in anything done under Part 6 of the Act¹¹;
- 665 (6) the making of representations about any matter to be included in a local development plan¹²;
- 666 (7) consideration of any such representations¹³;
- 667 (8) the remuneration and allowances payable to the person appointed to carry out an independent examination¹⁴ of the local development plan¹⁵;

- 668 (9) the time at which anything must be done for the purposes of Part 6 of the Act¹⁶;
- 669 (10) the manner of publication of any draft, report or other document published under that Part¹⁷;
- 670 (11) monitoring the exercise by local planning authorities of their functions under that Part¹⁸.

In the exercise of any function conferred under or by virtue of Part 6 of the Act, the local planning authority must have regard to any guidance issued by the Assembly¹⁹. Furthermore, any person or body must, in exercising any function under that Part in relation to a local development plan, exercise that function with the objective of contributing to the achievement of sustainable development²⁰ and must have regard to national policies and advice contained in guidance issued by the Assembly²¹.

The Assembly may direct that, with the exception of the provisions relating to the Wales Spatial Plan²², Part 6 of the Planning and Compulsory Purchase Act 2004 does not apply to the area of an urban development corporation²³.

- 1 As to the Assembly see PARA 20 ante.
- 2 As to regulations made by the Assembly see PARA 5 ante.
- 3 Ie by the Planning and Compulsory Purchase Act 2004 Pt 6 (ss 60-78): see PARAS 87-88 ante, PARA 134 et seq post.
- 4 Ibid s 77(1).
- 5 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 6 Ie the appraisal under the Planning and Compulsory Purchase Act 2004 s 62(6): see PARA 135 post.
- 7 Ibid s 77(2)(a). For the meaning of 'local development plan' see PARA 91 ante, PARA 135 post.
- 8 Ibid s 77(2)(b).
- 9 Ibid s 77(2)(c).
- 10 Ibid s 77(2)(d).
- 11 Ibid s 77(2)(e).
- 12 Ibid s 77(2)(f).
- 13 Ibid s 77(2)(g).
- 14 Ie under ibid s 64: see PARA 138 post.
- 15 Ibid s 77(2)(h).
- 16 Ibid s 77(2)(i).
- 17 Ibid s 77(2)(j).
- 18 Ibid s 77(2)(k).
- 19 Ibid s 75. As to such guidance see PARA 9 ante.
- 20 Ibid s 39(1)(c), (2).
- 21 Ibid s 39(3)(b).
- 22 Ie except ibid s 60 (see PARAS 87-88 ante): s 74.

23 Ibid s 74. As to urban development corporations see PARA 1428 et seq post.

UPDATE

133 Exercise of local development functions; in general

NOTE 8--See the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, SI 2005/2839.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/134. Annual monitoring report.

134. Annual monitoring report.

Every local planning authority¹ must make an annual report to the National Assembly for Wales². The annual report must contain such information as is prescribed³ as to the extent to which the objectives set out in the local development plan⁴ are being achieved⁵.

The annual report must:

- 671 (1) be made at such time;
- 672 (2) be in such form;
- 673 (3) contain such other matter,

as is prescribed⁶.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 76(1). As to the Assembly see PARA 20 ante.

3 Ie prescribed by regulations made by the Assembly: see PARA 5 ante.

4 For the meaning of 'local development plan' see PARA 91 ante, PARA 135 post.

5 Planning and Compulsory Purchase Act 2004 s 76(2).

6 Ibid s 76(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/135. Preparation of local development plan.

135. Preparation of local development plan.

The local planning authority¹ must prepare a plan for its area to be known as a local development plan². The plan must set out:

- 674 (1) the authority's objectives in relation to the development³ and use⁴ of land⁵ in its area;
- 675 (2) its general policies for the implementation of those objectives⁶.

The plan may also set out specific policies in relation to any part of the area of the authority⁷. Regulations⁸ may prescribe the form and content of the plan⁹.

In preparing a local development plan the authority must have regard to:

- 676 (a) current national policies¹⁰;
- 677 (b) the Wales Spatial Plan¹¹;
- 678 (c) the regional spatial strategy (the 'RSS')¹² for any region¹³ which adjoins the area of the authority;
- 679 (d) the community strategy¹⁴ prepared by the authority;
- 680 (e) the community strategy for any other authority whose area comprises any part of the area of the local planning authority;
- 681 (f) the resources likely to be available for implementing the plan;
- 682 (g) such other matters as the National Assembly for Wales prescribes¹⁵.

The authority must also carry out an appraisal of the sustainability of the plan and prepare a report of the findings of the appraisal¹⁶.

A plan is a local development plan only in so far as it:

- 683 (i) is adopted by resolution of the local planning authority as a local development plan¹⁷;
- 684 (ii) is approved¹⁸ by the Assembly¹⁹.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 62(1). For the meaning of 'local development plan' see PARA 91 ante. See also the text and notes 17-19 infra.

3 For the meaning of 'development' see PARA 217 post (definition applied by *ibid* s 117(1), (5)).

4 For the meaning of 'use' see PARA 221 note 4 post (definition as applied: see note 3 supra).

5 For the meaning of 'land' see PARA 2 note 10 ante (definition as applied: see note 3 supra).

6 Planning and Compulsory Purchase Act 2004 s 62(2).

7 *Ibid* s 62(3).

8 *Ie* regulations made by the Assembly under *ibid* s 62. As to regulations made by the Assembly under the Planning and Compulsory Purchase Act 2004 see generally para 5 ante.

9 *Ibid* s 62(4).

10 As to such policies see PARAS 1, 9 ante.

11 As to the Wales Spatial Plan see PARAS 87-88 ante.

12 For these purposes, 'RSS' must be construed in accordance with the Planning and Compulsory Purchase Act 2004 Pt I (ss 1-12): s 78(5). See PARA 72 ante.

13 For the meaning of 'region' see PARA 24 note 4 ante.

14 The community strategy is the strategy prepared by an authority under the Local Government Act 2000 s 4 (see LOCAL GOVERNMENT vol 69 (2009) PARA 464): Planning and Compulsory Purchase Act 2004 s 62(7).

15 Ibid s 62(5). 'Prescribes' means prescribes by regulations: see PARA 5 ante.

16 Ibid s 62(6).

17 Ibid s 62(8)(a). As to adoption of the plan see PARA 144 post.

18 Ie under ibid s 65 (see PARA 139 post) or s 71 (see PARA 142 post): s 62(8)(b).

19 Ibid s 62(8)(b). For the purposes of Pt 6 (ss 60-78) (see PARAS 87-88, 133-134 ante, PARA 136 et seq post), 'local development plan' must be construed in accordance with s 62: s 78(1).

UPDATE

135 Preparation of local development plan

TEXT AND NOTES--See the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, SI 2005/2839.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/136. Preparation requirements.

136. Preparation requirements.

A local development plan¹ must be prepared in accordance with:

- 685 (1) the local planning authority's² community involvement scheme³;
- 686 (2) the timetable for the preparation and adoption⁴ of the authority's local development plan⁵.

The authority and the National Assembly for Wales must attempt to agree the terms of the documents mentioned in heads (1) and (2) above⁶; but to the extent that they cannot agree the terms the Assembly may direct that the documents must be in the terms specified in the direction⁷. The authority must comply with the direction⁸.

The Assembly may prescribe⁹:

- 687 (a) the procedure in respect of the preparation of the documents mentioned in heads (1) and (2) above¹⁰;
- 688 (b) the form and content of the documents¹¹;
- 689 (c) the time at which any step in the preparation of the documents must be taken¹²;
- 690 (d) publicity about the documents¹³;
- 691 (e) making the documents available for inspection by the public¹⁴;
- 692 (f) circumstances in which the requirements of the documents need not be complied with¹⁵.

1 For the meaning of 'local development plan' for these purposes see PARAS 91, 135 note 19 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

3 The authority's community involvement scheme is a statement of the authority's policy as to the involvement in the exercise of the authority's functions under the Planning and Compulsory Purchase Act 2004

Pt 6 (ss 60-78) (see PARAS 87-88, 133-135 ante, PARA 137 et seq post) of the persons to whom s 63(3) applies: s 63(2). The persons mentioned in s 63(2): (1) must include such persons as the National Assembly for Wales prescribes; (2) may include such other persons as appear to the authority to have an interest in matters relating to development in the area of the authority: s 63(3). As to the Assembly see PARA 20 ante. 'Prescribes' means prescribes by regulations: see PARA 5 ante.

- 4 As to adoption of the local development plan see PARA 144 post.
- 5 Planning and Compulsory Purchase Act 2004 s 63(1).
- 6 Ibid s 63(4).
- 7 Ibid s 63(5).
- 8 Ibid s 63(6).
- 9 Ie by regulations: see PARA 5 ante.
- 10 Planning and Compulsory Purchase Act 2004 s 63(7)(a).
- 11 Ibid s 63(7)(b).
- 12 Ibid s 63(7)(c).
- 13 Ibid s 63(7)(d).
- 14 Ibid s 63(7)(e).
- 15 Ibid s 63(7)(f).

UPDATE

136 Preparation requirements

NOTE 3--As to community involvement schemes, see the Town and Country Planning (Local Development Plan) (Wales) Regulations 2005, SI 2005/2839.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/137. Joint local development plans.

137. Joint local development plans.

Two or more local planning authorities¹ may agree to prepare a joint local development plan². Part 6 of the Planning and Compulsory Purchase Act 2004³ applies for the purposes of the preparation, revision, adoption, withdrawal and revocation of a joint local development plan as it applies for the purposes of the preparation, revision, adoption, withdrawal and revocation of a local development plan⁴; and for those purposes anything which must be done by or in relation to a local planning authority in connection with a local development plan must be done by or in relation to each of the authorities mentioned above in connection with a joint local development plan⁵.

If a local planning authority withdraws from an agreement to prepare a joint local development plan⁶, the following provisions apply⁷:

- 693 (1) any step taken in relation to the plan must be treated as a step taken by: (a) an authority which was a party to the agreement for the purposes of any

- corresponding plan prepared by that authority; (b) two or more other authorities who were parties to the agreement for the purposes of any corresponding joint local development plan⁸;
- 694 (2) any independent examination⁹ of a local development plan to which the agreement relates must be suspended¹⁰;
- 695 (3) if before the end of the period prescribed¹¹ for these purposes an authority which was a party to the agreement requests the National Assembly for Wales¹² to do so it may direct that: (a) the examination is resumed in relation to the corresponding plan; (b) any step taken for the purposes of the suspended examination has effect for the purposes of the resumed examination¹³.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 Planning and Compulsory Purchase Act 2004 s 72(1). A joint local development plan is a local development plan prepared jointly by two or more local planning authorities: s 72(8). For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

3 Ie ibid Pt 6 (ss 60-78): see PARAS 87-88, 133-136 ante, PARA 138 et seq post.

4 Ibid s 72(2). As to the preparation of a local development plan see PARAS 135-136 ante; and as to its revision, adoption, withdrawal and revocation see PARA 143 et seq post.

5 Ibid s 72(3).

6 Ie an agreement mentioned in ibid s 72(1): see the text and notes 1-2 supra.

7 Ibid s 72(4).

8 Ibid s 72(5).

9 As to independent examination see PARA 138 post.

10 Planning and Compulsory Purchase Act 2004 s 72(6).

11 Ie prescribed by regulations: see PARA 5 ante.

12 As to the Assembly see PARA 20 ante.

13 Planning and Compulsory Purchase Act 2004 s 72(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/138. Independent examination.

138. Independent examination.

The local planning authority¹ must submit its local development plan² to the National Assembly for Wales³ for independent examination⁴. The purpose of the independent examination is to determine in respect of a local development plan:

- 696 (1) whether it satisfies the statutory requirements regarding its preparation⁵ and the requirements of the relevant regulations⁶;
- 697 (2) whether it is sound⁷.

The authority must not, however, submit a plan unless it has complied with any relevant requirements contained in regulations under Part 6 of the Planning and Compulsory Purchase Act 2004⁸ and it thinks the plan is ready for independent examination⁹.

The authority must also send to the Assembly, in addition to the local development plan, such other documents, or copies of documents, and such information as is prescribed¹⁰.

The examination must be carried out by a person appointed by the Assembly¹¹. Any person who makes representations seeking to change a local development plan must, if he so requests, be given the opportunity to appear before and be heard by the person carrying out the examination¹². If, however, the Assembly or a local planning authority thinks that a representation made in relation to a local development plan is in substance a representation or objection in respect of anything which is done or proposed to be done in pursuance of specified statutory provisions¹³, the Assembly or authority, as the case may be, may disregard it¹⁴.

The person appointed to carry out the examination must make recommendations and give reasons for the recommendations¹⁵; and the local planning authority must publish the recommendations and the reasons¹⁶.

1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

3 As to the Assembly see PARA 20 ante.

4 Planning and Compulsory Purchase Act 2004 s 64(1). An examination of any document or plan for the purposes of Pt 6 (ss 60-78) (see PARAS 87-88, 133 et seq ante, PARA 139 et seq post) is a statutory inquiry within the meaning of the Tribunals and Inquiries Act 1992: Planning and Compulsory Purchase Act 2004 s 114. See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15. Such an examination is also a qualifying procedure for the purposes of the Town and Country Planning Act 1990 s 303A (as added and amended) (costs of holding certain inquiries etc): see PARA 658 post.

5 Ie the requirements of ibid ss 62, 63 (see PARAS 135-136 ante): s 64(5)(a).

6 Ie the requirements of regulations under ibid s 77 (see PARA 133 ante): s 64(5)(a).

7 Ibid s 64(5)(a), (b).

8 Ie regulations under ibid Pt 6: see PARAS 87-88, 133 et seq ante, PARA 139 et seq post.

9 Ibid s 64(2).

10 Ibid s 64(3). 'Prescribed' means prescribed by regulations: see PARA 5 ante.

11 Ibid s 64(4). As to the remuneration etc of such a person see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (Wales) Regulations 2005, SI 2005/371. See also PARAS 165, 658 post.

12 Planning and Compulsory Purchase Act 2004 s 64(6).

13 Ie a representation to which the Planning and Compulsory Purchase Act 2004 s 73 applies. Section 73 applies to any representation or objection in respect of anything which is done or is proposed to be done in pursuance of: (1) an order or scheme under the Highways Act 1980 s 10 (as amended) (trunk roads), s 14 (as amended) (roads crossing or joining trunk or classified roads), s 16 (special roads), s 18 (as amended) (supplementary orders relating to special roads), s 106(1) or (3) (bridges or tunnels under or over navigable waters) or s 108(1) (diversion of navigable watercourses) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703 et seq, 710, 731 et seq, 878 et seq); (2) an order or scheme under the Highways Act 1959 s 7, s 9, s 11, s 13 or s 20 (all repealed), the Highways (Miscellaneous Provisions) Act 1961 s 3 (repealed) or the Highways Act 1971 s 1 or s 10 (both repealed) (which provisions were replaced by the provisions mentioned in head (1) supra); (3) an order under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 post): Planning and Compulsory Purchase Act 2004 s 73(1).

14 Ibid s 73(2).

15 Ibid s 64(7).

16 Ibid s 64(8).

UPDATE

138 Independent examination

NOTE 11--SI 2005/371 replaced: Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007, SI 2007/728.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/139. Direction by the Assembly to modify a local development plan.

139. Direction by the Assembly to modify a local development plan.

If the National Assembly for Wales¹ thinks that a local development plan² is unsatisfactory, it may at any time before the plan is adopted³ by the local planning authority⁴ direct the authority to modify the plan in accordance with the direction⁵. If it gives such a direction it must state its reasons for doing so⁶.

The authority must comply with the direction and must not adopt the plan unless the Assembly gives notice that it is satisfied that the authority has so complied⁷; but this does not apply if the Assembly withdraws the direction⁸.

1 As to the Assembly see PARA 20 ante.

2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

3 As to adoption of the plan see PARA 144 post.

4 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

5 Planning and Compulsory Purchase Act 2004 s 65(1)(a). In the exercise of any function under s 65 the Assembly must have regard to the documents mentioned in s 63(1)(a), (b) (see PARA 136 ante): s 65(10).

6 Ibid s 65(1)(b).

7 Ibid s 65(2).

8 Ibid s 65(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/140. Calling in of local development plan.

140. Calling in of local development plan.

At any time before a local development plan¹ is adopted² by a local planning authority³ the National Assembly for Wales⁴ may direct that the plan is submitted to it for its approval⁵. The following provisions apply if the Assembly gives such a direction:

- 698 (1) the authority must not take any step in connection with the adoption of the plan until the Assembly gives its decision⁶;
- 699 (2) if the direction is given before the authority has submitted the plan for independent examination⁷ the Assembly must hold an independent examination⁸;
- 700 (3) if the direction is given after the authority has submitted the plan the person appointed to carry out the examination must make his recommendations to the Assembly⁹;
- 701 (4) the plan has no effect unless it has been approved by the Assembly¹⁰.

The Assembly must publish the recommendations made to it by virtue of head (2) or head (3) above and the reasons of the person making the recommendations¹¹.

In considering a plan submitted under the above provisions the Assembly may take account of any matter which it thinks is relevant¹²; and it is immaterial whether any such matter was taken account of by the authority¹³.

1 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

2 As to adoption of the plan see PARA 144 post.

3 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

4 As to the Assembly see PARA 20 ante.

5 Planning and Compulsory Purchase Act 2004 s 65(4). In the exercise of any function under s 65 the Assembly must have regard to the documents mentioned in s 63(1)(a), (b) (see PARA 136 ante): s 65(10).

6 Ibid s 65(5)(a). As to the Assembly's decision see PARA 141 post.

7 Ie under ibid s 64(1): see PARA 138 ante.

8 Ibid s 65(5)(b). Section 64(4)-(7) (see PARA 138 ante) applies accordingly: s 65(5)(b).

9 Ibid s 65(5)(c).

10 Ibid s 65(5)(d).

11 Ibid s 65(6).

12 Ibid s 65(7).

13 Ibid s 65(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/141. Assembly's decision on called-in local development plan.

141. Assembly's decision on called-in local development plan.

The National Assembly for Wales¹ may approve, approve subject to specified modifications or reject a local development plan² submitted to it³ for approval⁴. The Assembly must give reasons for its decision⁵.

1 As to the Assembly see PARA 20 ante.

2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

3 le submitted to it under the Planning and Compulsory Purchase Act 2004 s 65(4): see PARA 140 ante.

4 Ibid s 65(9)(a). In the exercise of any function under s 65 the Assembly must have regard to the documents mentioned in s 63(1)(a), (b) (see PARA 136 ante): s 65(10).

5 Ibid s 65(9)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/142. Assembly's default power.

142. Assembly's default power.

If the National Assembly for Wales¹ thinks that a local planning authority² is failing or omitting to do anything it is necessary for that authority to do in connection with the preparation, revision or adoption of a local development plan³, the following provisions apply⁴:

702 (1) the Assembly must hold an independent examination⁵ and must publish the recommendations and reasons of the person appointed to hold the examination⁶;

703 (2) the Assembly may prepare the plan or revise the plan, as the case may be, and may approve it as a local development plan⁷;

704 (3) the Assembly must give reasons for anything it does in pursuance of head (2) above⁸.

The authority must reimburse the Assembly for any expenditure it incurs in connection with anything which is done by it under head (2) above and which the authority failed or omitted⁹ to do¹⁰.

1 As to the Assembly see PARA 20 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

3 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante; as to the preparation of such a plan see PARAS 135-136 ante; and as to its revision and adoption see PARAS 144-145 post.

4 Planning and Compulsory Purchase Act 2004 s 71(1).

5 Ibid s 71(2). Section 64(4)-(7) (see PARA 138 ante) applies accordingly: s 71(2).

6 Ibid s 71(3).

7 Ibid s 71(4).

8 Ibid s 71(5).

9 le as mentioned in ibid s 71(1): see the text and notes 1-4 supra.

10 Ibid s 71(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/143. Withdrawal of local development plan.

143. Withdrawal of local development plan.

A local planning authority¹ may, at any time before a local development plan² is adopted³, withdraw the plan⁴. This does not, however, apply to a local development plan at any time after the plan has been submitted for independent examination⁵ unless:

- 705 (1) the person carrying out the examination recommends that the plan is withdrawn and that recommendation is not overruled by a direction given by the National Assembly for Wales⁶; or
- 706 (2) the Assembly directs that the plan must be withdrawn⁷.

- 1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.
- 3 Ie adopted under the Planning and Compulsory Purchase Act 2004 s 67: see PARA 144 post.
- 4 Ibid s 66(1).
- 5 Ie under ibid s 64: see PARA 138 ante.
- 6 As to the Assembly see PARA 20 ante.
- 7 Planning and Compulsory Purchase Act 2004 s 66(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/144. Adoption of local development plan.

144. Adoption of local development plan.

The local planning authority¹ may adopt a local development plan²:

- 707 (1) as originally prepared³, if the person appointed to carry out the independent examination of the plan⁴ recommends that the plan as originally prepared is adopted⁵;
- 708 (2) with modifications, if the person appointed to carry out the independent examination of the plan recommends the modifications⁶.

A plan is adopted for these purposes if it is adopted by resolution of the authority⁷.

The authority must not, however, adopt a local development plan if the National Assembly for Wales⁸ directs the authority not to do so⁹.

- 1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.
- 3 As to preparation of the plan see PARAS 135-136 ante.
- 4 As to independent examination see PARA 138 ante.
- 5 Planning and Compulsory Purchase Act 2004 s 67(1).
- 6 Ibid s 67(2).
- 7 Ibid s 67(3).
- 8 As to the Assembly see PARA 20 ante.
- 9 Planning and Compulsory Purchase Act 2004 s 67(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/145. Review and revision of local development plan.

145. Review and revision of local development plan.

A local planning authority¹ must carry out a review of its local development plan² at such times as the National Assembly for Wales³ prescribes⁴. The authority must report to the Assembly on the findings of its review⁵. A review must be in such form as is, and be published in accordance with such requirements as are, prescribed⁶.

The local planning authority may at any time prepare a revision of a local development plan⁷; and must prepare such a revision if the Assembly directs the authority to do so or if, following a review under the above provisions, the authority thinks that the plan should be revised⁸. Part 6 of the Planning and Compulsory Purchase Act 2004⁹ applies to the revision of a local development plan as it applies to the preparation of the plan¹⁰.

- 1 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.
- 2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.
- 3 As to the Assembly see PARA 20 ante.
- 4 Planning and Compulsory Purchase Act 2004 s 69(1). 'Prescribes' means prescribes by regulations: see PARA 5 ante.
- 5 Ibid s 69(2).
- 6 Ibid s 69(3).
- 7 Ibid s 70(1).
- 8 Ibid s 70(2).
- 9 *le* ibid Pt 6 (ss 60-78): see PARAS 87-88, 133 et seq ante, PARA 146 post.
- 10 Ibid s 70(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/146. Revocation of local development plan.

146. Revocation of local development plan.

The National Assembly for Wales¹ may at any time revoke a local development plan² at the request of the local planning authority³.

1 As to the Assembly see PARA 20 ante.

2 For the meaning of 'local development plan' see PARAS 91, 135 note 19 ante.

3 Planning and Compulsory Purchase Act 2004 s 68. For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(2) DEVELOPMENT PLANS UNDER THE 2004 ACT/(iv) Local Development in Wales/147. Transitional arrangements with regard to Wales.

147. Transitional arrangements with regard to Wales.

Until 15 October 2005, in relation to specified local planning authorities¹ and to their areas, the provisions of the Planning and Compulsory Purchase Act 2004² with regard to:

- 709 (1) the local development plan³;
- 710 (2) preparation requirements⁴;
- 711 (3) joint local development plans⁵; and
- 712 (4) exclusion of certain representations⁶,

did not apply⁷; and the specified provisions of the Town and Country Planning Act 1990⁸ with regard to:

- 713 (a) preparation of a unitary development plan⁹;
- 714 (b) alteration or replacement of the unitary development plan¹⁰; and
- 715 (c) unitary development plans for National Parks in Wales¹¹,

continued in force in relation to those authorities and areas¹². As from that date, those transitional arrangements ceased to apply¹³; but certain of those specified local planning authorities¹⁴ must, if such an authority resolves its intention to conclude the exercise of its powers under the Town and Country Planning (Development Plan) Regulations 1991¹⁵, inform the National Assembly for Wales¹⁶ in writing, within three weeks, of that resolution and of the current development plan status for its area¹⁷ and must also, within four weeks, publish that information on its website¹⁸.

1 ie the local planning authorities listed in the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 4, Schedule

(revoked). Those authorities are: Blaenau Gwent County Borough Council; Brecon Beacons National Park Authority; Bridgend County Borough Council; Carmarthenshire County Council; Ceredigion County Council; Flintshire County Council; Gwynedd County Council; Isle of Anglesey County Council; Monmouthshire County Council; Neath Port Talbot County Borough Council; Newport City Council; Pembrokeshire County Council; Pembrokeshire Coast National Park Authority; Powys County Council; the Council of the City and County of Swansea; and Vale of Glamorgan County Borough Council.

2 Ie the provisions of the Planning and Compulsory Purchase Act 2004 brought into force by the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 2: see heads (1)-(4) in the text; and PARA 4 ante.

3 Ie the Planning and Compulsory Purchase Act 2004 s 62: see PARA 135 ante.

4 Ie *ibid* s 63: see PARA 136 ante.

5 Ie *ibid* s 72: see PARA 137 ante.

6 Ie *ibid* s 73: see PARA 138 note 13 ante.

7 Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 4(a) (revoked).

8 Ie the provisions of the 1990 Act which cease to have effect under the Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 3: see heads (a)-(c) in the text.

9 Ie the Town and Country Planning Act 1990 s 12 (as amended; repealed with savings): see PARA 158 post.

10 Ie *ibid* s 21 (as amended; repealed with savings): see PARA 175 post.

11 Ie *ibid* s 23B (as added: repealed with savings): see PARA 160 post.

12 Planning and Compulsory Purchase Act 2004 (Commencement No 3 and Consequential and Transitional Provisions) (Wales) Order 2005, SI 2005/1229, art 4(b) (revoked). The provisions referred to in heads (a)-(c) in the text otherwise ceased to have effect in relation to Wales on 30 April 2005: arts 2, 3.

13 Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, arts 2(2), 4.

14 Ie the local planning authorities specified in note 1 *supra* with the exception of Bridgend County Borough Council and Vale of Glamorgan County Borough Council: see *ibid* art 5(2), Schedule.

15 Ie its powers under the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (revoked subject to transitional provisions): see PARA 148 et seq post.

16 As to the Assembly see PARA 20 post.

17 Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 6(a).

18 Ibid art 6(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/148. Continuation in force of previous legislation for transitional purposes.

(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT

(i) Introduction

148. Continuation in force of previous legislation for transitional purposes.

The provisions of Part II of the Town and Country Planning Act 1990¹ relating to development plans, and certain related provisions², have effect, for the purposes of the transitional arrangements with regard to England made by Schedule 8 to the Planning and Compulsory Purchase Act 2004³ and of any regulations made pursuant thereto, as if they had not been repealed by the 2004 Act⁴. The Town and Country Planning (Development Plan) (England) Regulations 1999⁵ also continue to have effect for those purposes, subject, in certain cases, to prescribed⁶ amendments⁷.

Furthermore, at the date at which this title states the law, certain local planning authorities in Wales⁸ were not yet under a duty to prepare a local development plan under the new system for such plans in Wales set out in Part 6 of the Planning and Compulsory Purchase Act 2004⁹ and the Town and Country Planning (Development Plan) Regulations 1991¹⁰, although revoked in relation to England and replaced by the 1999 Regulations mentioned above, and otherwise revoked in relation to Wales, continued to apply in relation to those local planning authorities¹¹.

For these reasons, the provisions of Part II of the 1990 Act and of the relevant regulations are set out in the following paragraphs¹².

1 Ie the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended): see PARA 149 et seq post.

2 Ie ibid ss 284, 287 (both as amended), s 296(1)(a) (as substituted and prospectively repealed), s 303A (as added), Sch 1 para 2 (as substituted; repealed with savings), Sch 2 Pts I-III (as amended; Pts I, II-III repealed with savings) (excluding a street authorisation map which continued to be treated as having been adopted as a local plan by virtue of Sch 2 Pt III para 4 (as so repealed)), Sch 13 (as amended) (see PARAS 11, 39, 43, 46 ante, PARAS 149 et seq, 658 post) and the Planning and Compensation Act 1991 Sch 4 Pt III (transitional provisions) (see PARA 211 post).

3 Ie the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 (paras 1-19); and PARA 125 et seq ante.

4 See the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4(a), Sch 2; and PARA 125 ante.

5 Ie the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended): see PARA 154 et seq post.

6 Ie subject to the amendments prescribed by the Town and Country Planning (Transitional Arrangements) (England) Regulations 2004, SI 2004/2205, regs 3-5, Schedule: see PARAS 128-130 ante.

7 The 1999 regulations came into force on 4 January 2000 and extend to England only: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 1. They apply with respect to (1) the form and content of unitary development plans and the procedure to be followed in connection with the making, alteration and replacement of such plans under the Town and Country Planning Act 1990 Pt II Ch I (ss 10-28A) (as amended; repealed with savings) (see PARA 155 et seq post); (2) the form and content of structure plans and the procedure to be followed in connection with the alteration and replacement of such plans under Pt II Ch II (ss 29-54) (as amended; repealed with savings) (see PARA 183 et seq post); (3) the form and content of local plans, minerals local plans and waste local plans and the procedure to be followed in connection with the making, alteration and replacement of such plans under Pt II Ch II (as amended; repealed with savings) (see PARA 195 et seq post): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 3.

8 See PARA 147 notes 1, 14 ante.

9 Ie the duty set out in the Planning and Compulsory Purchase Act 2004 Pt 6 (ss 60-78): see PARAS 89, 135 et seq ante. As to the coming into force of the Planning and Compulsory Purchase Act 2004 see PARA 4 note 8 ante; and for transitional provisions in relation to Wales see PARA 147 ante.

10 Ie the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (as amended): see PARA 154 et seq post. The 1991 Regulations came into force on 10 February 1992 (reg 1) and were revoked in relation to England by the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 45(1) with effect from 4 January 2000. In relation to Wales they were revoked with effect from 15 October 2005, but this is subject to transitional provisions: see the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI

2005/2722, arts 5, 6; and PARA 147 ante. The 1991 regulations apply for those transitional purposes in relation to Wales with respect to the matters set out in note 7 head (1) supra: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 3(a), (c) (revoked subject to transitional provisions). Regulation 3(b), (c), which refers to the matters set out in note 7 heads (2)-(3) supra (structure and local plans) is no longer of practical effect, since, subject to the transitional provisions set out in PARA 210 post, the provisions applying to structure and local plans no longer apply in relation to Wales: see PARA 176 post.

11 See the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 5(1), (2), Schedule. For the purposes of the transitional arrangements set out in art 5, the following provisions continue to have effect on or after 15 October 2005 as if they had not been amended or repealed by the Planning and Compulsory Purchase Act 2004, ie (1) the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as otherwise amended) (see PARA 149 et seq post); (2) s 284 (as otherwise amended) (see PARA 43 ante); (3) s 287 (as otherwise amended) (see PARA 46 ante); (4) s 296(1)(a) (see PARA 11 ante); and (5) s 303A (as added) (see PARA 658 post): Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 3(3), Schedule.

12 See PARA 149 et seq post.

UPDATE

148 Continuation in force of previous legislation for transitional purposes

NOTE 11--SI 2005/2722 art 5(2) amended: SI 2006/842. SI 2005/2722 Schedule amended: SI 2006/1700, SI 2006/3119, SI 2007/546, SI 2007/1023, SI 2007/2447, SI 2007/2449, SI 2008/10, SI 2008/2162.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/149. Meaning of 'development plan' in Greater London and the metropolitan counties under the previous legislation.

149. Meaning of 'development plan' in Greater London and the metropolitan counties under the previous legislation.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the development plan³ for any district in Greater London⁴ or a metropolitan county⁵, whether the whole or part of the area of a local planning authority⁶, is taken⁷ as consisting of:

- 716 (1) the provisions of the unitary development plan⁸ for the time being in force for that area or the relevant part of it, together with a copy of the local planning authority's resolution of adoption⁹ or the Secretary of State's notice of approval¹⁰ or, where part of the plan has been adopted and the remainder approved, copies of the resolution and the notice; and
- 717 (2) any alteration to that plan, together with a copy of the authority's resolution of adoption, or the Secretary of State's notice of approval, of the alteration or, where part of the alteration has been adopted and the remainder approved, copies of the resolution and the notice¹¹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended) (repealed with savings): see PARA 148 ante, PARA 150 et seq post.

2 See PARA 148 ante.

3 For these purposes, except in so far as the context otherwise requires, 'development plan' is to be construed in accordance with the Town and Country Planning Act 1990 s 27 (repealed with savings), s 27A (as added; repealed with savings) (see PARA 150 post) and s 54 (as amended; repealed with savings) (see PARA 151 post), but subject to the transitional provisions in s 54(4), Sch 2 (as amended) (repealed with savings) (see PARAS 210, 212 post) and the Planning and Compensation Act 1991 s 27, Sch 4 Pt III (paras 40-51 (repealed with savings): see PARA 211 post): Town and Country Planning Act 1990 s 336(1) (definition amended by the Planning and Compensation Act 1991 Sch 4 para 34 and repealed with savings).

4 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 As to metropolitan counties see PARA 28 note 1 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 le for the purposes of the Town and Country Planning Act 1990 and any other enactment relating to town and country planning, the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND) and the Highways Act 1980 (see generally HIGHWAYS, STREETS AND BRIDGES). For the meaning of 'enactment' see PARA 2 note 11 ante.

8 As to unitary development plans see PARA 155 et seq post.

9 As to the adoption of a unitary development plan by the local planning authority see PARA 168 post.

10 As to the approval of a unitary development plan by the Secretary of State see PARA 173 post.

11 Town and Country Planning Act 1990 s 27 (repealed with savings). As to the transitional provisions with regard to old development plans see s 28, Sch 2 (as amended; repealed with savings) and PARAS 155, 212 post. Such a plan may include proposals relating to the use of Crown land: see s 296(1)(a) (as originally enacted).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/150. Meaning of 'development plan' in relation to Wales under the previous legislation.

150. Meaning of 'development plan' in relation to Wales under the previous legislation.

For the specified statutory purposes¹, the development plan² for any area in Wales is to be taken, under Part II of the Town and Country Planning Act 1990³ so far as still in force⁴, as consisting of:

718 (1) the provisions of the unitary development plan⁵ for the time being in force for that area, together with a copy of the relevant local planning authority's resolution of adoption⁶ or of the notice of approval of the National Assembly for Wales⁷ or, where part of the plan has been adopted and the remainder approved, copies of the resolution and the notice; and

719 (2) any alteration to that plan, together with a copy of the relevant local planning authority's resolution of adoption, or the Assembly's notice of approval, of the alteration or, where part of the alteration has been adopted and the remainder approved, copies of the resolution and the notice⁸.

1 le for the purposes of the enactments mentioned in the Town and Country Planning Act 1990 s 27 (repealed with savings): see PARA 149 note 7 ante. See also the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 3(1), (2), cited in PARA 91 note 8 ante (meaning of statutory references to the development plan for an area in Wales during the transitional period).

2 For the meaning of 'development plan' for these purposes see PARA 149 note 3 ante.

3 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 ante, PARA 151 et seq post.

4 See PARA 148 ante.

5 As to unitary development plans see PARA 155 et seq post.

6 As to the adoption of a unitary development plan by the local planning authority see PARA 168 post. As to local planning authorities see PARA 28 et seq ante.

7 The statutory wording is 'the Secretary of State's notice of approval'; but as to the transfer of functions of the Secretary of State, so far as exercisable in relation to Wales, to the Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the notice of approval see PARA 173 post.

8 Town and Country Planning Act 1990 s 27A (added by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 6; repealed by the Planning and Compulsory Purchase Act 2004 s 120, Sch 9; at the date at which this title states the law, that repeal was not fully in force (see PARA 4 ante)). Such a plan may include proposals relating to the use of Crown land: see the Town and Country Planning Act 1990 s 296(1)(a) (as originally enacted). As to the transitional provisions with regard to old development plans see PARAS 210-212 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/151. Meaning of 'development plan' in English districts outside Greater London and the metropolitan counties under the previous legislation.

151. Meaning of 'development plan' in English districts outside Greater London and the metropolitan counties under the previous legislation.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the development plan³ for any district⁴ outside Greater London⁵ and the metropolitan counties⁶, whether the whole or part of the area of a local planning authority⁷, is taken⁸ as consisting of:

720 (1) the provisions of the structure plan⁹ for the time being in operation in the area;

721 (2) any alterations to that structure plan;

722 (3) the provisions of the local plan¹⁰ and any minerals local plan¹¹ or waste local plan¹² for the time being in operation in the area;

723 (4) any alterations to that local plan or minerals local plan or waste local plan, together with the resolutions¹³ of the authority which made or altered the plan or, as the case may be, the Secretary of State's notice¹⁴ of approval¹⁵.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARAS 149-150 ante, PARA 152 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'development plan' for these purposes see PARA 149 note 3 ante.

4 As to non-metropolitan districts para 28 note 2 ante.

5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

6 As to metropolitan counties see PARA 28 note 1 ante

7 As to local planning authorities see PARA 28 et seq ante.

8 le for the purposes of the Town and Country Planning Act 1990 and any other enactment relating to town and country planning, the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND) and the Highways Act 1980 (see generally HIGHWAYS, STREETS AND BRIDGES). For the meaning of 'enactment' see PARA 2 note 11 ante.

9 As to structure plans see PARA 183 et seq post.

10 As to local plans see PARA 195 et seq post.

11 As to minerals local plans see PARA 196 post.

12 As to waste local plans see PARA 197 post.

13 As to resolutions adopting proposals see PARA 204 post.

14 For these purposes, references to notice of approval are, in relation to any plan or alteration made by the Secretary of State under the Town and Country Planning Act 1990 s 51 (as amended; repealed with savings) (see PARA 179 post), to be construed as references to notices of the making of the plan or alteration: s 54(3) (repealed with savings).

15 Ibid s 54(1) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 29(1); repealed with savings). Such a plan may include proposals relating to the use of Crown land: see the Town and Country Planning Act 1990 s 296(1)(a) (as originally enacted). References in s 54(1) (as so amended) to the provisions of any plan, notices of approval, alterations and resolutions of adoption are, in relation to a district forming part of the area to which they are applicable, to be respectively construed as references to so much of those provisions, notice, alterations and resolutions as is applicable to the district: s 54(2) (repealed with savings). Any reference in the Land Compensation Act 1961 to an area defined in the current development plan as an area of comprehensive development is to be construed as a reference to an action area for which a local plan is in force: Town and Country Planning Act 1990 s 54(5) (repealed with savings).

Section 54 (as amended; repealed with savings) has effect subject to s 54(4), Sch 2 Pt III (paras 1-10) (as amended; repealed with savings) (see PARA 212 post) and the Planning and Compensation Act 1991 s 27, Sch 4 Pt III (paras 40-51) (repealed with savings) (see PARA 211 post): Town and Country Planning Act 1990 s 54(4) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 29(2); repealed with savings). As to the application of the Town and Country Planning Act 1990 s 54 (as amended; repealed with savings) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/152. Exercise of functions.

152. Exercise of functions.

The functions¹ of a local planning authority² in respect of development plans under Part II of the Town and Country Planning Act 1990³, so far as still in force⁴:

724 (1) are exercisable under specified statutory provisions⁵ by the county planning authority⁶ and not by the district planning authority⁷;

725 (2) are exercisable under other specified statutory provisions⁸ by the district planning authority and not by the county planning authority;

and references in those provisions to a local planning authority are to be construed accordingly⁹.

1 For the meaning of 'functions' see PARA 2 note 1 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 lie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARAS 149-151 ante, PARA 153 et seq post. For the meaning of 'development plan' for these purposes see PARA 149 note 3 ante.

4 See PARA 148 ante.

5 lie the Town and Country Planning Act 1990 ss 30-35B (as amended; repealed with savings) (see PARA 178 et seq post), s 38(2) (as substituted; repealed with savings) (see PARA 197 post) and s 50(1), (4), (5), (7) (as amended; repealed with savings) (see PARAS 185, 189, 191, 208 post).

6 As to county planning, authorities see PARA 28 ante.

7 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

8 lie the Town and Country Planning Act 1990 s 36 (as substituted; repealed with savings) (see PARA 195 post), s 39 (as substituted; repealed with savings) (see PARA 199 post), s 40 (as substituted; repealed with savings) (see PARAS 200-201, 203 post), ss 42-44 (as amended; repealed with savings) (see PARA 202 et seq post) and s 50(6), (7A), (8) (as amended; repealed with savings) (see PARAS 198, 208 post).

9 Ibid s 1(5)(c), Sch 1 para 2 (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 para 35(1); repealed with savings). The Town and Country Planning Act 1990 Sch 1 para 2 (as so substituted) does not, however, apply in Greater London: Sch 1 para 2(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(i) Introduction/153. Status of development plans.

153. Status of development plans.

Where, in making any determination under the planning Acts¹, regard is to be had to the development plan under Part II of the Town and Country Planning Act 1990², so far as still in force³, the determination must be made in accordance with the plan unless material considerations indicate otherwise⁴.

1 For the meaning of 'the planning Acts' see PARA 2 ante.

2 lie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended) (repealed with savings): see PARAS 149-151 ante, PARA 155 et seq post. For the meaning of 'development plan' for these purposes see PARA 149 note 3 ante.

3 See PARA 148 ante.

4 Town and Country Planning Act 1990 s 54A (added by the Planning and Compensation Act 1991 s 26; repealed with savings). As to what are material considerations see PARA 485 post. Failure to refer expressly to s 54A (as so added and repealed) is not necessarily fatal to a decision provided that the requirements of that provision are met: *St Albans District Council v Secretary of State for the Environment and Allied Breweries Ltd* (1992) 66 P & CR 432, [1993] 1 PLR 88. See also *Heatherington (UK) Ltd v Secretary of State for the Environment and Westminster City Council* (1994) 69 P & CR 374, [1995] JPL 228 (the duty under the Town and Country Planning Act 1990 s 54A (as so added and repealed) does not override the duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(1) (see PARA 1106 post) but must be considered equally). A finding of compliance with the aims of local policies, in contrast with the policies themselves, amounts to a failure to comply with the duty under the Town and Country Planning Act 1990 s 54A (as so added and repealed): *R v Secretary of State for the Environment, Transport and the Regions, ex p Richmondshire District Council* (1999) 80 P & CR 302, [1999] 48 LS Gaz R 41, [1999] EGCS 148. As to whether it is appropriate to give significant weight to a policy in a draft local plan see *Austin v First Secretary of State* [2003] All ER (D) 72 (Feb); *Gloucester City Council v First Secretary of State and Noble Organisation Ltd* [2003] EWHC 540 (Admin), [2003] 2 P & CR 420, [2003] All ER (D) 331 (Mar); *South Cambridgeshire District Council v First Secretary of State* [2004] EWHC 2933 (Admin), [2004] All ER (D) 227 (Dec); and as to the weight to be attached

to a draft unitary development plan see *Warrington Borough Council v Secretary of State for Transport, Local Government and the Regions* [2002] All ER (D) 303 (Nov), CA. It is not 'double counting' to take into account both the presumption that development should be in accordance with the development plan pursuant to the Town and Country Planning Act 1990 s 54A (as so added and repealed) and, as a separate consideration, the legitimate expectations of the public that a proposed development not in accordance with the plan would not be allowed to proceed: *Loup v Secretary of State for the Environment* (1995) 71 P & CR 175, [1996] JPL 22, CA. Where a proposed development was in substantial conflict with a unitary development plan policy, an inspector who did not adequately consider a number of other material considerations which might have outweighed that conflict was in error: *B & Q plc v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 551 (Admin), [2002] All ER (D) 377 (Mar).

Development plans are not to be treated as legally binding documents; they are written by planners for planners and only loosely drafted and the wording of such documents is not amenable to a strict interpretative approach: *Cranage Parish Council v First Secretary of State* [2004] EWHC 2949 (Admin), [2004] All ER (D) 143 (Dec). As to interpretation of a development plan see eg *Houghton v Secretary of State for the Environment* (1995) 70 P & CR 178. In order to have regard to a development plan the decision maker must accurately identify its content: *Wycombe District Council v First Secretary of State* [2005] EWHC 120 (Admin), [2005] All ER (D) 124 (Feb). A site which does not fall within a designated shopping centre for the purposes of the local plan may nevertheless fall within the 'town centre' for the purposes of national policy guidance: see *R (on the application of Co-operative Group (CWS) Ltd) v Rushcliffe Borough Council* [2004] EWHC 1932 (Admin), [2004] All ER (D) 510 (Jul). For the relevant policy guidance see *PPS 6--Planning for Town Centres*; and as to the status of such guidance see PARA 9 ante.

UPDATE

153 Status of development plans

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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154. Supply and availability of documents etc.

The Town and Country Planning (Development Plan) Regulations 1991¹, so far as still in force in relation to Wales², and the Town and Country Planning (Development Plan) (England) Regulations 1999³, so far as still in force in relation to England⁴, make provision with regard to:

- 726 (1) the supply of documents to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶;
- 727 (2) the availability of documents for inspection⁷;
- 728 (3) the availability of plans after adoption or approval⁸;
- 729 (4) the keeping of an index of relevant information by the local planning authority⁹.

The 1999 Regulations also make provision regarding the use of electronic communications¹⁰.

¹ ie the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (as amended) (revoked subject to transitional provisions).

² See PARA 148 ante.

3 In the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended).

4 The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

5 See the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 32. As to the Secretary of State see PARA 19 ante.

6 See the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 21 (revoked subject to transitional provisions). As to the Assembly see PARA 20 ante.

7 In relation to England, and subject to the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 37(3), documents made available for inspection pursuant to the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings) (see PARA 149 et seq ante, PARA 155 et seq post) or pursuant to the 1999 Regulations by a local planning authority making, altering or replacing a statutory plan must be made so available at the place and time specified by the authority when giving notice of their availability for inspection, and must, unless the statutory plan proposals are withdrawn, remain so available until the expiration of six weeks from the date of publication of the notice of adoption, approval or rejection of the proposals: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 37(1). The local planning authority must, on request and on payment of a reasonable charge, provide, as soon as practicable, a copy of any document so made available for inspection: reg 37(2). Adopted proposals made available for inspection under reg 19(2) (see PARA 191 note 8 post) or reg 31(2) (see PARA 168 note 11 post) and approved proposals made available for inspection under reg 35(7)(c) (see PARA 173 note 10 post) must, however, remain so available until printed copies of the proposals are made available for inspection under reg 38(1) (see note 8 infra): reg 37(3).

For similar provisions in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 26 (revoked subject to transitional provisions).

8 In relation to England, as soon as practicable after proposals for a statutory plan or for the alteration or replacement of a statutory plan have been adopted or approved, the local planning authority which prepared the proposals must secure that printed copies of the statutory plan, the statutory plan as altered, or the replacement plan, as the case may be, are available for inspection during normal office hours at its principal office and at such other places within its area as it considers appropriate and, on payment of a reasonable charge, for purchase: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 38(1). A local planning authority must continue to make printed copies of a statutory plan, altered statutory plan, or replacement plan so made available for inspection and purchase so available until the relevant plan is altered, further altered, or replaced, as the case may be: reg 38(2).

For similar provisions in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 27 (revoked subject to transitional provisions).

9 In relation to England, a local planning authority must keep an index containing the following information in respect of the development plan for its area: (1) the title of any plan forming part of or constituting the development plan for its area; (2) the date on which that plan was adopted or approved; (3) the title and date of adoption or approval of any alteration to that plan; (4) the date of the first publication of any notice given under the 1999 Regulations in respect of proposals for the making of a plan which will form part of or constitute the development plan for its area or for the alteration or replacement of such a plan; and (5) the places at which any plan, alteration or notice listed in the index may be inspected: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 39(1). In a non-metropolitan area, the index kept by the local planning authority must also contain the date of any statement supplied under the Town and Country Planning Act 1990 s 35C (as substituted; repealed with savings) (see PARA 189 post) or the Planning and Compensation Act 1991 Sch 4 para 47 (repealed with savings) (old transitional provisions: see PARA 211 note 2 post), or prepared under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 41 (statement of conformity: see PARA 208 post), in relation to a plan listed in the index and must identify the places at which the statement may be inspected: reg 39(2). A local planning authority must also keep a map showing the boundary of any plan listed in its index: reg 39(3). The index and map kept in accordance with reg 39 must be made available for inspection during normal office hours at the local planning authority's principal office and at such other places within its area as the authority considers appropriate: reg 39(4).

For similar provisions in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 28 (revoked subject to transitional provisions).

10 In relation to England, where any provision of the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended): (1) requires a person to send a document, a copy of a document or any notice to another person; or (2) requires a person to notify another person of any matter; and (3) that other person has an address for the purposes of electronic communications, the document, copy, notice

or notification may be sent or made by way of electronic communications: reg 46(1) (reg 46 added by SI 2004/2205). Where any provision of those regulations enables a person to make representations on any matter or document, those representations may be made (a) in writing; or (b) by way of electronic communications: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 46(2) (as so added). Where electronic communications are used as mentioned in reg 46(1) or (2) (as added), and the communication is received by the recipient outside office hours, it is to be taken to have been received on the next working day; and for these purposes 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 46(3) (as so added).

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(ii) Unitary Development Plans in England and Wales

155. Application of statutory provisions relating to unitary development plans.

The statutory provisions relating to unitary development plans¹ under Part II of the Town and Country Planning Act 1990², so far as still in force³, apply subject to certain exceptions⁴ to the area of any local planning authority⁵ in Greater London⁶ or a metropolitan county⁷, other than any area in such a county which is part of a National Park⁸. Those provisions came into force, in the area of any such local planning authority, on such day as was appointed in relation to that area by an order made by the Secretary of State⁹. The power so to make orders might be exercised so as to make different provision for different cases, including different provision for different areas¹⁰.

Until a unitary development plan has become operative under those provisions for such an area as is mentioned above¹¹, or, where parts of such a plan became operative on different dates, until every part has become operative, transitional statutory provisions¹² apply¹³.

Those statutory provisions relating to unitary development plans¹⁴ also apply to the area of any local planning authority in Wales¹⁵. Where, however, the area of a local planning authority in Wales includes (1) the whole or any part of an area prescribed¹⁶ in relation to a National Park; and (2) other land, then those provisions apply separately in relation to:

- 730 (a) the Park area¹⁷ or, if there is more than one, each Park area; and
- 731 (b) the remaining area¹⁸,

and any reference therein to the area of the local planning authority, including any reference which falls to be so construed, is to be construed in its application in relation to any Park area, as a reference to that Park area, and in its application in relation to the remaining area, as a reference to that area¹⁹.

Until a unitary development plan has become fully operative²⁰ for the area of any local planning authority in Wales, certain transitional statutory provisions²¹ apply in relation to that area²².

1 Ie the Town and Country Planning Act 1990 Pt II Ch I (ss 10-28A) (as amended; repealed with savings): see the text and notes 2-13 infra; and PARA 156 et seq post.

2 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 156 et seq post.

3 See PARA 148 ante.

- 4 The Town and Country Planning Act 1990 s 28(1) (repealed with savings) (see the text to note 9 infra) does not apply in any area in relation to which an order had been made before 24 August 1990 under the Local Government Act 1985 s 4(1) (repealed), and in any such area the Town and Country Planning Act 1990 Pt II Ch I (as amended) came into force on 24 August 1990 or, if later, on the day appointed by the order: s 28(2) (repealed with savings), s 337(2). A number of orders were so made, and days were so appointed thereunder: see eg the Unitary Development Plans (West Midlands) (Appointed Day) Order 1988, SI 1988/140 (29 February 1988).
- 5 As to local planning authorities see PARA 28 et seq ante.
- 6 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 7 As to metropolitan counties see PARA 28 note 1 ante.
- 8 Town and Country Planning Act 1990 s 10 (repealed with savings). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 9 Ibid s 28(1) (repealed with savings).
- 10 Town and Country Planning Act 1990 s 28(4). As to the making of orders see PARA 3 ante.
- 11 Ie such an area as is mentioned in ibid s 28(1) (repealed with savings): see the text and note 9 supra.
- 12 Ie (1) if it is the area of a local planning authority in a metropolitan county, ibid Sch 2 Pt I (paras 1-4) (as amended; repealed with savings) (which provides for existing plans to continue in force and applies some of the provisions of Pt II Ch II (ss 29-54) (as amended; repealed with savings: see PARA 176 et seq post)) applies in relation to it (see PARA 212 post); (2) if it is the area of a local planning authority in Greater London, Sch 2 Pt II (paras 1-17) (as amended; repealed with savings) (which makes similar provision) applies in relation to it (see PARA 212 post); and (3) Sch 2 Pt III (paras 1-10) (repealed with savings) (see PARA 212 et seq post) applies in relation to it for the purpose of making continuing provision for the transitional matters for which provision was made immediately before 24 August 1990 by the Town and Country Planning Act 1971 s 21(3), Sch 7 (repealed) (old development plans etc): Town and Country Planning Act 1990 s 28(3)(a)-(c) (repealed with savings).
- 13 Ibid s 28(3) (repealed with savings).
- 14 See note 1 supra.
- 15 Town and Country Planning Act 1990 s 10A(1) (s 10A added by the Local Government (Wales) Act 1994 s 20(1); repealed with savings; at the date at which this title states the law, that repeal was not fully in force).
- 16 Ie prescribed under the Town and Country Planning Act 1990 s 23B(2) (as added; repealed with savings): see PARA 160 post.
- 17 For these purposes, 'the Park area', in relation to a National Park, means the part of the local planning authority's area which is within the area prescribed under ibid s 23B(2) (as added) in relation to that Park or, where there is more than one such part, those parts taken as a whole: s 10A(5) (as added and repealed: see note 12 supra).
- 18 For these purposes, 'the remaining area' means the part of the local planning authority's area which is not within the area prescribed under ibid s 23B(2) (as added) in relation to any National Park: s 10A(5) (as added and repealed: see note 12 supra).
- 19 Ibid s 10A(2)-(4) (as added and repealed: see note 12 supra).
- 20 For these purposes, a unitary development plan for the area of a local planning authority in Wales has become fully operative when: (1) it has become operative under ibid Pt II Ch I (as amended; repealed with savings); or (2) where different parts have become operative at different times, when all parts of it have become so operative: s 28A(2) (s 28A added the Local Government (Wales) Act 1994 s 20(2); repealed with savings; at the date at which this title states the law, that repeal was not fully in force).
- 21 Ie the Town and Country Planning Act 1990 Sch 2 Pt IA (paras 1-4) (as added) see PARA 210 post) and the Local Government (Wales) Act 1994 Sch 5 Pt III (paras 9-23) (as amended) (transitional provisions in relation to structure and local plans: see PARA 210 post).
- 22 Town and Country Planning Act 1990 s 28A(1) (as added and repealed: see note 20 supra).

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156. Regulations and directions.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may³ make regulations with respect to the form and content of unitary development plans⁴ under Part II of the Town and Country Planning Act 1990⁵, so far as still in force⁶, and the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making, alteration or replacement⁷. Such regulations may in particular:

- 732 (1) provide for publicity to be given to the results of any review or survey carried out⁸;
- 733 (2) provide for the notice to be given of or the publicity to be given to:
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 - 109. (a) matters included or proposed to be included in any unitary development plan;
 - 110. (b) the approval, adoption or making of any such plan or any alteration or replacement of it; or
 - 111. (c) any other prescribed⁹ procedural step,
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- 734 and for publicity to be given to the procedure to be followed¹⁰;
- 735 (3) make provision with respect to the making of an application to the Mayor of London¹¹ for a written opinion as to whether the unitary development plan is in general conformity with the spatial development strategy¹² and the giving by him of such an opinion, including provision as to the time within which such an application or opinion must be made or given;
- 736 (4) make provision with respect to the making and consideration of representations with respect to matters to be included in, or objections to, any such plan or proposals for its alteration or replacement;
- 737 (5) make provision with respect to the circumstance in which representation with respect to the matters to be included in a plan or proposals are to be treated¹³ as being objections made in accordance with the regulations¹⁴;
- 738 (6) provide, without prejudice to head (2) above, for notice to be given to particular persons of the approval, adoption, alteration or replacement of any plan if they have objected to the plan and have notified the local planning authority¹⁵ of their wish to receive notice, subject, if the regulations so provide, to the payment of a reasonable charge;
- 739 (7) require or authorise a local planning authority to consult¹⁶ with, or consider the views of, other persons before taking any prescribed procedural step;
- 740 (8) require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State or the Assembly may direct, to provide persons making a request in that behalf with copies of any plan or document which has been made public in compliance with the regulations or available for inspection¹⁷ subject, if the regulations so provide, to the payment of a reasonable charge;
- 741 (9) make provision for steps taken in compliance with the regulations in respect of a unitary development plan which has been withdrawn to be taken into account in prescribed circumstances for the purposes of complying with the regulations in respect of a subsequent unitary development plan;

742 (10) provide for the publication and inspection of any unitary development plan which has been adopted, approved or made or any document approved, adopted or made altering or replacing any such plan, and for copies of any such plan or document to be made available on sale¹⁸.

Regulations so made may make different provision for different cases¹⁹ and any provision made by regulations under these provisions as they apply in relation to England may differ from that made under them as they apply in relation to Wales²⁰.

The Secretary of State or the Assembly may²¹ give directions to any local planning authority or to local planning authorities generally:

743 (i) for formulating the procedure for the carrying out of its or their relevant statutory functions²²;

744 (ii) for requiring it or them to give him or the Assembly such information as he or the Assembly may require for carrying out any of relevant²³ statutory functions²⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie without prejudice to the provisions of the Town and Country Planning Act 1990 ss 10-25 (as amended; repealed with savings): see PARA 155 ante, PARA 157 et seq post.

4 For the meaning of 'unitary development plan' for these purposes see PARA 158 post.

5 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 157 et seq post.

6 See PARA 148 ante.

7 Town and Country Planning Act 1990 s 26(1) (repealed with savings). In exercise of the power so conferred the following regulations have been made: (1) the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (as amended) which came into force on 10 February 1992 (reg 1) (revoked subject to transitional provisions which relate to Wales: see PARAS 147-148 ante); (2) the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended) which replace the 1991 Regulations so far as relating to England and which are continued in force for transitional purposes (see PARA 148 ante); (3) the Town and Country Planning (London Spatial Development Strategy) Regulations 2000, SI 2000/1491 (as amended) (see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq). As to the making of regulations generally see PARA 3 ante.

8 Ie under the Town and Country Planning Act 1990 s 11 (repealed with savings): see PARA 157 post.

9 For the meaning of 'prescribed' see PARA 16 note 5 ante.

10 Ie as mentioned in the Town and Country Planning Act 1990 s 26(1) (repealed with savings): see the text and notes 1-7 supra.

11 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

12 Ie a written opinion under the Town and Country Planning Act 1990 s 13(1A) (as added; repealed with savings): see PARA 162 post.

13 Ie for any of the purposes of ibid Pt II Ch I (ss 10-28A) (as amended; repealed with savings).

14 For these purposes, 'objections made in accordance with the regulations' means objections made (1) in accordance with regulations made under ibid s 26 (as amended and repealed); and (2) within the prescribed period: s 13(4) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 4; repealed with savings). For the meaning of 'the prescribed period' see PARA 163 note 10 post.

- 15 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.
- 16 For the meaning of 'consult' see PARA 2 note 1 ante.
- 17 Ie under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 post.
- 18 Ibid s 26(2) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 15; the Greater London Authority Act 1999 s 344(1), (8); repealed with savings).
- 19 Town and Country Planning Act 1990 s 26(3) (repealed with savings).
- 20 Ie any provision made by regulations under ibid s 26 (as amended and repealed) in its application by virtue of s 10 (repealed with savings: see PARA 155 ante) may differ from that made under s 26 (as amended and repealed) in its application by virtue of s 10A (as added; repealed with savings: see PARA 155 ante): s 26(3A) (added by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 5; repealed with savings).
- 21 Ie subject to the Town and Country Planning Act 1990 ss 10-25, s 26(1)-(3) (as amended and repealed) and to any regulations under s 26 (as amended and repealed).
- 22 Ie functions under ibid Pt II Ch I (ss 10-28A) (as amended and repealed). For the meaning of 'functions' see PARA 2 note 1 ante.
- 23 See note 22 supra.
- 23 Town and Country Planning Act 1990 s 26(4) (repealed with savings).

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157. Survey of planning areas.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³:

- 745 (1) must keep under review the matters which may be expected to affect the development⁴ of its area or the planning of its development; and
- 746 (2) may, if it thinks fit, institute a survey or surveys of its area or any part of its area for examining those matters⁵.

The matters so to be kept under review or examined include⁶:

- 747 (a) the principal physical and economic characteristics of the area of the authority, including the principal purposes for which land⁷ is used, and, so far as they may be expected to affect that area, of any neighbouring areas⁸;
- 748 (b) the size, composition and distribution of the population of that area, whether resident or otherwise;
- 749 (c) without prejudice to head (a) above, the communications, transport system and traffic of that area and, so far as they may be expected to affect that area, of any neighbouring areas⁹;
- 750 (d) any considerations not mentioned in heads (a) to (c) above which may be expected to affect any matters mentioned in them;

- 751 (e) such other matters as may be prescribed¹⁰ or as the Secretary of State¹¹ or, in relation to Wales, the National Assembly for Wales¹² may in a particular case direct;
- 752 (f) any changes already projected in any of the matters mentioned in any of heads (a) to (e) above and the effect which those changes are likely to have on the development of that area or the planning of such development¹³.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 158 et seq post.

2 See PARA 148 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

4 For the meaning of 'development' see PARA 217 post.

5 Town and Country Planning Act 1990 s 11(1) (repealed with savings).

6 le without prejudice to the generality of ibid s 11(1).

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 A local planning authority must, for the purpose of discharging its functions under the Town and Country Planning Act 1990 s 11 (repealed with savings) of keeping under review and examining any matters relating to the area of another such authority, consult with that other authority about those matters: s 11(3) (repealed with savings). For the meanings of 'consult' and 'functions' see PARA 2 note 1 ante.

9 See note 8 supra.

10 For the meaning of 'prescribed' see PARA 16 note 5 ante.

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Town and Country Planning Act 1990 s 11 (repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Town and Country Planning Act 1990 s 11(2) (repealed with savings).

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158. Preparation of unitary development plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ must, within such period, if any, as the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ may direct, prepare for its area a plan to be known as a unitary development plan⁶. A unitary development plan must comprise two parts⁷:

753 (1) Part I must consist of a written statement formulating the authority's general policies⁸ in respect of the development⁹ and use¹⁰ of land in the authority's area¹¹;

754 (2) Part II must consist of:

- 112. (a) a written statement formulating in such detail as the authority thinks appropriate, and so as to be readily distinguishable from the other contents of the plan, its proposals for the development and use of land in its area;
- 113. (b) a map¹² showing those proposals on a geographical basis;
- 114. (c) a reasoned justification¹³ of the general policies in Part I of the plan and of the proposals in Part II of it; and
- 115. (d) such diagrams, illustrations or other descriptive or explanatory matter in respect of those general policies or proposals as the authority thinks appropriate or as may be prescribed¹⁴.

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A unitary development plan must also contain such other matters as may be prescribed or as the Secretary of State or the Assembly may in any particular case direct¹⁵.

In formulating the general policies in Part I of a unitary development plan the authority must have regard to:

- 755 (i) any regional or strategic planning guidance given by the Secretary of State or the Assembly to assist it in the preparation of the plan;
- 756 (ii) current national policies;
- 757 (iii) the resources likely to be available; and
- 758 (iv) such other matters as the Secretary of State or the Assembly may prescribe or, in a particular case, direct¹⁶.

The proposals in Part II of a unitary development plan must be in general conformity with Part I¹⁷; and, in formulating its proposals therein, the authority must have regard to such information and other considerations as the Secretary of State or the Assembly may prescribe or, in a particular case, direct¹⁸. Part II of a unitary development plan may designate any part of the authority's area as an action area¹⁹ and, if an area is so designated, that Part of the plan must contain a description of the treatment proposed by the authority²⁰.

In preparing a unitary development plan, the authority must take into account the provisions of any scheme²¹ relating to land in its area which has been designated²² as an enterprise zone²³.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 159 et seq post.

2 See PARA 148 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 12 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 12(1) (repealed with savings). The title of a unitary development plan must consist of the name of the area of the local planning authority followed by 'unitary development plan': Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 4(1) (revoked subject to transitional provisions); Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(1). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. As to the repeal of the Town and Country Planning Act 1990 s 12 (as amended) in Wales see PARA 147 ante.

7 Town and Country Planning Act 1990 s 12(2) (repealed with savings).

8 The policies must, subject to the Town and Country Planning Act 1990 s 12(3B) (as added; repealed with savings), include policies in respect of (1) the conservation of the natural beauty and amenity of the land; (2) the improvement of the physical environment; and (3) the management of traffic: s 12(3A) (added by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 2(1); repealed with savings). Regulations under the Town and Country Planning Act 1990 s 12 (as amended and repealed) may prescribe the aspects of such development and use with which the general policies in Part I of a unitary development plan are to be concerned, in which case the policies must be concerned with those aspects and no others: s 12(3B) (as so added and repealed).

'Amenity' means pleasant circumstances or features, and advantages: *Re Ellis and Ruislip-Northwood UDC* [1920] 1 KB 343 at 370, CA, per Scrutton LJ. See also *Cartwright v Post Office* [1968] 2 All ER 646 at 648, [1968] 3 WLR 63 at 75 per Willis J; affd [1969] 2 QB 62, [1969] 1 All ER 421, CA; and see *Re Parramatta City Council, ex p Tooth & Co Ltd* (1955) 55 SR NSW 282 at 306, 308 (the word 'amenity' may be taken to express 'that element in the appearance and layout of town and country which makes for a comfortable and pleasant life rather than a mere existence'); *Broad v Brisbane City Council and Baptist Union of Queensland* [1986] 2 Qd R 317 at 326 per de Jersey J; *Re Lamplugh* (1967) 19 P & CR 125. For the meaning of 'prescribed' see PARA 16 note 5 ante; and for the meaning of 'land' see PARA 2 note 10 ante. As to the making of regulations generally see PARA 3 ante.

9 For the meaning of 'development' see PARA 217 post.

10 For the meaning of 'use' see PARA 221 note 4 post.

11 Town and Country Planning Act 1990 s 12(3) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 2(1); repealed with savings). In the case of a London borough, Part I of the unitary development plan must be in general conformity with the spatial development strategy for the time being in force: Town and Country Planning Act 1990 s 12(3C) (added by the Greater London Authority Act 1999 s 344(1), (2); repealed with savings).

12 The map required to be so included in a unitary development plan is called the proposals map: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 6(1) (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 6(1). Policies for any part of the authority's area may be illustrated on a separate map on a larger scale than the proposals map, called an inset map; and, where an inset map is included in a plan, the area covered by the inset map must be identified on the proposals map and the policies for that area must be illustrated on that inset map only: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 6(2), (3) (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 6(2), (3). The title, and any sub-title, of a unitary development plan must be set out on the proposals map and any inset map contained in the plan and the proposals map and any inset map must show the scale to which it has been prepared and include an explanation of any symbol or notation used in the map: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 6(4) (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 6(4).

13 As to the reasoned justification see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 9(3) (as amended) (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 20(3).

14 Town and Country Planning Act 1990 s 12(4) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 2(2); repealed with savings). Regulations under the Town and Country Planning Act 1990 s 12 (as amended and repealed) may make different provision for different cases and are subject to any direction given, in a particular case, by the Secretary of State or the Assembly: s 12(10) (added by the Planning and Compensation Act 1991 Sch 4 paras 1, 2(5); repealed with savings). Any provision made by regulations under the Town and Country Planning Act 1990 s 12 (as amended and repealed) in its application by virtue of s 10 (repealed with savings: see PARA 155 ante) may differ from that made under s 12 (as amended and repealed) in its application by virtue of s 10A (as added; repealed with savings: see PARA 155 ante): s 12(11) (added by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 2; repealed with savings).

15 Town and Country Planning Act 1990 s 12(5) (repealed with savings).

16 Ibid s 12(6) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 2(3); repealed with savings). As to the matters to which the local planning authority must additionally have regard in formulating its general policies in Part I of a unitary development plan see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 9(1) (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 20(1). An authority is not entitled consciously to ignore a national policy: see *Keyland Developments Ltd v Leeds City Council, Jack Lunn Developments Ltd v Leeds City Council* [2002] EWHC 667 (Admin), [2002] All ER (D) 301 (Mar). As to national policies see PARAS 1, 9 ante.

17 Town and Country Planning Act 1990 s 12(7) (repealed with savings). In the case of a London borough council, they must also be in general conformity with the spatial development strategy (see PARA 86 ante); s 12(7) (amended by the Greater London Authority Act 1999 s 344(1), (3); repealed with savings).

18 Town and Country Planning Act 1990 s 12(7A) (added by the Planning and Compensation Act 1991 Sch 4 paras 1, 2(4); repealed with savings).

19 I.e. an area which the authority has selected for the commencement during a prescribed period of comprehensive treatment by development, redevelopment or improvement, or partly by one and partly by another method: Town and Country Planning Act 1990 s 12(8) (repealed with savings). The period so prescribed is a period of ten years beginning with the date on which the relevant plan is first made available for inspection in accordance with the Town and Country Planning Act 1990 s 13(2)(a) (as substituted; repealed with savings) (see PARA 163 post); see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 8 (revoked subject to transitional provisions); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 8.

20 Town and Country Planning Act 1990 s 12(8) (repealed with savings).

21 I.e. under the Local Government, Planning and Land Act 1980 s 179 (as amended), Sch 32 para 3: see PARA 1493 post.

22 I.e. under *ibid* Sch 32 (as amended).

23 Town and Country Planning Act 1990 s 12(9) (repealed with savings). As to enterprise zones see PARA 1491 et seq post.

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159. Urban development corporations.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may direct that:

- 759 (1) a unitary development plan⁵ shall not be prepared, or shall not operate;
- 760 (2) proposals for the alteration or replacement of a unitary development plan shall not be prepared,

in relation to the area of an urban development corporation⁶.

1 I.e. under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 160 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 12A (as added; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'unitary development plan' see PARA 158 ante.

6 Town and Country Planning Act 1990 s 12A(1), (2) (added by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 3; repealed with savings). As to urban development corporations see PARA 1429 et seq post.

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160. Unitary development plans for National Parks in Wales.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a unitary development plan³ must be prepared for each National Park in Wales⁴. A Welsh National Park development plan⁵ must relate to an area prescribed⁶ in relation to the National Park in question by order made by the National Assembly for Wales⁷. The prescribed area in relation to a National Park which falls wholly within, but does not comprise the whole of, the area of a single local planning authority⁸ must be:

- 761 (1) where the local planning authority has so elected, the whole of the area of the local planning authority; and
- 762 (2) in any other case, either the whole of the area of the National Park or a composite area⁹.

The prescribed area in relation to any other Welsh National Park must be either the whole of the area of the National Park or a composite area¹⁰.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 161 et seq post.

2 See PARA 148 ante. As to the repeal of the Town and Country Planning Act 1990 s 23B (as added) subject to transitional provisions see PARA 147 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 Town and Country Planning Act 1990 s 23B(1) (s 23B added by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 4; repealed with savings). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

5 'Welsh National Park development plan' means a unitary development plan prepared for a National Park in Wales: Town and Country Planning Act 1990 s 23B(10) (as added and repealed: see note 4 supra). Certain Welsh National Park development plans must be joint plans: see PARA 161 post.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 Town and Country Planning Act 1990 s 23B(2) (as added and repealed: see note 4 supra). The statutory wording is 'by order made by the Secretary of State'; but as to the transfer of functions under s 23B(2) (as so added and repealed) to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The Assembly may not so prescribe an area which is a composite area except with the consent of every local planning authority in whose area the prescribed area or any part of it would fall: Town and Country Planning Act 1990 s 23B(6) (as so added and repealed). Any order made under s 23B(2) (as so added and repealed) may make such saving or transitional provision as the Assembly considers appropriate: s 23B(7) (as so added and repealed). Where, by an order under s 23B(2) (as so added and repealed) the Assembly prescribes a composite area which comprises or includes part only of the area of a local planning authority, the provisions of Pt II Ch I (ss 10-28A) (as amended; repealed with savings) apply in relation to (1) the Welsh National Park development plan in question; or (2) any proposals for its alteration or replacement, subject to such modifications, if any, as may be prescribed by the order: s 23B(8) (as so added and repealed). See also note 9 infra.

For these purposes and the purposes of s 23C (as added; repealed with savings) (see PARA 161 post), 'composite area', in relation to a National Park, means an area which consists of the whole of the Park together with any one or more other areas in Wales: s 23B(5) (as so added and repealed).

8 As to local planning authorities see PARA 28 et seq ante.

9 Town and Country Planning Act 1990 s 23B(3) (as added and repealed: see note 4 supra). Section 10A(3), (4) (as added; repealed with savings) (see PARA 155 ante) does not apply for the purposes of s 23B(3), (8) (as so added and repealed) or for the purposes of s 23C(1), (2) or (4) (as added and repealed: see PARA 161 post): s 23B(9) (as so added and repealed).

10 Ibid s 23B(4) (as added and repealed: see note 4 supra).

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161. Joint unitary development plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a joint unitary development plan³ or joint proposals for the alteration or replacement⁴ of such a plan may be prepared by two or more local planning authorities⁵ in Greater London⁶ or by two or more local planning authorities in a metropolitan county⁷. Similarly, a joint unitary development plan or joint proposals for the alteration or replacement of such a plan may be prepared by two or more local planning authorities in Wales for their areas if each of those areas adjoins each of the others, or if the National Assembly for Wales⁸ has given its approval⁹; but this does not apply in relation to a joint plan for any area which consists of or includes a National Park¹⁰.

The relevant statutory provisions¹¹ have effect in relation to any such joint plan or proposals subject to the following provisions¹²:

- 763 (1) each of the local planning authorities by which a joint unitary development plan is prepared has the duty¹³ of making copies of the plan available for inspection¹⁴;
- 764 (2) objections to such a plan may be made to any of those authorities and the statement required¹⁵ to accompany copies of the plan must state that objections may be so made¹⁶;
- 765 (3) it is for each of the local planning authorities by which a joint unitary development plan is prepared to adopt the plan¹⁷ and each may do so as respects any part of its area to which the plan relates, but any modifications subject to which the plan is adopted must have the agreement of all those authorities¹⁸;
- 766 (4) where a unitary development plan has been prepared jointly, the power of preparing proposals in respect of the plan¹⁹ may be exercised as respects their respective areas by any of the authorities by which it was prepared and the Secretary of State²⁰ or, in relation to Wales, the Assembly may²¹ direct any of them to prepare proposals as respects their respective areas²²;
- 767 (5) the date of the coming into operation of a unitary development plan prepared jointly by two or more local planning authorities or for the alteration or replacement of such a plan in pursuance of proposals so prepared is to be a date jointly agreed by those authorities²³.

A Welsh National Park development plan²⁴ for a National Park which neither coincides with nor falls wholly within the area of a single local planning authority must be a joint unitary

development plan²⁵. A Welsh National Park development plan for any other National Park must be a joint unitary development plan if it relates to a composite area²⁶ unless the composite area coincides with or falls wholly within the area of a single local planning authority²⁷. Any Welsh National Park development plan which is required to be a joint plan must be prepared by the authorities who will be the appropriate authorities²⁸ in relation to the plan²⁹. Any proposals prepared³⁰ for the alteration or replacement of a joint plan of such a kind must be joint proposals prepared by the appropriate authorities in relation to that plan, and any direction given by the Assembly³¹ in relation to that plan must be given jointly to those authorities³².

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 162 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 As to alteration and replacement of plans see PARA 175 post.

5 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

6 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 Town and Country Planning Act 1990 s 23(1) (repealed with savings). As to metropolitan counties see PARA 28 note 1 ante.

8 The statutory wording is 'the Secretary of State'; but as to the transfer of functions under ibid ss 23A, 23C (as added; repealed with savings) to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 23A(1) (ss 23A, 23C added by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 4; repealed with savings; at the date at which this title states the law, that repeal was not fully in force).

10 Town and Country Planning Act 1990 s 23A(2) (as added and repealed: see note 9 supra).

11 Ie the Town and Country Planning Act 1990 ss 10-21 (as amended): see PARA 155 et seq ante.

12 Ibid s 23(1) (repealed with savings), s 23A(3) (as added and repealed: see note 9 supra).

13 Ie the duty imposed by ibid s 13(2) (as substituted; repealed with savings): see PARA 163 post.

14 Ibid s 23(5) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 14(b); repealed with savings); Town and Country Planning Act 1990 s 23A(4) (as added and repealed: see note 9 supra).

15 Ie by ibid s 13(3) (as substituted; repealed with savings): see PARA 163 post.

16 Ibid s 23(6) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 14(c); repealed with savings); Town and Country Planning Act 1990 s 23A(5) (as added and repealed: see note 9 supra).

17 Ie under ibid s 15(1) (as substituted; repealed with savings): see PARA 168 post.

18 Ibid s 23(7) (repealed with savings); s 23A(6) (as added and repealed: see note 9 supra).

19 Ie under ibid s 21 (as amended; repealed with savings): see PARA 175 post.

20 As to the Secretary of State see PARA 19 ante.

21 See note 19 supra.

22 Town and Country Planning Act 1990 s 23(8) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 14(d); repealed with savings); Town and Country Planning Act 1990 s 23A(7) (as added and repealed: see note 9 supra).

23 Ibid s 23(11) (repealed with savings); s 23A(8) (as added and repealed: see note 9 supra).

- 24 For the meaning of 'Welsh National Park development plan' see PARA 160 note 5 ante.
- 25 Town and Country Planning Act 1990 s 23C(1) (as added and repealed: see note 9 supra). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 26 For the meaning of 'composite area' see PARA 160 note 7 ante.
- 27 Town and Country Planning Act 1990 s 23C(2) (as added and repealed: see note 9 supra).
- 28 For these purposes, an authority is an appropriate authority in relation to a joint plan if it is a local planning authority and its area or any part of its area falls within the area to which the plan relates: *ibid* s 23C(4) (as added and repealed: see note 9 supra).
- 29 *Ibid* s 23C(3) (as added and repealed: see note 9 supra).
- 30 See note 19 supra.
- 31 *Ie* given by the Assembly under the Town and Country Planning Act 1990 s 21 (as amended; repealed with savings): see PARA 175 post.
- 32 *Ibid* s 23C(5) (as added and repealed: see note 9 supra). Section 23A(3)-(6), (8) (as added; repealed with savings: see PARA 160 ante) applies in relation to any joint plan or proposals of a kind mentioned in s 23C(1), (2) or (5) (as so added and repealed) as they apply in relation to any joint plan or proposals of a kind mentioned in s 23A(1) (as added; repealed with savings: see PARA 160 ante): s 23C(6) (as so added and repealed).

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162. Pre-deposit consultation.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², when preparing a unitary development plan³ for its area and before finally determining its contents, the local planning authority⁴ must:

768 (1) comply with any requirements imposed by regulations⁵ and any particular direction given to it by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷ with respect to specified publicity and consultation matters⁸; and

769 (2) consider any representations made in accordance with those regulations⁹.

Where the local planning authority for a London borough¹⁰ has prepared a unitary development plan, it must, before complying with the statutory requirements for the deposit of proposals¹¹, make an application in accordance with regulations¹² to the Mayor of London¹³ for his written opinion whether the unitary development plan is in general conformity with the spatial development strategy¹⁴. If, on such an application, the opinion given by the Mayor¹⁵ is that the unitary development plan is not in general conformity with the spatial development strategy, the giving of the opinion is to be treated as the making by the Mayor of objections in accordance with the regulations¹⁶.

¹ *Ie* under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 163 et seq post.

² See PARA 148 ante.

- 3 For the meaning of 'unitary development plan' see PARA 158 ante.
 - 4 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.
 - 5 Ie regulations made under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings): see PARA 156 ante.
 - 6 As to the Secretary of State see PARA 19 ante.
 - 7 As to the transfer of functions under the Town and Country Planning Act 1990 s 13(1) (as substituted; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
 - 8 Ie with respect to a matter falling within any of the Town and Country Planning Act 1990 s 26(2)(a)-(c) or (e) (as amended; repealed with savings): see PARA 156 ante at heads (1)-(2), (4), (7) in the text.
 - 9 Ibid s 13(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 4; repealed with savings). Certain representations may, however, be ignored: see PARA 164 post.
- In relation to England, the local planning authority must prepare a statement of any persons it has consulted when preparing the plan or proposals, and of any steps it has taken to publicise its plan or proposals and to provide persons with an opportunity of making representations in respect of that plan or those proposals: see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 21. Specific consultees are prescribed in relation to Wales: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 10(1) (revoked subject to transitional provisions). The local planning authority must consider any representations made by the consultees before finally determining the contents of the proposals (reg 10(2)); and must prepare a statement of any other persons it has consulted when preparing its proposals, in addition to those listed in reg 10(1), and of any steps it has taken to publicise its proposals and to provide persons with an opportunity of making representations in respect of those proposals (reg 10(3)). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. The 1991 Regulations have been revoked in relation to England but continue to apply in relation to Wales: see PARA 148 ante.
- 10 As to London boroughs see PARA 28 note 7 ante.
 - 11 Ie before complying with the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 post.
 - 12 See note 5 supra.
 - 13 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.
 - 14 Town and Country Planning Act 1990 s 13(1A) (s 13(1A), (5A) added by the Greater London Authority Act 1999 s 344(1), (4), (5); repealed with savings). As to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.
 - 15 Ie in accordance with regulations under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings): see PARA 156 ante.
 - 16 Ibid s 13(5A) (as added and repealed: see note 14 supra).

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163. Deposit of proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where the local planning authority³ has prepared a unitary development plan⁴ it must before adopting it:

- 770 (1) make copies of it available for inspection at such places as may be prescribed⁵ by regulations⁶;
- 771 (2) send a copy to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸; and
- 772 (3) comply with any requirements imposed by the regulations mentioned in head (1) above⁹;

and each copy so made available for inspection or sent to the Secretary of State or the Assembly must be accompanied by a statement of the prescribed period¹⁰ within which objections may be made to the authority¹¹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 164 et seq post.

2 See PARA 148 ante.

3 As to local planning authorities see PARA 28 et seq ante; as to the authorities to which these provisions apply see PARA 155 ante.

4 For the meaning of 'unitary development plan' see PARA 158 ante.

5 For the meaning of 'prescribed' see PARA 16 note 5 ante.

6 Ie regulations under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings): see PARA 156 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 s 13 (as substituted and amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 13(2) (s 13(2), (3), (4) substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 4; repealed with savings). In order for the transitional arrangements in relation to England set out in the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 (see PARA 125 et seq ante) to apply to a unitary development plan, the local planning authority must have complied with the Town and Country Planning Act 1990 s 13(2) (as so substituted and repealed) before 28 September 2004: see PARA 129 ante.

10 For these purposes, 'the prescribed period' means such period as may be prescribed or determined in accordance with regulations made under the Town and Country Planning Act 1990 s 26 (as amended; repealed with savings): s 13(4) (as substituted and repealed: see note 9 supra). The period within which objections and representations may be made to the local planning authority with respect to proposals for a unitary development plan, or for the alteration or replacement of such a plan, made available for inspection under the Town and Country Planning Act 1990 s 13(2)(a) (as substituted and repealed: see note 9 supra) is (1) in relation to Wales, six weeks beginning with the date on which a notice given pursuant to the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 11(1)(b) (see note 11 infra) is first published in a local newspaper (reg 12(1)); (2) in relation to England, six weeks beginning with the date on which (a) a notice given pursuant to the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22(1)(b) (see note 11 infra) is first published in a local newspaper; or (b) the local planning authority complies with reg 24A(3)(b) (as added) (see note 11 infra) (regs 23(1), 24A(9)(a)) (reg 24A added by SI 2004/2205). The 1991 Regulations have been revoked in relation to England subject to transitional provisions which apply in relation to Wales; and the 1999 Regulations apply for transitional purposes: see PARA 148 ante.

11 Town and Country Planning Act 1990 s 13(3) (as substituted and repealed: see note 9 supra).

In relation to England, a local planning authority making a local plan, waste local plan, minerals local plan or unitary development plan (ie a 'statutory plan': see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 2(1)) or proposals for the alteration or replacement of such a plan available for inspection in accordance with the Town and Country Planning Act 1990 s 13(2)(a) (as substituted and repealed: see note 9 supra) or s 40(2)(a) (as substituted; repealed with savings: see PARA 201 post) must: (1) make the proposals available at its principal office and at such other places within its area as it

considers appropriate; (2) give notice by advertisement in Form 6; and (3) give notice in similar form to any other person whom it considers should be given notice: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22(1). Proposals made available for inspection must be accompanied by the statement prepared pursuant to reg 21 (see PARA 162 ante); reg 22(2). The local planning authority must send four copies of the documents made available for inspection to the Secretary of State: reg 22(3). It must send one copy of the documents made available for inspection to each of those bodies listed in reg 10(1)(c)-(f) (pre-deposit consultation with regard to structure plans: see PARA 186 note 8 post) and to any other local authority for an area covered by the plan or proposals: reg 22(4). For Form 6 see regs 2(2)(b), 22(1), Schedule, Form 6.

Where, however, a local planning authority has complied with either the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 5(2)(b) or Sch 8 para 5(3) (transitional arrangements for unitary development plans: see PARA 129 ante) or with either Sch 8 para 10(2)(b) or Sch 8 para 10(3) (transitional arrangements for local plans: see PARA 130 ante), the following procedural requirements apply: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A(1) (as added: see note 10 supra). The local planning authority may revise the plan or proposals or, where the authority has complied with reg 24 (revoked) the revised plan or revised proposals: reg 24A(2) (as so added). The local planning authority must: (a) make the plan or proposals available for inspection at those places at which the plan or proposals were made available under reg 22(1)(a); (b) give notice by advertisement of the following matters: (i) the title of the plan or proposals; (ii) the fact that the plan or proposals were made available under reg 22 or, as the case may be, that the revised plan or revised proposals were made available under reg 24 (revoked) and, in either case, the date on which they were first made available; (iii) if it be the case that the plan or proposals have been revised under reg 24A(2) (as so added), that fact; (iv) that copies of the plan or proposals are available for inspection and the places and times at which they can be inspected; (v) the period set out in reg 24A(9) (as so added) (see note 10 supra) and the address to which, and, where appropriate, the person to whom, representations on the plan or proposals must be made; (vi) that any such representations may be accompanied by a request to be notified at a specified address of the adoption of the plan or proposals; and (vii) where reg 24A(4) (as so added) applies, that if no objections are received during the period for receipt of representations, the authority intends to adopt the plan or proposals 28 days after the expiry of that period; and (c) notify in writing: (i) the persons referred to in reg 24A(5) (as so added); and (ii) such other persons as the authority thinks fit, of the matters referred to in reg 24A(3)(b)(i), (ii), (iv) and (v) (as so added) (see heads (i), (ii), (iv), (v) supra) and, if applicable, those referred to in reg 24A(3)(b)(iii) and (vii) (as so added) (see heads (iii), (vii) supra): reg 24A(3) (as so added). Regulation 24A(4) (as so added) applies if either at the time the local planning authority complies with reg 24A (as so added) no objections in accordance with the 1999 Regulations have been made in respect of the plan or proposals or if such objections have been made, they have been withdrawn; or if the local planning authority complies with reg 24A(2) (as so added) and those parts of it in respect of which objections have been made and not subsequently withdrawn no longer form part of the plan or proposals: reg 24A(4) (as so added). The persons referred to in reg 24A(3)(c) (as so added) are any person who, in accordance with the 1999 Regulations, has objected to, or made a representation in respect of the plan or proposals (whether or not that person has subsequently withdrawn that objection or representation): reg 24A(5) (as so added). The plan or proposals made available under reg 24A(3)(a) (as so added) (see head (a) supra) must comprise the full text of the plan or proposals and, in the case of a plan or proposal revised under reg 24A(2) (as so added), indicate clearly the revisions that have been made: reg 24A(6) (as so added). Where revisions have been made under reg 24A(2) (as so added), the plan or proposals made available must be accompanied by a list of the revisions made and need not contain a revised version of the map required by the Town and Country Planning Act 1990 s 12(4)(b) (repealed with savings) (see PARA 158 ante) or (in relation to a local plan) s 36(6)(a) (as substituted; repealed with savings: see PARA 195 post) provided that the plan or proposals contain that map and such diagrams and maps as are necessary to indicate the revisions are annexed to that map: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A(7) (as so added). The authority must send four copies of the documents made available for inspection to the Secretary of State and one copy of those documents to each of the bodies listed in reg 10(1)(c)-(f) and to any other local authority any part of whose area is covered by the plan or proposals: reg 24A(8) (as so added). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

In relation to Wales, a local planning authority making proposals for a statutory plan available for inspection in accordance with the Town and Country Planning Act 1990 s 13(2)(a) (as substituted and repealed: see note 9 supra) must: (A) make the proposals available at its principal office and at such other places within its area as it considers appropriate; (B) give notice by advertisement in the prescribed form; and (C) give notice in similar form to any consultee under the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 10(1) (see PARA 162 ante) and to any other person whom the authority considers should be given notice: reg 11(1). Proposals so made available for inspection must be accompanied by the statement prepared pursuant to reg 10(3) (see PARA 162 ante) and the local planning authority must send four copies of the documents made available for inspection to the Assembly: reg 11(2)(a), (3). For the prescribed form see regs 2(2)(b), 10(1), Schedule Form 1 (substituted by SI 1997/531). 'Statutory plan' now means a unitary development plan (see PARA 176 post); 'by advertisement' means by publication in the London Gazette and by local advertisement; and 'by local advertisement' means by publication on at least one occasion in two successive weeks in a local newspaper circulating in the area of the local planning authority: Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 2(1). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

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164. Objections and representations.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², objections and representations to be considered by the local planning authority³ must be made in accordance with the relevant regulations⁴.

Neither the Secretary of State or, in relation to Wales, the National Assembly for Wales⁵, nor a local planning authority is required⁶ to consider representations or objections with respect to a unitary development plan⁷ or any proposals for the alteration or replacement of such a plan⁸ if it appears to the Secretary of State or the Assembly or, as the case may be, to the authority that those representations or objections are in substance representations or objections with respect to things done or proposed to be done in pursuance of:

- 773 (1) an order or scheme under specified provisions⁹ of the Highways Act 1980;
- 774 (2) an order or scheme under any statutory provision replaced by those specified provisions¹⁰; or
- 775 (3) an order under specified provisions¹¹ of the New Towns Act 1981¹².

The procedure for considering objections without holding a local inquiry¹³ is prescribed by regulations¹⁴.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 165 et seq post.

2 See PARA 148 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

4 See PARA 162 ante at head (2) in the text. In relation to England, objections and representations must be made in writing and addressed to the local planning authority in accordance with the details given in the published notice under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22 (see PARA 163 ante); reg 22(2). In addition to the requirement to consider objections imposed by the Town and Country Planning Act 1990 s 13(6) (as substituted; repealed with savings) (see PARA 167 post) or s 40(7) (as substituted; repealed with savings) (local plans: see PARA 203 post), as the case may be, the local planning authority must also consider any representations made in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22: reg 22(3). In the case of a plan, or proposals for the replacement of a plan, to which reg 22 refers, a representation that matters relating to the development and use of land not included in the plan or proposals ought to have been so included must, if the representation is made within the time and in the manner required by reg 22, be treated as an objection made to the plan or proposals in accordance with the 1999 Regulations for the purpose of regs 26, 28 (as amended) and the Town and Country Planning Act 1990 s 16 (as amended; repealed with savings) (see PARA 165 post) and s 42 (as amended; repealed with savings) (local plans: see PARA 202 post): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22(4). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

Where, however, a local planning authority has complied with either the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 5(2)(b) or Sch 8 para 5(3) (transitional arrangements for unitary development plans: see PARA 129 ante) or with either Sch 8 para 10(2)(b) or Sch 8 para 10(3) (transitional arrangements for local plans: see PARA 130 ante), the following provisions apply: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A(1) (added by SI 2004/2205). An objection or representation

is made in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A (as so added) if it is made within six weeks beginning with the date on which the local planning authority complies with reg 24A(3)(b) (as so added) (see PARA 163 note 11 head (b) ante), in writing, and sent to the address, and, where appropriate, the person, specified under paragraph reg 24A(3)(b)(v) (as so added) (see PARA 163 note 11 head (b)(v) ante): reg 24A(9) (as so added). In addition to the requirement to consider objections imposed by the Town and Country Planning Act 1990 s 13(6) (as substituted; repealed with savings) (see PARA 167 post) or s 40(7) (as substituted; repealed with savings) (local plans: see PARA 203 post), as the case may be, the local planning authority must also consider any representations made in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A (as so added): reg 24A(10) (as so added). A representation (1) that matters relating to the development and use of land not included in the plan or proposals ought to have been so included; or (2) made by the Secretary of State that the plan or proposals should be modified to accord with current national policies or policies in a regional spatial strategy (an 'RSS') must, if it is made in accordance with reg 24A (as so added), be treated as an objection made to the plan or proposals in accordance with the 1999 Regulations for the purpose of regs 26, 28 (as amended) and the Town and Country Planning Act 1990 s 16 (as amended; repealed with savings) (see PARA 165 post) and s 42 (as amended; repealed with savings) (local plans: see PARA 202 post): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A(11) (as so added). As to the Secretary of State see PARA 19 ante; and as to the RSS see PARA 72 ante.

An opinion given by the Mayor of London that the unitary development plan is not in general conformity with the spatial development strategy is to be treated as the making by the Mayor of objections in accordance with the 1999 Regulations: see PARA 162 ante.

In relation to Wales, objections and representations must be made in writing and addressed to the local planning authority in accordance with the details given in the notice published pursuant to the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 11(1)(b) (see PARA 163 ante); and the local planning authority must, in addition to the requirement to consider objections imposed by the Town and Country Planning Act 1990 s 13(6) (as substituted; repealed with savings) (see PARA 167 post) also consider any representations so made: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 12(2), (3). In the case of deposited proposals for a statutory plan or for the replacement of such a plan, a representation that matters relating to the development and use of land not included in the deposited proposals ought to have been so included is to be treated, for the purposes of reg 17 (see note 14 infra) and, in the case of statutory plan proposals reg 14 (see PARA 165 post) and the Town and Country Planning Act 1990 s 16 (as amended; repealed with savings) (see PARA 165 post), as an objection made to the proposals in accordance with the regulations if the representation is made within the time and in the manner required by the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 12: reg 12(4). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante. For the meaning of 'statutory plan' see PARA 163 note 11 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 24 (repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie notwithstanding anything in the Town and Country Planning Act 1990 ss 10-23C (as amended; repealed with savings): see PARA 155 et seq ante, PARA 165 et seq post.

7 For the meaning of 'unitary development plan' see PARA 158 ante.

8 As to alteration or replacement of a unitary development plan see PARA 175 post.

9 Ie under the Highways Act 1980 s 10 (as amended) (trunk roads), s 14 (as amended) (roads crossing or joining trunk or classified roads), s 16 (special roads), s 18 (as amended) (supplementary orders relating to special roads), s 106(1) or (3) (bridges or tunnels under or over navigable waters) or s 108(1) (diversion of navigable watercourses: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703 et seq, 710, 731 et seq, 787 et seq.

10 Ie under the Highways Act 1959 s 7, s 9, s 11, s 13 or s 20 (repealed), the Highways (Miscellaneous Provisions) Act 1961 s 3 (repealed) or the Highways Act 1971 s 1 or s 10 (both repealed).

11 Ie under the New Towns Act 1981 s 1 (as amended): see PARA 1315 post.

12 Town and Country Planning Act 1990 s 24 (repealed with savings).

13 As to local inquiries see PARA 165 post.

14 In relation to England, where objections have been made to a plan or proposals in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended), and not withdrawn and the local planning authority does not cause a local inquiry or other hearing to be held, the authority must prepare a statement of its decisions as respects all the objections and its reasons for each

decision: reg 28(1). Similar provisions apply in relation to Wales: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 17 (revoked subject to transitional provisions).

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165. Local inquiries and other hearings.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where any objections have been made in accordance with the regulations³ to proposals for a unitary development plan⁴ copies of which have been made available for inspection⁵, the local planning authority⁶ must cause a local inquiry or other hearing to be held for the purpose of considering the objections⁷. The authority may also cause a local inquiry or other hearing to be held for the purpose of considering any other objections to the proposals⁸.

The local inquiry or other hearing must be held by a person appointed by the Secretary of State⁹ or, in relation to Wales, by the National Assembly for Wales¹⁰ or, in such cases as may be prescribed¹¹, by the authority itself¹². No such inquiry or hearing need, however, be so held if all persons who have made objections have indicated in writing that they do not wish to appear¹³.

Regulations made for these purposes may make provision with respect to:

- 776 (1) the appointment and qualifications for appointment of persons to hold such a local inquiry or other hearing, including provision enabling the Secretary of State or the Assembly to direct a local planning authority to appoint a particular person or one of a specified list or class of persons;
- 777 (2) the remuneration and allowances of a person appointed for that purpose¹⁴.

In relation to England, there is no longer a prescribed procedure whereby the local planning authority may modify the proposals after the inquiry¹⁵.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 166 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'objections made in the accordance with the regulations' see PARA 156 note 14 ante.

4 For the meaning of 'unitary development plan' see PARA 158 ante.

5 le under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 ante.

6 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

7 Town and Country Planning Act 1990 s 16(1) (s 16(1), (1A), (1B) substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 7; repealed with savings). The Local Government Act 1972 s 250(2), (3) (as amended) (power to summon and examine witnesses: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held under the Town and Country Planning Act 1990 s 16 (as amended and repealed) as it applies to an inquiry under the Local Government Act 1972 s 250 (as amended) (Town and Country Planning Act 1990 s 16(2) (repealed with savings)); and the Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held under the Town and Country Planning Act 1990 s 16 (as amended and repealed) as it applies to a statutory inquiry held by the Secretary of State, but as if in the Tribunals and Inquiries Act

1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a local planning authority: Town and Country Planning Act 1990 s 16(3) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 22; repealed with savings).

8 Town and Country Planning Act 1990 s 16(1A) (as substituted and repealed: see note 7 supra). As to refusal to hold an inquiry see eg *Rossington Hall Investments Ltd v Doncaster Metropolitan Borough Council* (1999) 79 P & CR 366.

In relation to England, a local planning authority must, at least six weeks before the opening of any local inquiry or other hearing which it causes to be held to consider objections to a plan or proposals to which the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22 refers (see PARA 163 ante): (1) give any person who has objected to, or made a representation in respect of, the plan or proposals in accordance with the 1999 Regulations and not withdrawn the objection or representation, notice of the time and place at which the inquiry or other hearing is to be held, the name of the person appointed to hold it, and its purpose; and (2) in the case of a local inquiry, give notice of that information by local advertisement: reg 26(1). Where, by virtue of the Planning and Compulsory Purchase Act 2004 Sch 8 para 4 (transitional arrangements for unitary development plans: see PARA 129 ante) or Sch 8 para 9 (transitional arrangements for local plans: see PARA 130 ante), the Town and Country Planning Act 1990 Pt I Ch I (ss 10-28A) (as amended; repealed with savings) or Pt II Ch II (ss 29-54) (as amended; repealed with savings) continue to have effect in relation to proposals, a local planning authority must, within eight weeks of receiving the report of the person holding an inquiry or other hearing to which this provision applies, make that report available for inspection at those places at which the proposals were made available under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22(1)(a): reg 26(2) (reg 26(2) amended, and reg 26(2A), (2B) added, by SI 2004/2205). Where the Planning and Compulsory Purchase Act 2004 Sch 8 para 5 (see PARA 129 ante) or Sch 8 para 10 (see PARA 130 ante) applies to proposals, on the date specified in the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 26(2B) (as so added) the local planning authority must make the report of the person holding an inquiry or other hearing to which reg 26 (as amended) applies available for inspection at those places at which the proposals were made available under reg 22(1)(a): reg 26(2A) (as so added). The date so referred to is: (a) the date the authority adopt the plan or proposals; or (b) if (i) the Secretary of State issues a direction under the Town and Country Planning Act 1990 s 17(1) (as amended) (see PARA 169 post), s 18(1) (as amended) (see PARA 170 post), s 43(4) (as amended) (local plans: see PARA 205 post) or s 44(1) (as amended) (local plans: see PARA 206 post) (all repealed with savings) (as the case may be), and (ii) that direction is issued after the local planning authority has received the report of the person holding the inquiry or other hearing, as soon as practicable after that direction is issued: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 26(2B) (as so added). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

In relation to Wales, a local planning authority must, at least six weeks before the opening of any local inquiry or other hearing which it causes to be so held to consider objections to proposals for a statutory plan made available for inspection under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): (A) give any person who has objected to, or made a representation in respect of, the proposals in accordance with the relevant regulations and not withdrawn the objection or representation, notice of the time and place at which the inquiry or other hearing is to be held, the name of the person appointed to hold it, and its purpose; and (B) in the case of a local inquiry, give notice of that information by local advertisement: Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 14(1). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante. For the meaning of 'statutory plan' see PARA 163 note 11 ante.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Town and Country Planning Act 1990 s 16 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 For the meaning of 'prescribed' see PARA 16 note 5 ante.

12 Town and Country Planning Act 1990 s 16(1B) (as substituted and repealed: see note 7 supra). A local inquiry in relation to Wales must be held in public: Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 14(2) (revoked subject to transitional provisions).

13 Town and Country Planning Act 1990 s 16(5) (repealed with savings).

14 Ibid s 16(4) (repealed with savings). As to the remuneration etc of the person so appointed see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (Wales) Regulations 2005, SI 2005/371, regs 2, 3; the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (England) Regulations 2004, SI 2004/421, regs 2, 3.

15 See the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 5(4); and PARA 129 ante. For the procedure prescribed for such modification in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, regs 16, 18 (as amended; revoked subject to transitional provisions). As to refusal to accept the inspector's recommended modifications see *Welsh Development Agency v Carmarthenshire County Council* (1999) 80 P & CR 192, [2000] JPL 692, CA; *Fairfield Partnership v Huntingdonshire District Council* [2003] EWHC 2430 (Admin), 147 Sol Jo LB 1273, [2003] All ER (D) 378 (Oct); and see also *Blaneifield Property Co Ltd v Salisbury District Council* [2004] EWHC 336 (Admin), [2004] All ER (D) 401 (Feb).

UPDATE

165 Local inquiries and other hearings

NOTE 14--SI 2005/371 replaced: Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007, SI 2007/728.

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166. Withdrawal of unitary development plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a unitary development plan³ may be withdrawn by the local planning authority⁴ at any time before it is adopted by the authority or approved by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶. It must be so withdrawn by the authority if the Secretary of State or the Assembly so directs⁷.

Where a unitary development plan is withdrawn:

- 778 (1) the authority must:
- 81
- 116. (a) withdraw the copies made available for inspection and sent to the Secretary of State or the Assembly⁸; and
- 117. (b) give notice that the plan has been withdrawn to every person who has made an objection to it⁹;
- 82
- 779 (2) the copies of the plan are treated as never having been made¹⁰ available¹¹.

1 See under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 167 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

5 As to the Secretary of State see PARA 19 ante.

6 Town and Country Planning Act 1990 s 14(1) (repealed with savings). As to the transfer of functions under s 14 (as amended and so repealed), so far as exercisable in relation to Wales, to the Assembly see the National

Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 14(1) (repealed with savings).

8 le under ibid s 13(2) (as substituted; repealed with savings): see PARA 163 ante.

9 Ibid s 14(2) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 5(a); repealed with savings). As to the prescribed procedure for withdrawal in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 13, Schedule, Form 2. There is no longer a prescribed procedure for withdrawal in relation to England. The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

10 le as never having been made available under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 ante.

11 Ibid s 14(4) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 5(a); repealed with savings).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(ii) Unitary Development Plans in England and Wales/167. Notice of intention to adopt.

167. Notice of intention to adopt.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a unitary development plan³ may not be adopted⁴ by the local planning authority⁵ until after it has considered any objections made in accordance with the regulations⁶ or, if no such objections are made, until after the expiry of the prescribed⁷ period⁸.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 168 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 le under the Town and Country Planning Act 1990 s 15 (as amended; repealed with savings): see PARA 168 post.

5 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

6 The persons who may make objections in accordance with the regulations include, in particular, the Secretary of State or, in relation to Wales, the National Assembly for Wales: Town and Country Planning Act 1990 s 13(5) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 4; repealed with savings). For the meaning of 'objections made in accordance with the regulations' see PARA 156 note 14 ante; as to the transfer of functions under s 13(5) (as so substituted and repealed), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 s 13(6) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 4; repealed with savings).

Without prejudice to the Town and Country Planning Act 1990 s 13(6) (as so substituted and repealed), in relation to Wales, proposals for a statutory plan or for the alteration or replacement of such a plan may not be adopted by a local planning authority until the period given by the authority in its notice of intention to adopt in

the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 2(2)(b), Schedule, Form 1 or, where the authority has also given notice of its intention to adopt in Form 3 or Form 4, the period in the last such notice to be given by the authority, has expired: regs 2(2)(b), 19. The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante. For the meaning of 'statutory plan' see PARA 163 note 11 ante.

In relation to England, where the authority has given notice of its intention to adopt in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 24A(3)(b)(vii) (as added) (see PARA 163 ante) or in reg 2(2)(b), Schedule, Form 9 or Form 10 (substituted by SI 2004/2205), a plan or proposals to which reg 22 (see PARA 163 ante) applies must not be adopted by the authority until the period specified by the authority in that notice has expired: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 30 (substituted by SI 2004/2205). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

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168. Adoption of unitary development plan by local planning authority.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ may⁴ by resolution adopt the unitary development plan⁵, either as originally prepared or as modified so as to take account of any objections to the plan or any other considerations which appear to the authority to be material⁶. A unitary development plan may not, however, be adopted unless Part II of the plan is in general conformity with Part I⁷. Nor may a unitary development plan be adopted by a London borough council⁸ unless Parts I and II of the plan are in general conformity with the spatial development strategy⁹.

A unitary development plan becomes operative¹⁰ on the date on which it is adopted¹¹. The procedures for giving notice of such adoption are prescribed by regulations¹².

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 169 et seq post.

2 See PARA 148 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

4 Ie subject to the provisions of the Town and Country Planning Act 1990 s 15(2)-(4) (as amended; repealed with savings) (see the text and notes 7-11 infra), s 17 (as amended; repealed with savings) (see PARA 169 post) and s 18 (as amended; repealed with savings) (see PARA 170 post).

5 For the meaning of 'unitary development plan' see PARA 158 ante.

6 Town and Country Planning Act 1990 s 15(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 6; repealed with savings). As to whether a modified policy may be adopted without holding a public inquiry see *University of Leeds v Leeds City Council* [2002] EWHC 738 (Admin), [2002] All ER (D) 211 (Apr).

7 Town and Country Planning Act 1990 s 15(2) (repealed with savings). As to Part I and Part II of the plan see PARA 158 ante.

8 As to London borough councils see PARA 28 ante.

9 Town and Country Planning Act 1990 s 15(2A) (added by the Greater London Authority Act 1999 s 344(1), (6)). As to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.

10 is subject to the Town and Country Planning Act 1990 ss 16-28A (as amended; repealed with savings) (see PARA 165 et seq ante, PARA 169 et seq post) and s 287 (as amended) (see PARA 46 note 14 ante).

11 Ibid s 15(4) (repealed with savings). As to the validity of unitary development plans see PARAS 42, 43 note 5 ante; and as to proceedings for questioning the validity of unitary development plans see PARAS 42, 46 note 14 ante.

12 In relation to England, where a local planning authority adopts a plan or proposals to which the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22 (see PARA 163 ante) refers it must give notice by advertisement of the following matters: (1) the title of the plan or proposals; (2) that the plan or proposals have been adopted and the date of adoption; (3) if the Secretary of State issued a direction under the Town and Country Planning Act 1990 s 17(1) (as amended; repealed with savings) (see PARA 169 post) or s 43(4) (as amended; repealed with savings) (local plans: see PARA 205 post) that: (a) the Secretary of State withdrew that direction; or (b) he was satisfied that the necessary modifications to the plan or proposals had been made to comply with that direction; (4) that copies of the adopted plan or proposals and, where relevant, copies of the Secretary of State's notification of the matters specified in head (3)(a) or (b) supra are available for inspection and the places and times at which they can be inspected; (5) that copies of the adopted plan can be obtained on request and on payment of a reasonable charge; (6) that any person aggrieved by the adopted plan or proposals may make an application to the High Court under the Town and Country Planning Act 1990 s 287 (as amended) and (a) the grounds on which such an application may be made; (b) the time within which such an application must be made: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 31(1)(a) (reg 31(1) substituted, and reg 31(3) amended, by SI 2004/2205). The authority must also notify any person who has asked to be notified of the adoption of the plan or proposals of the matters specified in head (1)(a), (b), (d)-(f) and, if applicable, in head (1)(c) supra, and must publish the plan, the plan as altered, or the replacement plan as the case may be on its website: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 31(1)(b), (c) (as so substituted). A copy of the notice given pursuant to reg 31(1) (as so substituted) and of the adopted plan or proposals must be made available for inspection at any place at which the proposals were made available for inspection under reg 22(1)(a) (see PARA 163 ante): reg 31(2). The local planning authority must, not later than the date on which notice is first given by advertisement pursuant to reg 31(1) (as so substituted), send one copy of the adopted plan or proposals to the Secretary of State: reg 31(3) (as so amended). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

In relation to Wales, when a local planning authority adopts proposals for a statutory plan or for the alteration or replacement of such a plan, it must give notice by advertisement in the prescribed form and serve notice in similar form on any person who has asked to be notified of the adoption: Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 20(1). For the prescribed form of notice see regs 2(2) (b), 20(1)(a), Schedule Form 5 (substituted by SI 1997/531). A copy of the notice so given and of the adopted proposals must be made available for inspection at any place at which the proposals were made available for inspection under the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 11(1) (a) (see PARA 163 ante): reg 20(2). Adopted proposals so made available for inspection must remain so available until printed copies of the proposals are made available under reg 27(1) (see PARA 154 ante): reg 26(3). The local planning authority must, not later than the date on which notice is first given by advertisement pursuant to reg 20(1), send four copies of the adopted proposals to the National Assembly for Wales: reg 20(3); and see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante. The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante. For the meaning of 'statutory plan' see PARA 163 note 11 ante.

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169. Direction to modify proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², after a copy of a unitary development plan³ has been sent⁴ to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶, the following provisions apply⁷. Before the plan is adopted by the local planning authority⁸, the Secretary of State or the Assembly may, if it appears to him or

to it that the plan is unsatisfactory, direct the authority to modify the proposals in such respects as are indicated in the direction⁹. An authority to which a direction is given may not adopt the plan unless it satisfies the Secretary of State or the Assembly that the authority has made the modifications necessary to conform with the direction or the direction is withdrawn¹⁰.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 170 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 le under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 17 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 See the Town and Country Planning Act 1990 s 17 (as amended; repealed with savings); and the text and notes 1-6 supra, 8-10 infra.

8 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

9 Town and Country Planning Act 1990 s 17(1) (amended by the Planning and compensation Act 1991 s 27, Sch 4 paras 1, 8, 9; repealed with savings).

10 Town and Country Planning Act 1990 s 17(2) (repealed with savings).

In relation to England, where the Secretary of State directs a local planning authority to modify its proposals under s 17(1) (as amended and repealed), s 35(2) (as substituted; repealed with savings) (structure plans: see PARA 192 post) or s 43(4) (as substituted; repealed with savings) (local plans: see PARA 205 post), the authority must make a copy of the direction available for inspection at each place at which the plan or proposals were made available for inspection under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22(1)(a) (see PARA 163 ante): reg 33(1) (substituted by SI 2004/2205). Any notice of adoption of the proposals given pursuant to the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 19(1) (see PARA 191 post) or reg 31(1) (as so substituted) must state that the local planning authority has satisfied the Secretary of State that it has made the modifications necessary to conform with the direction to modify or that the direction has been withdrawn, as the case may be: reg 33(2). A copy of any notification by the Secretary of State that he is satisfied with the modifications made or that the direction is withdrawn must be made available for inspection from the date on which, and at the places at which, the adopted proposals are made available for inspection: reg 33(3). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

In relation to Wales, where the Assembly so directs a local planning authority to modify its proposals, the authority must make a copy of the direction available for inspection with any subsequent list of modifications made so available pursuant to the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 18(1); and that list must indicate: (1) which modifications have been proposed to comply with the direction; or (2) where modifications have not been proposed to comply, or to comply fully, with the direction, the authority's reasons for not doing so: reg 22(1); and see note 6 supra. Any notice of adoption of the proposals given pursuant to reg 20(1) (see PARA 168 ante) must state that the local planning authority has satisfied the Assembly that it has made the modifications necessary to conform with the direction to modify or that the direction has been withdrawn, as the case may be: reg 22(2). A copy of any notification by the Assembly that it is satisfied with the modifications made or that the direction is withdrawn must be made available for inspection from the date on which, and at the places at which, the adopted proposals are made available for inspection: reg 22(3). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(ii) Unitary Development Plans in England and Wales/170. Calling in of unitary development plan for approval.

170. Calling in of unitary development plan for approval.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², after a copy of a unitary development plan³ has been sent⁴ to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶, and before it is adopted by the local planning authority⁷, the Secretary of State or the Assembly may direct that the whole or part of the plan shall be submitted to him or to it for approval⁸. If such a direction is given:

- 780 (1) the authority may not take any further steps for the adoption of the plan until the Secretary of State or the Assembly has given his or its decision on the plan or the relevant part of it⁹; and
- 781 (2) the plan or the relevant part of it does not have effect unless approved by him or by the Assembly and does not require adoption under the normal¹⁰ statutory provisions¹¹.

1 He under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 171 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'unitary development plan' see PARA 158 ante.

4 He under the Town and Country Planning Act 1990 s 13(2) (as substituted; repealed with savings): see PARA 163 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 18 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

8 Town and Country Planning Act 1990 s 18(1) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 9; repealed with savings).

In relation to England, if, before the local planning authority has adopted proposals for a statutory plan or for the alteration or replacement of such a plan, the Secretary of State directs the authority not to adopt the proposals until he has decided whether to give it a direction under the Town and Country Planning Act 1990 s 18(1) (as so amended and repealed), under s 35A(1) (as substituted; repealed with savings) (structure plans: see PARA 193 post) or under s 44(1) (as amended; repealed with savings) (local plans: see PARA 206 post), as the case may be, the authority must not adopt the proposals until he has notified them of his decision: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 34. For the meaning of 'statutory plan' see PARA 163 note 11 ante. The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

Similarly, in relation to Wales, if, before the local planning authority has adopted proposals for such a plan or for the alteration or replacement of such a plan, the Assembly directs the authority not to adopt the proposals until it has decided whether to give the authority a direction that the whole or part of the plan be submitted to the Assembly for approval, the authority may not adopt the proposals until the Assembly has notified the authority of its decision: Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 23 (revoked subject to transitional provisions); and see note 6 supra.

9 Town and Country Planning Act 1990 s 18(2)(a) (repealed with savings). Section 18(2)(a) (as so repealed) applies in particular to holding or proceeding with a local inquiry or other hearing in respect of the plan under s 16 (as amended; repealed with savings) (see PARA 165 ante); and at any such inquiry or hearing which is subsequently held or resumed a local planning authority need not give any person an opportunity of being

heard in respect of any objection which has been heard at an examination, local inquiry or other hearing under s 20 (as amended; repealed with savings) (see PARA 171 post) or which the Secretary of State or the Assembly states that he or it has considered in making his or its decision: s 18(4) (repealed with savings).

10 le under ibid ss 10-17 (as amended; repealed with savings): see PARA 155 et seq ante. As to the normal procedure for adoption of a plan see PARA 167 et seq ante.

11 Ibid s 18(2)(b) (repealed with savings).

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171. Local inquiry after calling in.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², before deciding whether or not to approve a plan or part of a plan submitted for approval³, the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ must consider any objection to it so far as made in accordance with the regulations⁶. He or the Assembly need not, however, so consider any objections which have already been considered by the local planning authority⁷.

Where the whole or part of Part II of a unitary development plan⁸ is submitted⁹ for approval, whether or not the whole or part of Part I of the plan is also submitted, then, if any objections have been made¹⁰ to the plan or the relevant part of it, the Secretary of State or the Assembly must, before deciding whether to approve it, cause a local inquiry or other hearing to be held for the purpose of considering those objections¹¹. He or the Assembly need not, however, so cause such an inquiry or hearing to be held if the local planning authority has already held a local inquiry or other hearing into the objections¹² or if the Secretary of State or the Assembly, on taking the plan or the relevant part of it into consideration, decides to reject it¹³.

The procedure for giving notice of such an inquiry or hearing is prescribed by regulations¹⁴.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 172 et seq post.

2 See PARA 148 ante.

3 le under the Town and Country Planning Act 1990 s 18(1) (as amended; repealed with savings): see PARA 170 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 18 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 20(1) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 11; repealed with savings). For the meaning of 'objections made in accordance with the regulations' see PARA 156 note 14 ante.

7 Town and Country Planning Act 1990 s 20(3) (repealed with savings). As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

8 For the meaning of 'unitary development plan' see PARA 158 ante.

9 See note 3 *supra*.

10 *Ie* as mentioned in the Town and Country Planning Act 1990 s 20(1) (as amended and repealed): see the text and notes 1-6 *supra*.

11 *Ibid* s 20(2) (repealed with savings).

12 *Ie* under *ibid* s 16 (as amended; repealed with savings); see PARA 165 *ante*.

13 *Ibid* s 20(3) (repealed with savings).

14 The Secretary of State or the Assembly must give the same notice as the local planning authority would be required to give if it were proposing to hold an inquiry or other hearing: see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, 24(4); the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(4). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 *ante*. The 1999 Regulations apply for transitional purposes: see PARA 148 *ante*.

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172. Public examination and consultation after calling in.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where the whole or part of Part I of a unitary development plan³, but not the whole or any part of Part II of the plan, is submitted to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵, he or the Assembly may cause a person or persons appointed by him or by it for the purpose to hold an examination in public of such matters affecting his or its consideration of the part of the plan so submitted as he or the Assembly considers ought to be so examined⁶. The Secretary of State or the Assembly is not, however, required to secure to any local planning authority⁷ or other person a right to be heard at such an examination, and the bodies and persons who may take part are such only as he or the Assembly may, whether before or during the course of the examination, in his or its discretion invite to do so⁸. The person or persons holding the examination, however, have power, exercisable either before or during the course of the examination, to invite additional bodies or persons to take part if it appears to him or them desirable to do so⁹.

On considering a plan or part of a plan so submitted¹⁰, the Secretary of State or the Assembly may consult¹¹ with or consider the views of any local planning authority or other person but need not¹² do so¹³.

1 *Ie* under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 *et seq ante*, PARA 173 *et seq post*.

2 See PARA 148 *ante*.

3 For the meaning of 'unitary development plan' see PARA 158 *ante*.

4 *Ie* under the Town and Country Planning Act 1990 s 18(1) (as amended; repealed with savings): see PARA 170 *ante*. As to the Secretary of State see PARA 19 *ante*.

5 As to the transfer of functions under *ibid* s 20 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

6 Town and Country Planning Act 1990 s 20(4) (repealed with savings). Such an examination constitutes a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992 s 1(1)(c) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15), but does not constitute such an inquiry for any other purpose of that Act: Town and Country Planning Act 1990 s 20(7) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 23; repealed with savings). The Secretary of State may, after consultation with the Lord Chancellor, make regulations with respect to the procedure to be followed at any such examination: Town and Country Planning Act 1990 s 20(5) (repealed with savings). This function is not transferred to the Assembly so far as exercisable in relation to Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). The Lord Chancellor's function under the Town and Country Planning Act 1990 s 20(5) (repealed with savings) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4.

7 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

8 Town and Country Planning Act 1990 s 20(6) (repealed with savings).

9 See note 8 supra.

In relation to England, where the Secretary of State causes an examination in public to be held under the Town and Country Planning Act 1990 s 20(4) (repealed with savings) or s 35B(2) (as substituted; repealed with savings) (local plans: see PARA 188 post) of matters affecting his consideration of statutory plan proposals submitted to him for his approval, or modifications which he proposes to make to such proposals, he must: (1) send a list of the matters with which the examination in public will be concerned and the persons who have been invited to take part in it to the local planning authority; and (2) give such notice as the local planning authority would be required to give by the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 14 (see PARA 188 post) if it was proposing to hold an examination in public: reg 35(5). The local planning authority must, on receipt of a list sent to it pursuant to reg 35(5), make that list available for inspection at any place at which the statutory plan proposals have been made available for inspection: reg 35(6). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

For similar provisions applying in relation to Wales see the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 24(5), (6) (revoked subject to transitional provisions).

10 See note 4 supra.

11 For the meaning of 'consult' see PARA 2 note 1 ante.

12 Ie except as provided by the Town and Country Planning Act 1990 s 20 (as amended and repealed); see the text and notes 1-11 supra; and PARA 171 ante.

13 Ibid s 20(8) (repealed with savings).

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173. Approval by the Secretary of State or the Assembly.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may⁵ after considering⁶ a plan or part of a plan submitted for approval⁷, either approve it, in whole or in part and with or without modifications or reservations, or reject it⁸.

The Secretary of State or the Assembly must give a local planning authority⁹ such statement as he or the Assembly considers appropriate of the reasons governing his or its decision on any plan or part of a plan submitted to him or to it¹⁰.

Where the whole or part of Part I of a unitary development plan is approved by the Secretary of State or the Assembly with modifications, the local planning authority must, before adopting

the remainder of the plan, make such modifications in Part II as may be directed by the Secretary of State or the Assembly for bringing it into general conformity with Part I and, in the absence of any such direction, must make such modifications for that purpose in Part II as appear to the authority to be required¹¹.

A plan or part of a plan which is approved by the Secretary of State or the Assembly under the above provisions becomes operative¹² on such day as he or it may appoint¹³.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 174 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 19 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 le subject to the Town and Country Planning Act 1990 s 20 (as amended; repealed with savings): see PARAS 171-172 ante.

6 In considering a plan or part of a plan submitted to him or to it under *ibid* s 18 (as amended; repealed with savings) (see PARA 170 ante), the Secretary of State or the Assembly may take into account any matters which he or it thinks relevant, whether or not they were taken into account in preparing the plan or that part of it: s 19(2) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 10; repealed with savings).

7 le under the Town and Country Planning Act 1990 s 18(1) (as amended; repealed with savings): see PARA 170 ante.

8 *Ibid* s 19(1) (repealed with savings).

In relation to England, where the Secretary of State is minded to approve with modifications statutory plan proposals submitted to him for his approval, he must, unless, in his opinion, the proposed modifications will not materially affect the content of the statutory plan proposals, send a list of the proposed modifications to the local planning authority, and the authority must, upon receipt of the list: (1) make copies of the list available for inspection at any place at which the statutory plan proposals were made available for inspection; (2) give notice by advertisement of the following matters: (a) the title of the statutory plan proposals; (b) the name of the local planning authority; (c) that the proposals have been submitted to the Secretary of State for his approval and the date when this occurred; (d) that the Secretary of State proposes to modify the proposals; (e) that copies of the proposals and lists of the proposed modifications are available for inspection and the places and times at which they can be inspected; (f) the period within which and the address to which representations on the proposed modifications must be made; (g) that any representations made may be accompanied by a request to be notified at a specified address of the approval or rejection of the statutory plan proposals; and (3) serve notice in similar form on any person who has objected to, or made a representation in respect of, the statutory plan proposals in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended), and not withdrawn the objection or representation and on any other person on whom the Secretary of State directs the authority to serve such a notice: reg 35(1) (amended by SI 2004/2205). The period within which objections or representations may be made to the Secretary of State in respect of the proposed modifications is six weeks beginning with the date on which a notice given pursuant to the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(1) (as so amended) is first published in a local newspaper: reg 35(2). Objections and representations must be made in writing and addressed in accordance with the details given in the notice: reg 35(3). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. 'Statutory plan proposals' means proposals for a statutory plan or for the alteration or replacement of a statutory plan: reg 2(1). For the meaning of 'statutory plan' see PARA 163 note 11 ante.

Similarly in relation to Wales, where the Assembly is minded to approve with modifications proposals for a unitary development plan or for the alteration or replacement of a unitary development plan submitted to it for its approval, the Assembly must, unless in its opinion the proposed modifications will not materially affect the content of the plan proposals, send a list of the proposed modifications to the local planning authority, and the authority must, upon receipt of the list: (i) make copies of the list available for inspection at any place at which the plan proposals have been made available for inspection; (ii) give notice by local advertisement in the prescribed form; and (iii) serve notice in similar form on any person who has objected to, or made a representation in respect of, the plan in accordance with the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (as amended), and not withdrawn the objection or representation and on any

other person on whom the Assembly directs the authority to serve such a notice: reg 24(1). The period within which objections or representations may be made to the Assembly in respect of the proposed modifications is six weeks beginning with the date on which a notice so given is first published in a local newspaper: reg 24(2). Objections and representations must be made in writing and addressed in accordance with the details given in the notice: reg 24(3). For the prescribed form see regs 2(2)(b), 24(1), Schedule Form 6 (substituted by SI 1997/531). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

As to the consideration of objections see PARAS 171-172 ante.

9 As to local planning authorities see PARA 28 et seq ante.

10 Town and Country Planning Act 1990 s 19(3) (repealed with savings).

In relation to England, the local planning authority must, on being notified by the Secretary of State of his decision on statutory plan proposals submitted to him for his approval, give notice by advertisement of the following matters: (1) the title of the statutory plan proposals; (2) the name of the local planning authority; (3) that the statutory plan proposals have been submitted to the Secretary of State for his approval and the date when this occurred; (4) whether the Secretary of State has approved or rejected the proposals and, if he has approved the proposals, whether he has done so in whole or in part and with or without modifications or reservations; (5) that copies of the Secretary of State's letter notifying his decision are available for inspection and the places and times at which they can be inspected; (6) if the Secretary of State has approved any part of the proposals: (a) that any person aggrieved by the approved proposals may make an application to the High Court under the Town and Country Planning Act 1990 s 287 (as amended) (see PARA 46 note 14 ante); (b) the grounds on which such an application may be made; and (c) the time within which such an application must be made: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(7)(a) (substituted by SI 2004/2205). The authority must also serve a notice in similar form on any person who has asked to be notified of the decision reached on the proposals and on any other person on whom the Secretary of State directs the authority to serve such a notice; and must make a copy of the Secretary of State's notification and of the approved or rejected proposals available for inspection at any place at which the proposals were made available for inspection under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 11(1)(a) (see PARA 187 post): reg 35(7)(b), (c).

Similarly, in relation to Wales, on being notified by the Assembly of its decision on statutory plan proposals submitted to it for its approval, the local planning authority must: (i) give notice by advertisement in the prescribed form; (ii) serve a notice in similar form on any person who has asked to be notified of the decision reached on the proposals and on any other person on whom the Assembly directs the authority to serve such a notice; and (iii) make a copy of the Assembly's notification and of the approved or rejected proposals available for inspection at any place at which the proposals were made available for inspection under the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 11(1)(a) (see PARA 163 ante): reg 24(7). For the prescribed form of notice see reg 24(7)(a), Schedule Form 7 (substituted by SI 1997/531). Approved proposals so made available for inspection must remain so available until printed copies of the proposals are made available for inspection under the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794, reg 27(1) (see PARA 154 ante): reg 26(3). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

11 Town and Country Planning Act 1990 s 19(4) (repealed with savings).

12 Ie subject to *ibid* s 287 (as amended): see PARA 46 note 14 ante.

13 *Ibid* s 19(5) (repealed with savings).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(ii) Unitary Development Plans in England and Wales/174. Default powers of the Secretary of State or the Assembly.

174. Default powers of the Secretary of State or the Assembly.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where, by virtue of any of the relevant statutory provisions³, any unitary development plan⁴ or proposals

for the alteration or replacement of such a plan is or are required to be prepared, or steps are required to be taken for the adoption of any such plan or proposals, then:

- 782 (1) if at any time the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ is satisfied, after holding a local inquiry⁷ or other hearing, that the local planning authority⁸ is not taking the steps necessary to enable it to prepare or adopt such a plan or proposals within a reasonable period; or
- 783 (2) in a case where a period is specified for the preparation or adoption of any such plan or proposals, if no such plan or proposals has or have been prepared or adopted by the local planning authority within that period,

the Secretary of State or the Assembly may prepare and make the plan or any part of it or, as the case may be, alter or replace it, as he or it thinks fit⁹.

The authority mentioned above must on demand repay to the Secretary of State or the Assembly so much of any expenses incurred by him or by the Assembly in connection with the doing of anything which should have been done by the authority as he or it certifies to have been incurred in the performance of the authority's functions¹⁰.

The relevant statutory provisions¹¹ apply so far as practicable, with any necessary modifications, in relation to the doing of anything by the Secretary of State or the Assembly under these default powers and to the thing so done¹².

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 175 et seq post.

2 See PARA 148 ante.

3 le by virtue of the Town and Country Planning Act 1990 ss 10-24 (as amended; repealed with savings): see PARA 155 et seq ante, PARA 175 post.

4 For the meaning of 'unitary development plan' see PARA 158 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 25 (repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 As to local inquiries held by the Secretary of State or the Assembly see PARA 171 ante.

8 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

9 Town and Country Planning Act 1990 s 25(1) (repealed with savings).

10 Ibid s 25(3) (repealed with savings). For the meaning of 'functions' see PARA 2 note 1 ante.

11 le ibid ss 10-24 (as amended; repealed with savings): see PARA 155 et seq ante, PARA 175 post.

12 Town and Country Planning Act 1990 s 25(2) (repealed with savings).

In relation to England, the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended), apply, so far as practicable and with any necessary modifications, to the making, alteration and replacement of a statutory plan by the Secretary of State pursuant to the Town and Country Planning Act 1990 s 25 (repealed with savings) (default powers) or s 51 (as amended; (repealed with savings) (default powers with regard to local or structure plans: see PARA 179 post) as they apply to the making, alteration or replacement of a statutory plan by a local planning authority: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 36(1). When a statutory plan or alteration made by the Secretary of State becomes operative, the local planning authority entitled to prepare proposals for the alteration or replacement of the plan made or altered by the Secretary of State must comply with reg 38 (see PARA 154 ante) in respect of that plan: reg 36(2). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. For the meaning of 'statutory plan' see PARA 163 note 11 ante.

Similarly in relation to Wales, the Town and Country Planning (Development Plan) Regulations 1991, SI 1991/2794 (as amended), apply, so far as practicable and with any necessary modifications, to the making, alteration and replacement of a statutory plan by the Assembly as they apply to the making, alteration or replacement of a statutory plan by a local planning authority: reg 25(1). When a unitary development plan or alteration made by the Assembly becomes operative, the local planning authority entitled to prepare proposals for the alteration or replacement of the plan made or altered by the Assembly must comply with reg 27 (see PARA 154 post) in respect of that plan: reg 25(2). The 1991 Regulations have been revoked subject to transitional provisions which apply in relation to Wales: see PARA 148 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(ii) Unitary Development Plans in England and Wales/175. Alteration or replacement of plan.

175. Alteration or replacement of plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a local planning authority³ may at any time prepare proposals for alterations to the unitary development plan⁴ for its area, or for its replacement⁵. If the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ directs the authority to do so, it must prepare, within such time as he or the Assembly may direct, proposals for such alterations to the unitary development plan as he or it directs, or for its replacement⁸. An authority may not, however, without the consent of the Secretary of State or the Assembly prepare proposals in respect of a unitary development plan if the plan or any part of it has been approved by him or by the Assembly⁹.

Where:

- 784 (1) a local planning authority in Greater London¹⁰ proposes to make, alter or replace a unitary development plan;
- 785 (2) copies of proposed alterations of, or of a proposed new spatial development strategy¹¹ to replace, the spatial development strategy have been made available for inspection¹²; and
- 786 (3) the local planning authority includes in any relevant copy¹³ of the plan or proposals a statement that it is making the permitted assumption¹⁴,

the permitted assumption must¹⁵ be made for all purposes, including in particular any question as to conformity between the plan and the spatial development strategy¹⁶. The permitted assumption must not, however, be made at any time after the local planning authority knows that the proposed alterations or new spatial development strategy mentioned in head (2) above have been withdrawn¹⁷.

As soon as practicable after:

- 787 (a) an order has been made¹⁸ for the designation of an enterprise zone; or
- 788 (b) a notification has been given¹⁹ of approval of modification of an enterprise zone scheme²⁰,

the local planning authority for an area in which the zone is wholly or partly situated must review any unitary development plan for that area in the light of the provisions of the scheme or modified scheme²¹ and must prepare proposals for any consequential alterations to the plan which the authority considers necessary²².

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 176 et seq post.

2 See PARA 148 ante. As to the repeal of the Town and Country Planning Act 1990 s 21 (as amended) in relation to Wales subject to transitional provisions see PARA 147 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 155 ante.

4 For the meaning of 'unitary development plan' see PARA 158 ante.

5 Town and Country Planning Act 1990 s 21(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 12(1); repealed with savings). The Town and Country Planning Act 1990 ss 12-20 (as amended; repealed with savings) (see PARA 158 et seq ante), other than s 12(1) (as so repealed) (see PARA 158 ante), apply in relation to the making of proposals under s 21 (as amended and repealed) and to any alteration or replacement so proposed as they apply to the preparation of a unitary development plan under s 12 (as amended and repealed) and to a plan prepared thereunder: s 21(2) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 12(2); repealed with savings).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 21 (as amended; repealed with savings), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 21(1A) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 12(1); repealed with savings). See also note 5 supra.

9 Town and Country Planning Act 1990 s 21(1B) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 12(1); repealed with savings). See also note 5 supra.

10 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

11 As to the spatial development strategy see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq.

12 le made available under the Greater London Authority Act 1999 s 335(2): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 190.

13 For the purposes of head (3) in the text, a copy is a relevant copy of a plan or proposals if it is served on the Greater London Authority: Town and Country Planning Act 1990 s 21A(3) (s 21A added by the Greater London Authority Act 1999 s 344(1), (7); repealed with savings). As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79.

14 For these purposes, 'the permitted assumption' means the assumption that: (1) the proposed alterations or new spatial development strategy mentioned in head (2) in the text; or (2) if any proposed modifications to those proposed alterations or that new spatial development strategy have been published in accordance with regulations made under Greater London Authority Act 1999 s 343 (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 193), the proposed alterations or spatial development strategy as so modified, have become operative under s 337(9) (see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 193): Town and Country Planning Act 1990 s 21A(2) (as added and repealed: see note 13 supra).

15 le subject to ibid s 21A(4) (as added and repealed): see the text and note 17 infra.

16 Ibid s 21A(1) (as added and repealed: see note 13 supra).

17 Ibid s 21A(4) (as added and repealed: see note 13 supra).

18 le under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 post.

19 le under ibid Sch 32 para 11(1): see PARA 1499 post.

20 For these purposes, except in so far as the context otherwise requires, 'enterprise zone scheme' means a scheme or modified scheme having effect to grant planning permission in accordance with the Town and

Country Planning Act 1990 s 88 (as amended) (see PARA 1502 post): s 336(1). For the meaning of 'planning permission' see PARA 43 note 6 ante.

21 le under the Local Government, Planning and Land Act 1980 Sch 32 (as amended): see PARA 1491 et seq post.

22 Town and Country Planning Act 1990 s 21(3) (repealed with savings).

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(iii) Structure and Local Plans in England

A. IN GENERAL

176. Application of statutory provisions relating to structure and local plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the statutory provisions relating to structure and local plans³ apply⁴ only to the area of any local planning authority⁵ in England outside Greater London⁶ and the metropolitan counties⁷ and to any part of a National Park⁸ in a metropolitan county in England⁹.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 177 et seq post.

2 See PARA 148 ante.

3 le the Town and Country Planning Act 1990 Pt II Ch II (ss 29-54) (as amended): see PARA 177 et seq post.

4 le subject to the transitional provisions in ibid s 54(4), Sch 2 Pt III (paras 1-10) (as amended; repealed with savings) (see PARA 212 post) and the Local Government (Wales) Act 1994 Sch 5 Pt III (paras 9-12) (as amended) (see PARA 210 post).

5 As to local planning authorities see PARA 28 et seq ante.

6 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 As to metropolitan counties see PARA 28 note 1 ante.

8 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq. In respect of a National Park in Wales, a unitary development plan must be prepared: see PARA 160 ante.

9 Town and Country Planning Act 1990 s 29(1), (2) (substituted by the Local Government (Wales) Act 1994 s 20(3), Sch 5 para 7; repealed with savings).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/A. IN GENERAL/177. Regulations and directions.

177. Regulations and directions.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ may⁴ make regulations with respect to the form and content of structure and local plans in relation to England and the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making, alteration and replacement⁵. In particular any such regulations may:

- 789 (1) provide for publicity to be given to the report of any survey carried out⁶ by a local planning authority⁷;
- 790 (2) provide for the notice to be given of or the publicity to be given to:
 - 83 118. (a) matters included or proposed to be included in any such plan;
 - 119. (b) the approval, adoption or making of any such plan or any alteration or replacement of it; or
 - 120. (c) any other prescribed⁸ procedural step,
- 84 791 and for publicity to be given to the procedure to be followed⁹;
- 792 (3) make provision with respect to the making and consideration of representations with respect to matters to be included in, or objections to, any such plan or proposals for its alteration or replacement¹⁰;
- 793 (4) make provision with respect to the circumstances in which representations with respect to the matters to be included in a plan or proposals are to be treated, for any of the purposes of the relevant statutory provisions¹¹, as being objections made in accordance with the regulations¹²;
- 794 (5) without prejudice to head (2) above, provide for notice to be given to particular persons of the approval, adoption or alteration of any plan, if they have objected to the plan and have notified the relevant local planning authority of their wish to receive notice, subject, if the regulations so provide, to the payment of a reasonable charge for receiving it;
- 795 (6) require or authorise a local planning authority to consult¹³ with, or consider the views of, other persons before taking any prescribed procedural step;
- 796 (7) require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State may direct, to provide persons making a request with copies of any plan or document which has been made public in compliance with the regulations or available for inspection¹⁴, subject, if the regulations so provide, to the payment of a reasonable charge;
- 797 (8) make provision for steps taken in compliance with the regulations in respect of a plan or proposal which has been withdrawn to be taken into account in prescribed circumstances for the purposes of complying with the regulations in respect of a subsequent plan or proposal;
- 798 (9) provide for the publication and inspection of any structure plan or local plan which has been approved, adopted or made, or any document approved, adopted or made altering or replacing any such plan, and for copies of any such plan or document to be made available on sale¹⁵.

Regulations so made may extend throughout England¹⁶ or to specified areas only and may make different provision for different cases¹⁷.

The Secretary of State may¹⁸ give directions to any local planning authority, or to local planning authorities generally:

- 799 (i) for formulating the procedure for the carrying out of their functions¹⁹ under the relevant statutory provisions²⁰;

800 (ii) for requiring them to give him such information as he may require for carrying out any of his functions under those provisions²¹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 178 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Ie without prejudice to the provisions of the Town and Country Planning Act 1990 ss 29-52 (as amended; repealed with savings): see PARA 176 ante, PARA 178 et seq post.

5 Ibid s 53(1) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 28(1); repealed with savings).

6 Ie under the Town and Country Planning Act 1990 s 30 (repealed with savings): see PARA 178 post.

7 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

8 For the meaning of 'prescribed' see PARA 16 note 5 ante.

9 Ie as mentioned in the Town and Country Planning Act 1990 s 53(1) (as amended and repealed): see the text and notes 1-5 supra.

10 Ibid s 53(2)(c) refers to 'proposals for its alteration, repeal or replacement'. It is apprehended, however, that s 53(2)(c) is to be construed with the omission of the word 'repeal'.

11 Ie ibid Pt II Ch II (ss 29-54) (as amended; repealed with savings): see PARAS 151, 176 ante, PARA 178 et seq post.

12 For these purposes, 'objection made in accordance with the regulation' means objections made in accordance with regulations made under ibid s 53 (as amended and repealed) and within the prescribed period: s 33(4) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 17; repealed with savings). For the meaning of 'the prescribed period' see PARA 187 note 10 post.

13 For the meaning of 'consult' see PARA 2 note 1 ante.

14 Ie under the Town and Country Planning Act 1990 s 33(2) (as amended; repealed with savings) (see PARA 187 post) or s 40(2) (as substituted; repealed with savings) (see PARA 201 post).

15 Ibid s 53(2) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 28(2)(a)-(e); repealed with savings).

16 The statutory wording is 'England and Wales', but these provisions no longer apply in relation to Wales: see PARA 176 ante.

17 Town and Country Planning Act 1990 s 53(3) (repealed with savings). In exercise of the power so conferred the Secretary of State has made the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended). As to the application of the 1999 Regulations see PARA 148 ante.

18 Ie subject to the provisions of the Town and Country Planning Act 1990 ss 29-52 (as amended; repealed with savings) and to any regulations under s 53 (as amended and repealed).

19 For the meaning of 'functions' see PARA 2 note 1 ante.

20 Ie under the Town and Country Planning Act 1990 Pt II Ch II (ss 29-54) (as amended; repealed with savings).

21 Ibid s 53(4) (repealed with savings). As to the application of s 53 (as amended and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/A. IN GENERAL/178. Survey of planning areas.

178. Survey of planning areas.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³:

- 801 (1) must keep under review the matters which may be expected to affect the development⁴ of its area or the planning of its development; and
- 802 (2) may, if it thinks fit, at any time institute a fresh survey of its area⁵ examining those matters⁶.

The matters so to be kept under review and examined include⁷:

- 803 (a) the principal physical and economic characteristics of the area of the authority, including the principal purposes for which land⁸ is used, and, so far as they may be expected to affect that area, of any neighbouring areas⁹;
- 804 (b) the size, composition and distribution of the population of that area, whether resident or otherwise;
- 805 (c) without prejudice to head (a) above, the communications, transport system and traffic of that area and, so far as they may be expected to affect that area, of any neighbouring areas;
- 806 (d) any considerations not mentioned in heads (a), (b) or (c) above which may be expected to affect any matters so mentioned;
- 807 (e) such other matters as may be prescribed¹⁰ or as the Secretary of State¹¹ may in any particular case direct;
- 808 (f) any changes already projected in any of the matters mentioned in any of heads (a) to (e) above and the effect which those changes are likely to have on the development of that area or the planning of any such development¹².

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 179 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 30 (repealed with savings) (see the text and notes 4-12 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 For the meaning of 'development' see PARA 217 post.

5 Such a survey may relate to only part of the area of an authority; and references in the Town and Country Planning Act 1990 s 30(2) (repealed with savings) (see heads (a)-(f) in the text) to the area of an authority or any neighbouring area are to be construed accordingly: s 30(3) (repealed with savings).

6 Ibid s 30(1) (repealed with savings).

7 Ie without prejudice to ibid s 30(1) (repealed with savings): see the text and notes 1-6 supra.

8 For the meaning of 'land' see PARA 2 note 10 ante.

9 A local planning authority must, for the purpose of discharging its functions under the Town and Country Planning Act 1990 s 30 (repealed with savings) of examining and keeping under review any matters relating to

the area of another such authority, consult with that other authority about those matters: s 30(4) (repealed with savings). For the meanings of 'functions' and 'consult' see PARA 2 note 1 ante.

10 For the meaning of 'prescribed' see PARA 16 note 5 ante.

11 As to the Secretary of State see PARA 19 ante.

12 Town and Country Planning Act 1990 s 30(2) (repealed with savings). See also note 5 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/A. IN GENERAL/179. Default powers of the Secretary of State.

179. Default powers of the Secretary of State.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where any survey is required³ to be carried out, or any local plan⁴ or proposals for the alteration or replacement of such a plan or of a structure plan⁵ are required to be prepared or submitted to the Secretary of State⁶, or steps are required to be taken for the adoption of any local plan or any such proposals, then:

- 809 (1) if at any time the Secretary of State is satisfied, after holding a local inquiry⁷ or other hearing, that the relevant local planning authority⁸ is not carrying out the survey or is not taking the steps necessary to enable it to submit or adopt a local plan or such proposals within a reasonable period; or
- 810 (2) in a case where a period is specified for the submission or adoption of a local plan or any such proposals, if no such plan or proposals has or have been submitted or adopted within that period,

the Secretary of State may carry out the survey or prepare and make a local plan or, as the case may be, alter or replace such a plan or a structure plan, as he thinks fit⁹.

Where the Secretary of State may so do anything which should have been done by a local planning authority ('the defaulting authority'), he may, if he thinks fit, authorise any other local planning authority which appears to him to have an interest in the proper planning of the area of the defaulting authority to do it¹⁰. The defaulting authority must:

- 811 (a) on demand repay to the Secretary of State so much of any expenses incurred by him in connection with the doing of anything which should have been done by the authority as he certifies to have been incurred in the performance of the authority's functions¹¹; and
- 812 (b) repay to any other authority which so does anything which should have been done by the defaulting authority any expenses certified by the Secretary of State to have been reasonably incurred by that other authority in connection with the doing of that thing¹².

The relevant statutory provisions¹³ apply so far as practicable, with any necessary modifications, in relation to the doing of anything by the Secretary of State under these default powers and to the thing so done¹⁴.

- 1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 180 et seq post.
 - 2 See PARA 148 ante.
 - 3 le by virtue of any of the provisions of the Town and Country Planning Act 1990 ss 29-50 (as amended; repealed with savings): see PARA 176 et seq ante, PARA 182 et seq post.
 - 4 As to local plans see PARA 195 et seq post.
 - 5 As to structure plans see PARA 183 et seq post.
 - 6 As to the Secretary of State see PARA 19 ante.
 - 7 As to local inquiries see PARA 651 et seq post.
 - 8 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.
 - 9 Town and Country Planning Act 1990 s 51(1) (amended by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 paras 1, 25, Sch 19 Pt I; repealed with savings).
 - 10 Town and Country Planning Act 1990 s 51(2) (repealed with savings).
 - 11 For the meaning of 'functions' see PARA 2 note 1 ante.
 - 12 Town and Country Planning Act 1990 s 51(4) (repealed with savings).
 - 13 le ibid ss 29-50 (as amended; repealed with savings): see PARA 176 et seq ante, PARA 180 et seq post.
 - 14 Ibid s 51(3) (repealed with savings). See also the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 38; and PARA 154 note 8 ante. The 1999 Regulations apply for transitional purposes: see PARA 148 ante.
- As to the application of the Town and Country Planning Act 1990 s 51 (as amended and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

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180. Urban development corporations.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ may direct that:

- 813 (1) a structure plan⁴ shall not operate;
- 814 (2) a local plan⁵ shall not be prepared or operate;
- 815 (3) proposals for the alteration or replacement of a structure plan or a local plan shall not be prepared,

in relation to the area of an urban development corporation⁶.

- 1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 181 et seq post.
- 2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the continuity, form and content of a structure plan see PARA 183 post.

5 As to local plans see PARA 195 et seq post.

6 Town and Country Planning Act 1990 s 51A(1), (2) (added by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 26; repealed with savings). As to urban development corporations see PARA 1429 et seq post. As to the application of the Town and Country Planning Act 1990 s 51A (as so added and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

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181. Review of plans in enterprise zones.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², as soon as practicable after an order has been made³ regarding the adoption of an enterprise zone scheme⁴, or a notification of modification of such a scheme has been given⁵, any local planning authority⁶ for an area in which the enterprise zone is wholly or partly situated must consider whether the authority needs, in the light of the provisions in the scheme or modified scheme, to prepare proposals for the alteration or replacement of any structure plan⁷ or local plan⁸ in relation to which the authority has power to prepare such proposals⁹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 182 et seq post.

2 See PARA 148 ante.

3 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 post.

4 For the meaning of 'enterprise zone scheme' see PARA 175 note 20 ante.

5 Ie under the Local Government, Planning and Land Act 1980 Sch 32 para 11: see PARA 1499 post.

6 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

7 For the meaning of 'structure plan' see PARA 183 post.

8 As to local plans see PARA 195 et seq post.

9 Town and Country Planning Act 1990 s 52(1) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 27(1); repealed with savings). As to the application of the Town and Country Planning Act 1990 s 52 (as amended and as so repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

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PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/A. IN GENERAL/182. Disregard of certain representations.

182. Disregard of certain representations.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², neither the Secretary of State³ nor a local planning authority⁴ need⁵ consider representations or objections with respect to a local plan⁶, or any proposal to alter or replace a structure plan⁷ or a local plan if it appears to the Secretary of State or, as the case may be, to the authority, that those representations or objections are in substance representations or objections with respect to things done or proposed to be done in pursuance of:

- 816 (1) an order or scheme under specified provisions⁸ of the Highways Act 1980;
- 817 (2) an order or scheme under any statutory provision replaced by those specified provisions⁹; or
- 818 (3) an order under specified provisions¹⁰ of the New Towns Act 1981¹¹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 183 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to local planning authorities see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 Ie notwithstanding anything in the Town and Country Planning Act 1990 ss 29-48 (as amended; repealed with savings): see PARA 176 et seq ante, PARA 183 et seq post.

6 As to local plans see PARA 195 et seq post.

7 As to alteration or replacement of a structure plan see PARA 184 post.

8 Ie under the Highways Act 1980 s 10 (as amended) (trunk roads), s 14 (as amended) (roads crossing or joining trunk or classified roads), s 16 (special roads), s 18 (as amended) (supplementary orders relating to special roads), s 106(1) or (3) (bridges or tunnels under or over navigable waters) or s 108(1) (diversion of navigable watercourses: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703 et seq, 710, 731 et seq, 878 et seq.

9 Ie under the Highways Act 1959 s 7, s 9, s 11, s 13 or s 20 (repealed), the Highways (Miscellaneous Provisions) Act 1961 s 3 (repealed) or the Highways Act 1971 s 1 or s 10 (both repealed).

10 Ie under the New Towns Act 1981 s 1 (as amended): see PARA 1315 post.

11 Town and Country Planning Act 1990 s 49 (amended by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 paras 1, 23, Sch 19 Pt I; repealed with savings). As to the application of the Town and Country Planning Act 1990 s 49 (as so amended and repealed) to minerals local plans and waste local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

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B. STRUCTURE PLANS

183. Continuity, form and content.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², each structure plan approved by the Secretary of State³ under the Town and Country Planning Act 1971 with respect to the area of a local planning authority⁴ which was in operation immediately before 24 August 1990⁵ continues in force after that date, subject to any alterations then in operation and to the relevant provisions⁶ of the Town and Country Planning Act 1990⁷.

A structure plan⁸ must contain a written statement formulating the authority's general policies⁹ in respect of the development¹⁰ and use¹¹ of land¹² in its area¹³.

The policies must¹⁴ include policies in respect of:

- 819 (1) the conservation of the natural beauty and amenity¹⁵ of the land;
- 820 (2) the improvement of the physical environment; and
- 821 (3) the management of traffic¹⁶;

and, in formulating its general policies, the authority must have regard to:

- 822 (a) any regional or strategic planning guidance given by the Secretary of State to assist the authority in the preparation of the plan;
- 823 (b) current national policies¹⁷;
- 824 (c) the resources likely to be available; and
- 825 (d) such other matters as the Secretary of State may prescribe¹⁸ or, in a particular case, direct¹⁹.

A structure plan must also contain:

- 826 (i) such diagrams, illustrations or other descriptive or explanatory matter in respect of the general policies as may be prescribed²⁰, and
- 827 (ii) such other matters as the Secretary of State may, in any particular case, direct²¹.

Where there is in operation²² a structure plan relating to part of the area of a local planning authority, the authority must, within such period, if any, as the Secretary of State may direct, prepare proposals for replacing the structure plans for the time being in operation with a single structure plan relating to the whole of its area²³.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 184 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 31 (as amended; repealed with savings) (see the text and notes 5-23 infra) are exercisable by the country planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 Ie the date when the Town and Country Planning Act 1990 came into force: see s 337(2).

6 Ie ibid ss 31(2)-41 (as substituted; repealed with savings) and ss 42-54A (as amended; repealed with savings); see PARA 184 et seq post.

7 Ibid s 31(1) (repealed with savings).

8 The title of a structure plan must consist of the name of the area of the local planning authority followed by 'structure plan': Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(1). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

9 For these purposes, except in the Town and Country Planning Act 1990 s 31(6)(b) (as substituted; repealed with savings) (see head (b) in the text), 'policies' includes proposals: s 31(10) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 16; repealed with savings). As to whether a policy is general see *JS Bloor Ltd v Swindon Borough Council* [2001] EWHC Admin 966, (2001) Times, 4 December, [2001] All ER (D) 365 (Nov).

10 For the meaning of 'development' see PARA 217 post. See also *Richardson v Secretary of State for the Environment* (1997) 75 P & CR 97 (meaning of 'replacement' in a structure plan which contained a presumption against development in the open countryside but permitted replacement of existing dwellings).

11 For the meaning of 'use' see PARA 221 note 4 post.

12 For the meaning of 'land' see PARA 2 note 10 ante.

13 Town and Country Planning Act 1990 s 31(2) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

14 In subject to the Town and Country Planning Act 1990 s 31(4) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings). Regulations under the Town and Country Planning Act 1990 s 31 (as amended and repealed) may prescribe the aspects of such development and use with which the general policies in a structure plan are to be concerned, in which case the policies must be concerned with those aspects and no others: s 31(4) (as so substituted and repealed). Regulations under the Town and Country Planning Act 1990 s 31 (as amended and repealed) may make different provision for different cases and are subject to any direction given, in a particular case, by the Secretary of State: s 31(9) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

15 As to the meaning of 'amenity' see PARA 158 note 8 ante.

16 Town and Country Planning Act 1990 s 31(3) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

17 The Town and Country Planning Act 1990 s 31(10) (as substituted and repealed: see note 9 supra) (meaning of 'proposals') does not apply for this purpose: s 31(10) (as so substituted and repealed).

18 In formulating its general policies in a structure plan, the local planning authority must, in addition to the matters specified in *ibid* s 31(6) (as substituted and repealed: see note 19 infra), have regard to: (1) economic, environmental and social considerations; (2) the national waste strategy; (3) the objectives of preventing major accidents and limiting the consequences of such accidents; and (4) the need (a) in the long term, to maintain appropriate distances between establishments and residential areas, areas of public use and areas of particular sensitivity or interest; and (b) in the case of existing establishments, for additional technical measures in accordance with EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) on the control of major accident hazards involving dangerous substances, art 5 (see PARA 1211 post): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 9(1), (3). For the meanings of 'major accident' and 'establishment' see PARA 1211 note 2 post; and as to existing establishments see PARA 1211 note 4 post (definitions applied by virtue of reg 9(4)). 'National waste strategy' means any statement which contains the Secretary of State's policies in relation to the recovery and disposal of waste in England, and which is made under the Environmental Protection Act 1990 s 44A (as added) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 627), or pending the publication of the first such statement, any relevant waste disposal plan prepared under s 50 (repealed): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 2(1). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

19 Town and Country Planning Act 1990 s 31(6) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

20 A structure plan must contain a diagram, called the key diagram, illustrating the general policies formulated in the plan's written statement: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 5(1). A structure plan may also contain a diagram, called an inset diagram, drawn to a larger scale than the key diagram, and illustrating the application of the general policies to part of the area covered by the structure plan: reg 5(2). Where an inset diagram is included in a structure plan, the area covered by the inset diagram must be identified on the key diagram and the application of the general policies to that area must be illustrated on that inset diagram only: reg 5(3). No key diagram or inset diagram contained in a structure plan must be on a map base: reg 5(4). The title of a structure plan must be set out on

the key diagram and on any inset diagram contained in the plan and the key diagram and any inset diagram must include an explanation of any symbol or notation used in the diagram: reg 5(5).

21 Town and Country Planning Act 1990 s 31(5) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

22 Ie by virtue of the Town and Country Planning Act 1971 s 7(7) (repealed).

23 Town and Country Planning Act 1990 s 31(7) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings). The Town and Country Planning Act 1990 ss 32-41 (as substituted; repealed with savings), ss 42-54 (as amended) apply to such replacement as they apply to replacement in exercise of the power in s 32(1)(b) (as substituted; repealed with savings) (see PARA 184 post): s 31(8) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 16; repealed with savings).

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184. Alteration or replacement of structure plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a local planning authority³ may at any time prepare proposals for alterations to the structure plan⁴ for its area or for its replacement⁵. If the Secretary of State⁶ directs the authority to do so, it must prepare, within such time as he may direct, proposals for such alterations to the structure plan as he directs, or for its replacement⁷. An authority may not, however, without the consent of the Secretary of State prepare proposals in respect of a structure plan if the plan or any part of it has been approved⁸ by him⁹.

Proposals so prepared must be accompanied by an explanatory memorandum¹⁰ which must state:

- 828 (1) the reasons which in the opinion of the authority justify each of its proposals;
- 829 (2) any information on which the proposals are based;
- 830 (3) the relationship of the proposals to general policies for the development¹¹ and use¹² of land¹³ in neighbouring areas which may be expected to affect the area to which the proposals relate,

and may contain such illustrative material as the authority thinks appropriate¹⁴.

Proposals for the alteration or replacement of a structure plan do not become operative unless they are adopted¹⁵ by the authority or approved¹⁶ by the Secretary of State¹⁷.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 185 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 32 (as substituted; repealed with savings) (see the text and notes 4-17 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 Proposals for the alteration of a structure plan may relate to the whole or part of the area to which the plan relates: *ibid* s 32(4) (s 32 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). As to the continuity, form and content of a structure plan see PARA 183 ante.

- 5 Town and Country Planning Act 1990 s 32(1) (as substituted and repealed: see note 4 supra).
- 6 As to the Secretary of State see PARA 19 ante.
- 7 Town and Country Planning Act 1990 s 32(2) (as substituted and repealed: see note 4 supra).
- 8 Ie under ibid s 35A (as substituted; repealed with savings): see PARA 194 post.
- 9 Ibid s 32(3) (as substituted and repealed: see note 4 supra).
- 10 Ibid s 32(5) (as substituted and repealed: see note 4 supra).
- 11 For the meaning of 'development' see PARA 217 post.
- 12 For the meaning of 'use' see PARA 221 note 4 post.
- 13 For the meaning of 'land' see PARA 2 note 10 ante.
- 14 Town and Country Planning Act 1990 s 32(6) (as substituted and repealed: see note 4 supra). The explanatory memorandum must contain a statement of the regard which the local planning authority has had in formulating its general policies to the matters specified in the Town and Country Planning Act 1990 s 31(6) (as substituted; repealed with savings) (see PARA 183 ante) and in the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 9(1) (see PARA 183 note 18 ante): reg 9(2). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.
- 15 Ie under the Town and Country Planning Act 1990 s 35 (as substituted; repealed with savings): see PARA 191 post.
- 16 Ie under ibid s 35A (as substituted; repealed with savings); see PARA 194 post.
- 17 Ibid s 32(7) (as substituted and repealed: see note 4 supra).

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185. Joint structure plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where a structure plan³ has been prepared by two or more local planning authorities⁴ jointly, the power of making proposals⁵ for the alteration or replacement of the plan may be exercised as respects their respective areas by any of the authorities by which it was prepared⁶. The Secretary of State may⁷ direct any of them to submit such proposals as respects their respective areas⁸.

Each of the authorities by which proposals for the alteration or replacement of a joint structure plan have been prepared has the duty⁹ of making copies of the proposals and explanatory memorandum available for inspection¹⁰.

The date of the coming into operation of proposals for the alteration or replacement of a structure plan prepared jointly by two or more local planning authorities is a date jointly agreed by those authorities¹¹.

Where two or more local planning authorities jointly so prepare proposals for the alteration or replacement of a structure plan, all or any of them may withdraw the proposals¹² and, on their doing so, all the authorities must comply with the relevant¹³ statutory provisions¹⁴.

- 1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 186 et seq post.
- 2 See PARA 148 ante.
- 3 As to the continuity, form and content of a structure plan see PARA 183 ante.
- 4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 50(1), (4), (5) (as amended; repealed with savings) (see the text and notes 5-14 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.
- 5 le under ibid s 32 (as substituted; repealed with savings): see PARA 184 ante.
- 6 Ibid s 50(1) (amended by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 paras 1, 24(1), Sch 19 Pt I; repealed with savings).
- 7 See note 5 supra.
- 8 Town and Country Planning Act 1990 s 50(1) (as amended and repealed: see note 6 supra).
- 9 le the duty imposed by the Town and Country Planning Act 1990 s 33(2) (as substituted; repealed with savings): see PARA 187 post.
- 10 Ibid s 50(4) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(2), Sch 19 Pt I; repealed with savings).
- 11 Town and Country Planning Act 1990 s 50(9)(a) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(7); repealed with savings).
- 12 le under the Town and Country Planning Act 1990 s 34(1) (as substituted; repealed with savings): see PARA 189 post.
- 13 le with ibid s 34(2) (as substituted; repealed with savings): see PARA 189 post.
- 14 Ibid s 50(5) (amended by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(3), Sch 19 Pt I; repealed with savings).

UPDATE

185 Joint structure plans

NOTE 8--Where a development is composed of a mixture of elements and the construction of a town centre is merely one of those elements, the sequential approach need not be applied when considering which area will be given priority for regeneration: *Land Securities Group plc v Scottish Ministers* [2006] UKHL 48, [2007] JPL 710.

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186. Pre-deposit consultation.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², when preparing proposals for the alteration or replacement of a structure plan³ for its area and before finally determining their contents, the local planning authority⁴ must:

- 831 (1) comply with any requirements imposed by regulations⁵ and any particular direction given to it by the Secretary of State⁶ with respect to a specified matter⁷; and
 832 (2) consider any representations made in accordance with those regulations⁸.

The persons who must be consulted by the authority, and the procedure for considering representations made by them, are prescribed by regulations⁹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 187 et seq post.

2 See PARA 148 ante.

3 As to the continuity, form and content of a structure plan see PARA 183 ante.

4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 33(1) (as substituted; repealed with savings) (see the text and notes 5-8 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 Ie regulations made under ibid s 53 (as amended; repealed with savings): see PARA 177 ante.

6 As to the Secretary of State see PARA 19 ante.

7 Ie a matter falling within any of the Town and Country Planning Act 1990 s 53(2)(a)-(c) or (e) (as amended; repealed with savings): see PARA 177 ante at heads (1)-(3), (6) in the text.

8 Ibid s 33(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

9 When preparing proposals for the alteration or replacement of a structure plan under the Town and Country Planning Act 1990 s 33(1) (as so substituted and repealed), and before finally determining the contents of the proposals, the local planning authority must consult: (1) the Secretary of State; (2) any other local authority (except the council of any parish) for an area covered by the proposals; (3) any local planning authority for an area adjacent to the area covered by the proposals; (4) the Environment Agency; (5) the Countryside Agency and English Nature; (6) the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage'): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 10(1) (amended by virtue of the Countryside and Rights of Way Act 2000 s 73(2)). The local planning authority must consider any representations made by the consultees before finally determining the contents of the proposals (Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 10(2)) and must prepare a statement of any other persons it has consulted when preparing its proposals, in addition to those listed in heads (1)-(6) supra, and of any steps it has taken to publicise its proposals and to provide persons with an opportunity of making representations in respect of those proposals (reg 10(3)). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; as to the Countryside Agency and English Nature see PARA 70 ante; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq; and as to English Heritage see PARA 1058 post.

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187. Deposit of proposals; consideration of objections.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where the local planning authority³ has prepared proposals for the alteration or replacement of a structure plan⁴, the authority must:

- 833 (1) make copies of the proposals and the explanatory memorandum⁵ available for inspection at such places as may be prescribed⁶ by the relevant regulations⁷;
- 834 (2) send a copy of the proposals and the explanatory memorandum to the Secretary of State⁸; and
- 835 (3) comply with any requirements imposed by those regulations⁹;

and each copy so made available for inspection or sent to the Secretary of State must be accompanied by a statement of the prescribed period¹⁰ within which objections may be made to the authority¹¹.

Where no examination in public is held¹², the procedure for dealing with objections is prescribed by regulations¹³. The procedure which the authority must follow where it proposes to modify its proposals after they have been deposited is similarly prescribed¹⁴.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 188 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 33(2)-(4) (as substituted; repealed with savings) (see the text and notes 4-11 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 As to the continuity, form and content of a structure plan see PARA 183 ante.

5 As to the explanatory memorandum see PARA 184 ante.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 Ie regulations under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings): see PARA 177 ante.

A local planning authority making proposals for the alteration or replacement of a structure plan available for inspection in accordance with 33(2)(a) (as substituted and repealed: see note 9 infra) (see head (1) in the text) must: (1) make the proposals available at its principal office and at such other places within its area as it considers appropriate; (2) give notice by advertisement in Form 1; and (3) give notice in similar form to any consultee under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 10(1) (as amended) (see PARA 186 note 8 ante) and to any other person whom it considers should be given notice: reg 11(1). Proposals made available for inspection must be accompanied by (a) the statement prepared pursuant to reg 10(3); and (b) the explanatory memorandum: reg 11(2). The local planning authority must send four copies of the documents made available for inspection to the Secretary of State: reg 11(3). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. For Form 1 see regs 2(2)(b), 10 (as amended), Schedule Form 1.

8 As to the Secretary of State see PARA 19 ante.

9 Town and Country Planning Act 1990 s 33(2) (s 33 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). In order for the transitional arrangements in relation to England set out in the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 (see PARA 125 et seq ante) to apply to a structure plan, the local planning authority must have complied with the Town and Country Planning Act 1990 s 33(2) (as so substituted and repealed) before 28 September 2004: see PARA 128 ante.

10 For these purposes, 'the prescribed period' means such period as may be prescribed or determined in accordance with regulations made under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings): s 33(4) (as substituted and repealed: see note 9 supra). The period within which objections and representations may be made to the local planning authority with respect to proposals for the alteration or replacement of a structure plan made available for inspection under s 33(2)(a) (as so substituted and repealed) is six weeks beginning with the date on which a notice given pursuant to the Town and Country Planning

(Development Plan) (England) Regulations 1999, SI 1999/3280, reg 11(1)(b) (see note 7 supra) is first published in a local newspaper: reg 12(1).

11 Town and Country Planning Act 1990 s 33(3) (as substituted and repealed: see note 9 supra). Objections and representations must be made in writing and addressed to the local planning authority in accordance with the details given in the published notice: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 12(2). In the case of deposited proposals for the replacement of a structure plan, a representation that matters relating to the development and use of land not included in the deposited proposals ought to have been so included is to be treated as an objection made to the proposals in accordance with the 1999 Regulations for the purpose of reg 16 (see note 13 infra) if the representation is made within the time and in the manner required by reg 12: reg 12(4).

12 As to examination in public see PARA 188 post.

13 Where objections have been made to proposals in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280 (as amended), and not withdrawn and the local planning authority does not cause an examination in public to be held, the authority must prepare a statement of its decisions as respects all the objections and its reasons for each decision: reg 16(1). Regulation 15(2), (3), (5) (see PARA 188 note 11 post) applies where a statement is prepared pursuant to reg 16(1) as it applies where a statement is prepared pursuant to reg 15(1): reg 16(2).

14 Subject to *ibid* reg 17(7), a local planning authority proposing to modify proposals for the alteration or replacement of a structure plan (whether to comply with a direction given by the Secretary of State or on its own initiative) must, unless it is satisfied that the modifications it intends to make will not materially affect the content of the proposals: (1) prepare a list of the modifications with its reasons for proposing them; (2) make copies of that list available for inspection at any place at which the proposals have been made available for inspection; (3) give notice by local advertisement in Form 4; and (4) serve a notice in similar form on any person who has objected to, or made a representation in respect of, the proposals in accordance with the 1999 Regulations and not withdrawn the objection or representation and on such other persons as the authority thinks fit: reg 17(1). The period within which objections and representations may be made to the local planning authority in respect of proposed modifications is six weeks beginning with the date on which a notice given pursuant to reg 17(1) is first published in a local newspaper: reg 17(2). Objections and representations must be made in writing and addressed in accordance with the details given in the notice: reg 17(3). Where an examination in public is held to consider matters in connection with proposed modifications, reg 14 (see PARA 188 note 9 post) applies as that regulation applies in the case of proposals, and reg 15 (see PARA 188 note 11 post) applies following such an examination in public as it applies to an examination in public mentioned in reg 15(1): reg 17(5). Where objections have been made to proposed modifications in accordance with reg 17 and not withdrawn and the local planning authority does not cause an examination in public to be held, reg 16 (see note 13 supra) applies to the consideration of the objections as it applies to the consideration of objections to proposals: reg 17(6). Unless a list of proposed modifications contains only modifications proposed by the local planning authority in order to comply with a direction given by the Secretary of State under the Town and Country Planning Act 1990 s 35(2) (as substituted; repealed with savings) (see PARA 192 post), it must not be made available for inspection, and the notice referred to in the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 17(1) must not be given or served, until after (a) the period for objecting to the proposals after they have been made available for inspection has expired, or, in the case of a second or subsequent list of proposed modifications, the period for objecting to the previous list of proposed modifications has expired; and (b) any statement (or further statement) required by reg 15(1) or 16(1), as the case may be, has been prepared: reg 17(7). For Form 4 see regs 2(2)(b), 17(1), Schedule Form 4.

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188. Examination in public.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², before adopting proposals for the alteration or replacement of a structure plan³, the local planning authority⁴ must, unless the Secretary of State⁵ otherwise directs, cause an examination in public to be held of such matters affecting the consideration of the proposals as the authority

considers ought to be so examined, or the Secretary of State directs⁶. An examination in public must be conducted by a person appointed by the Secretary of State for the purpose⁷.

No person has a right to be heard at an examination in public⁸ but the following may take part in such an examination:

- 836 (1) the local planning authority; and
- 837 (2) any person invited to do so by the person or persons holding the examination or the person causing the examination to be held⁹.

The Secretary of State may, after consultation with the Lord Chancellor, make regulations with respect to the procedure to be followed at any examination in public¹⁰.

The procedure for dealing with objections following an examination in public is prescribed by regulations¹¹.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 189 et seq post.

2 See PARA 148 ante.

3 As to the alteration or replacement of a structure plan see PARA 184 ante.

4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 35B (as substituted; repealed with savings) (see the text and notes 5-10 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 As to the Secretary of State see PARA 19 ante.

6 Town and Country Planning Act 1990 s 35B(1) (s 35B substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

7 Town and Country Planning Act 1990 s 35B(3) (as substituted and repealed: see note 6 supra). Without prejudice to s 303A(8), (9) (as added; repealed with savings) (see PARA 658 post), regulations may make provision with respect to the remuneration and allowances of any person or persons appointed by the Secretary of State to conduct an examination in public under s 35B (as so substituted and repealed): s 35B(8) (added by the Town and Country Planning (Costs of Inquiries etc) Act 1995 s 1(5)). See the Town and Country Planning (Costs of Inquiries etc) (Examination in Public) (England) Regulations 2004, SI 2004/1716, regs 2-5, Schedule (applying where the remuneration, and travelling or subsistence allowances (if any) of the appointed person are to be paid by the local planning authority causing the examination to be held (reg 2(2)); the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (England) Regulations 2004, SI 2004/421, reg 3 (applying in other cases: see reg 2).

8 Town and Country Planning Act 1990 s 35B(4) (as substituted and repealed: see note 6 supra).

9 Ibid s 35B(5) (as substituted and repealed: see note 6 supra).

A local planning authority must, at least six weeks before the opening of an examination in public which it causes to be held of matters affecting the consideration of proposals for the alteration or replacement of a structure plan: (1) make available for inspection at any place at which the proposals have been made available for inspection a list of the matters with which the examination in public will be concerned and the persons who have been invited to take part in it; (2) give any person who has objected to, or made a representation in respect of, the proposals in accordance with the 1999 Regulations and not withdrawn the objection or representation, notice of the time and place at which the examination in public is to be held, the name of the person or persons appointed to hold it and its purpose, and the availability for inspection of the list mentioned in head (1) supra; and (3) give notice of that information by local advertisement: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 14(1). Any notice so given must invite representations to be made to the local planning authority on the list referred to in head (1) supra within 28 days of the date on which the notice is first published in a local newspaper: reg 14(2). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

10 Town and Country Planning Act 1990 s 35B(6) (as substituted and repealed: see note 6 supra). An examination in public constitutes a statutory inquiry for the purposes of the Tribunals and Inquiries Act 1992 s

1(1)(c) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15) but does not constitute such an inquiry for any other purpose of that Act: Town and Country Planning Act 1990 s 35B(7) (as so substituted and repealed); Interpretation Act 1978 s 17(2)(a). As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 1990 Act see the Constitutional Reform Act 2005 s 19.

11 Where a local planning authority causes an examination in public to be held for a purpose mentioned in the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 14 (see note 9 supra), the authority must, after considering the report of the person holding the examination in public, prepare a statement of: (1) the decisions it has reached in the light of the report and any recommendations contained in the report; and (2) the reasons for those decisions: reg 15(1). Where a list of proposed modifications to the proposals is made available for inspection under reg 17(1) (see PARA 187 note 14 ante) after the statement of decisions and reasons is prepared, the report mentioned in reg 15(1) and that statement must be made available for inspection from the date on which, and at the places at which, the list is made available for inspection: reg 15(2). Where such a list is not made available for inspection under reg 17(1) after the statement of decisions and reasons is prepared, the local planning authority must: (a) give notice by local advertisement in Form 3; (b) serve a notice in similar form on any person who has objected to, or made a representation in respect of, the proposals in accordance with the 1999 Regulations and not withdrawn the objection or representation and on such other persons as the authority thinks fit; and (c) make copies of the report mentioned in reg 15(1) and the statement of decisions and reasons available for inspection at any place at which the proposals have been made available for inspection: reg 15(3). Where the report of the person holding the examination in public contains recommendations that the proposals should be modified in a manner specified in the report and the local planning authority intends not to accept one or more of those recommendations: (i) the authority must make a list of the recommendations that it does not intend to accept available for inspection from the date on which, and at the places at which, the report is made available for inspection; (ii) the notice given in Form 3, or in Form 4, as the case may be, must record the authority's intention not to accept those recommendations and invite objections and representations to be made in respect of that intention within six weeks of the date on which the notice is first published in a local newspaper; (iii) reg 17(3), (4) (see PARA 187 note 14 ante) applies to any objection or representation made in respect of that intention as it applies to objections and representations made in respect of proposed modifications; (iv) where an examination in public is held to consider one or more objections made to that intention, reg 14 applies as it applies in the case of proposals, and reg 15 applies following such an examination in public as it applies to an examination in public mentioned in reg 15(1); and (v) where objections have been made to that intention in accordance with the 1999 Regulations and not withdrawn and the local planning authority does not cause an examination in public to be held, reg 16 (see PARA 187 note 13 ante) applies to the consideration of the objections as it applies to the consideration of objections to proposals: reg 15(4). Where notice is given in Form 3 and reg 15(4) does not apply, the notice must give 28 days notice of the local planning authority's intention to adopt the proposals: reg 15(5). For Forms 3, 4, see regs 2(2)(b), 15, Schedule Forms 3, 4.

As to breach of the procedural obligations under reg 15(4) see eg *Butler v Bath and North East Somerset Council* [2003] EWCA Civ 1614, (2003) Times, 4 November, [2003] All ER (D) 495 (Oct).

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189. Withdrawal of proposals for alteration or replacement of structure plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², proposals for the alteration or replacement of a structure plan³ may be withdrawn by the local planning authority⁴ at any time before the authority has adopted them or the Secretary of State⁵ has approved them⁶. On the withdrawal of such proposals, the authority must:

- 838 (1) withdraw the copies made available for inspection⁷; and
- 839 (2) give notice that the proposals have been withdrawn to every person who has made an objection to them⁸.

An authority responsible for a structure plan⁹ must, where any of its proposals for the alteration or replacement of a structure plan are withdrawn, notify any authority responsible for a local plan¹⁰ in its area that the proposals have been withdrawn¹¹.

Where a structure plan has been jointly prepared by two or more local planning authorities¹², the duty so to notify any authority applies to each of those authorities¹³.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 190 et seq post.

2 See PARA 148 ante.

3 As to the alteration or replacement of a structure plan see PARA 184 ante.

4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 34 (as substituted; repealed with savings) (see the text and notes 5-8 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 As to the Secretary of State see PARA 19 ante.

6 Town and Country Planning Act 1990 s 34(1) (s 34 substituted by the planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

7 Ie in accordance with the Town and Country Planning Act 1990 s 33(2) (as substituted; repealed with savings): see PARA 187 ante.

8 Ibid s 34(2) (as substituted and repealed: see note 6 supra).

On the withdrawal of proposals for the alteration or replacement of a structure plan, the local planning authority must, in addition to the persons specified in head (2) in the text, give notice of the withdrawal to every person who has made a representation with respect to the proposals: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 13(1). A local planning authority withdrawing proposals for the alteration or replacement of a structure plan must also give notice by advertisement: reg 13(2). The notice of withdrawal must be in Form 2: reg 13(3). The 1999 Regulations apply for transitional purposes: see PARA 148 ante. For Form 2 see regs 2(2)(b), 13(3), Schedule Form 2.

9 For these purposes, an authority is regarded as responsible for a structure plan if the authority is entitled to prepare proposals for its alteration or replacement: Town and Country Planning Act 1990 s 35C(5)(a) (s 35C substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

10 For these purposes, an authority is regarded as responsible for a local plan if the authority is under a duty to prepare a local plan or is entitled to prepare proposals for its alteration or replacement: Town and Country Planning Act 1990 s 35C(5)(b) (as substituted and repealed: see note 9 supra). For the meaning of 'local plan' see PARA 195 post.

11 Ibid s 35C(3) (as substituted and repealed: see note 9 supra). Nothing in s 35C (as so substituted and repealed) requires an authority to notify itself: s 35C(4) (as so substituted and repealed).

12 The functions of a local planning authority under ibid 50(7)(a) (as substituted and repealed) (see note 13 infra) are exercisable by the county planning authority: see PARA 152 ante.

13 Ibid s 50(7)(a) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(5); repealed with savings).

UPDATE

189 Withdrawal of proposals for alteration or replacement of structure plans

TEXT AND NOTES--See *R (on the application of Martin Grant Homes Ltd) v Wealden DC* [2005] EWCA Civ 1221, [2005] All ER (D) 359 (Oct).

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190. Notice of intention to adopt.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², proposals for the alteration or replacement of a structure plan³ may not be adopted⁴ by the local planning authority⁵ until after it has considered any objections made in accordance with the regulations⁶ or, if no such objections are made, until after the expiry of the prescribed⁷ period⁸.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 191 et seq post.

2 See PARA 148 ante.

3 As to the alteration or replacement of a structure plan see PARA 184 ante.

4 Ie under the Town and Country Planning Act 1990 s 35 (as substituted; repealed with savings): see PARA 192 post.

5 The functions of a local planning authority under ibid s 33(6) (as substituted; repealed with savings) (see note 8 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

6 The persons who may make objections in accordance with the regulations include, in particular, the Secretary of State: ibid s 33(5) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). For the meaning of 'objections made in accordance with the regulations' see PARA 177 note 12 ante; and as to the Secretary of State see PARA 19 ante.

In addition to the requirement to consider objections imposed by the Town and Country Planning Act 1990 s 33(6) (as substituted; repealed with savings) (see note 8 infra), the local planning authority must also consider any representations made in accordance with the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 12 (see PARA 187 ante): reg 12(3). An objection to, or representation in respect of, proposed modifications, made in accordance with reg 17 (see PARA 187 note 14 ante), must be treated as an objection made in accordance with the 1999 Regulations for the purpose of the Town and Country Planning Act 1990 s 33(6) (as so substituted and repealed): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 17(4). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

7 For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 s 33(6) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 17; repealed with savings).

Proposals for the alteration or replacement of a structure plan must not be adopted by a local planning authority until the period given by the authority in its notice of intention to adopt in Form 1, or where the authority has also given notice of its intention to adopt in Form 3 or Form 4, the period in the last such notice to be given by the authority, has expired: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 18. For the prescribed forms see regs 2(2)(b), 11, 15-17, Schedule Forms 1, 3, 4.

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191. Adoption of proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ may⁴ by resolution adopt proposals for the alteration or replacement of a structure plan⁵, either as originally prepared or as modified so as to take account of any objections to the proposals or any other considerations which appear to the authority to be material⁶.

Proposals for the alteration or replacement of a structure plan become operative⁷ on the date on which they are adopted⁸.

An authority responsible for a structure plan must, where any proposals of the authority for the alteration or replacement of such a plan are adopted or approved:

- 840 (1) notify any authority responsible for a local plan in its area that the proposals have been adopted or approved; and
- 841 (2) supply that authority with a statement⁹ that the local plan is or, as the case may be, is not in general conformity with the altered or new structure plan¹⁰.

Where a structure plan has been jointly prepared by two or more local planning authorities, the duty to notify and supply such a statement applies to each of those authorities¹¹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 192 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 35(1), (4) (as substituted; repealed with savings) (see the text and notes 4-8 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 Ie subject to ibid ss 35(3), 35A, 35B (as substituted; repealed with savings): see PARA 188 ante, PARA 192 et seq post.

5 As to the alteration or replacement of a structure plan see PARA 184 ante.

6 Town and Country Planning Act 1990 s 35(1) (s 35 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

7 Ie subject to the Town and Country Planning Act 1990 ss 35A-54 (as amended; repealed with savings) (see PARA 188 et seq ante, PARA 192 et seq post) and s 287 (as amended) (see PARA 46 note 14 ante).

8 Ibid s 35(4) (as substituted and repealed: see note 6 supra). As to the validity of structure plans see PARA 42 ante; and as to proceedings for questioning the validity of structure plans see PARAS 42, 46 note 14 ante.

Where a local planning authority adopts proposals for the alteration or replacement of a structure plan it must: (1) give notice by advertisement in Form 5; and (2) serve notice in similar form on any person who has asked to be notified of the adoption: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 19(1). A copy of the notice so given and of the adopted proposals must be made available for inspection at any place at which the proposals were made available for inspection under reg 11(1)(a) (see PARA 187 note 7 ante): reg 19(2). The local planning authority must, not later than the date on which notice is first given by advertisement pursuant to reg 19(1), send four copies of the adopted proposals to the Secretary of State: reg 19(3). For Form 5 see regs 2(2)(b), 19(1), Schedule Form 5. The 1999 Regulations apply for transitional purposes: see PARA 148 ante. As to the Secretary of State see PARA 19 ante.

9 A statement that a local plan is not in general conformity with a structure plan must specify the respects in which it is not in such conformity: Town and Country Planning Act 1990 s 35C(2) (s 35C substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). As to conformity between plans generally see PARA 208 post.

10 Town and Country Planning Act 1990 s 35C(1) (as substituted and repealed: see note 11 supra). Nothing in s 35C (as so substituted and repealed) requires an authority to notify or supply a statement to itself: s 35C(4) (as so substituted and repealed).

11 Town and Country Planning Act 1990 s 50(7)(a) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(5); repealed with savings).

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192. Direction to modify proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², if it appears to the Secretary of State³ that the proposals for the alteration or replacement of a structure plan⁴ are unsatisfactory, he may, at any time before the local planning authority⁵ has adopted the proposals, direct the authority to modify the proposals in such respects as are indicated in the direction⁶. An authority to which a direction is given may not adopt the proposals unless it satisfies the Secretary of State that the authority has made the modifications necessary to conform with the direction or the direction is withdrawn⁷.

1 The under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 193 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the proposals for the alteration or a replacement of a structure plan see PARA 184 ante.

5 The functions of a local planning authority under the Town and Country Planning Act 1990 s 35(2), (3) (as substituted) (see the text and notes 1-4 supra, 6-7 infra) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

6 Ibid s 35(2) (s 35 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). The Secretary of State is not bound by the findings of an examination in public but has a wide subjective reserve power to intervene in appropriate circumstances: see *R v Secretary of State for the Environment, Transport and the Regions, ex p West Sussex County Council* (1998) 77 P & CR 263, [1998] All ER (D) 406.

7 Town and Country Planning Act 1990 s 35(3) (as substituted and repealed: see note 6 supra). As to the prescribed procedure for publicising the direction see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 33 (as amended); and PARA 169 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/B. STRUCTURE PLANS/193. Calling in of proposals for approval by the Secretary of State.

193. Calling in of proposals for approval by the Secretary of State.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ may, at any time before the local planning authority⁴ has adopted proposals for the alteration or replacement of a structure plan⁵, direct that all or any part of the proposals shall be submitted to him for his approval⁶. If he gives such a direction:

842 (1) the local planning authority may not take any further steps for the adoption of any of the proposals until the Secretary of State has given his decision on the proposals or the relevant part of the proposals⁷; and

843 (2) the proposals or the relevant part of the proposals do not have effect unless approved by him and do not require adoption⁸ by the authority⁹.

Where proposals are submitted to the Secretary of State in compliance with such a direction, he may cause an examination in public to be held of any matter specified by him¹⁰.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 194 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 The functions of a local planning authority under the Town and Country Planning Act 1990 s 35A (as substituted; repealed with savings) (see the text and notes 5-9 infra; and PARA 194 post) are exercisable by the county planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 As to the alteration or replacement of a structure plan see PARA 184 ante.

6 Town and Country Planning Act 1990 s 35A(1) (s 35A substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

If, before the local planning authority has adopted proposals for a statutory plan or for the alteration or replacement of such a plan, the Secretary of State directs the authority not to adopt the proposals until he has decided whether to give a direction under 35A(1) (as so substituted and repealed), the authority must not adopt the proposals until he has notified it of his decision: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 34. The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

7 Town and Country Planning Act 1990 s 35A(2)(a) (as substituted and repealed: see note 6 supra). Section 35A(2)(a) (as so substituted and repealed) applies in particular to holding or proceeding with an examination in public under s 35B(1) (as substituted; repealed with savings) (see PARA 188 ante): s 35A(3) (as so substituted and repealed).

8 le under ibid s 35 (as substituted; repealed with savings): see PARA 191 ante.

9 Ibid s 35A(2)(b) (as substituted and repealed: see note 6 supra).

10 Ibid s 35B(2) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). The provisions of the Town and Country Planning Act 1990 s 35B(3), (4), (5)(b), (6), (7) (as substituted; repealed with savings) apply to such an examination: see PARA 188 ante.

As to the procedure where the Secretary of State causes such an examination in public to be held see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(5), (6); and PARA 172 note 9 ante.

194. Approval or rejection of proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ may, after considering⁴ proposals submitted to him in compliance with a direction under the provisions set out in the previous paragraph⁵, approve them, in whole or in part and with or without modifications or reservations, or reject them⁶. The Secretary of State must give the authority such statement as he considers appropriate of the reasons governing his decision on any proposals submitted to him⁷.

Proposals so approved by the Secretary of State become operative⁸ on such day as he may appoint⁹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 195 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 In considering proposals so submitted to him the Secretary of State must take into account any objections made in accordance with the regulations, and may take into account any matters which he thinks relevant, whether or not they were taken into account in preparing the proposals: Town and Country Planning Act 1990 s 35A(5) (s 35A substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). For the purpose of taking into account any objection or matter, the Secretary of State may, but need not, consult with any local planning authority or other person: Town and Country Planning Act 1990 s 35A(6) (as so substituted and repealed). For the meaning of 'objections made in accordance with the regulations' see PARA 177 note 12 ante; for the meaning of 'consult' see PARA 2 note 1 ante; as to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 Ie under *ibid* s 35A(1) (as substituted; repealed with savings): see PARA 193 ante.

6 *Ibid* s 35A(4) (as substituted and repealed: see note 4 supra).

For the prescribed procedure where the Secretary of State is minded to approve the proposals with modifications see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(1)-(4) (as amended); and PARAS 171 note 14, 173 note 8 ante.

7 Town and Country Planning Act 1990 s 35A(7) (as substituted and repealed: see note 4 supra). For the prescribed procedure where the local planning authority is notified by the Secretary of State of his decision see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(7) (as amended); and PARA 173 note 10 ante.

8 Ie subject to the Town and Country Planning Act 1990 s 287 (as amended): see PARA 46 note 14 ante.

9 *Ibid* s 35A(8) (as substituted and repealed: see note 4 supra).

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C. LOCAL PLANS

195. Preparation of local plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ must, within such period, if any, as the Secretary of State⁴ may direct, prepare for its area a plan to be known as a local plan⁵. A local plan must contain a written statement formulating the authority's detailed policies⁶ for the development⁷ and use⁸ of land⁹ in its area¹⁰; and the policies must include policies in respect of:

- 844 (1) the conservation of the natural beauty and amenity¹¹ of the land;
- 845 (2) the improvement of the physical environment; and
- 846 (3) the management of traffic¹².

In formulating its detailed policies, the authority must have regard to:

- 847 (a) such information and other considerations as the Secretary of State may prescribe or, in a particular case, direct; and
- 848 (b) the provisions of any scheme¹³ relating to land in the authority's area which has been designated¹⁴ as an enterprise zone¹⁵.

A local plan must also contain:

- 849 (i) a map¹⁶ illustrating each of the detailed policies; and
- 850 (ii) such diagrams, illustrations or other descriptive or explanatory matter in respect of the policies as may be prescribed¹⁷,

and may contain such descriptive or explanatory matter as the authority thinks appropriate¹⁸.

A local plan must be in general conformity with the structure plan¹⁹, but it may not contain any policies in respect of:

- 851 (A) the winning and working of minerals²⁰ or the depositing of mineral waste²¹, unless it is a plan for a National Park²²;
- 852 (B) the depositing of refuse or waste materials other than mineral waste, unless it is a plan for a National Park or for an area where such depositing is not²³ a county matter²⁴.

A local plan may designate any part of the authority's area as an action area²⁵; and, if an area is so designated, the plan must contain a description of the treatment proposed by the authority²⁶.

A local plan becomes operative²⁷ on the date on which it is adopted²⁸. After adoption, the authority may adopt supplementary planning guidance setting out more detailed guidance on the way in which the policies in a development plan will be applied in particular circumstances or areas without necessitating a formal alteration of the plan²⁹, provided that the supplementary guidance is not inconsistent with the adopted plan³⁰.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 196 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 36 (as substituted; repealed with savings) (see the text and notes 4-28 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 As to the Secretary of State see PARA 19 ante.

5 Town and Country Planning Act 1990 s 36(1) (s 36 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). The title of a local plan must consist of the name of the area of the local planning authority followed by 'local plan': Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(1). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

6 For these purposes, 'policies' includes proposals: Town and Country Planning Act 1990 s 36(11) (as substituted and repealed: see note 5 supra). As to the application of s 36(11) (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

7 For the meaning of 'development' see PARA 217 post.

8 For the meaning of 'use' see PARA 221 note 4 post.

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Town and Country Planning Act 1990 s 36(2) (as substituted and repealed: see note 5 supra).

11 As to the meaning of 'amenity' see PARA 158 note 8 ante.

12 Town and Country Planning Act 1990 s 36(3) (as substituted and repealed: see note 5 supra). A local plan must contain a reasoned justification of the policies formulated in the plan; and that reasoned justification must be set out so as to be readily distinguishable from the other contents of the plan: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 7(1), (2). See further reg 20; and PARA 158 ante.

13 Ie under the Local Government, Planning and Land Act 1980 s 179 (as amended), Sch 32 para 3: see PARA 1493 post.

14 Ie under ibid Sch 32 (as amended): see PARA 1491 et seq post.

15 Town and Country Planning Act 1990 s 36(9) (as substituted and repealed: see note 5 supra).

16 The map required to be so included in a local plan is called the proposals map: see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 6; and PARA 158 ante.

17 For the meaning of 'prescribed' see PARA 16 note 5 ante.

18 Town and Country Planning Act 1990 s 36(6) (as substituted and repealed: see note 5 supra). As to the application of s 36(6) (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

19 Ibid s 36(4) (as substituted and repealed: see note 5 supra). As to conformity between plans in general see PARA 208 post; and as to the application of s 36(4) (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

20 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

21 For the meaning of 'the depositing of mineral waste' see PARA 16 note 3 ante.

22 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

23 Ie for the purposes of the Town and Country Planning Act 1990 s 1(5), Sch 1 (as amended): see PARA 38 ante.

24 Ibid s 36(5) (as substituted and repealed: see note 5 supra). Where policies in respect of development consisting of the winning and working of minerals or involving the depositing of mineral waste ('minerals policies') are included in a local plan or waste policies are included in such a plan, the local plan must have a sub-title consisting of the words 'including minerals policies', 'including waste policies' or 'including minerals and waste policies', as the case may be: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(2).

25 Ie an area which the authority has selected for the commencement during a prescribed period of comprehensive treatment by development, redevelopment or improvement, or partly by one and partly by another method. The period prescribed for these purposes is a period of ten years beginning with the date on which the relevant plan is first made available for inspection in accordance with the Town and Country Planning

Act 1990 s 40(2)(a) (as substituted; repealed with savings) (see PARA 201 post): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 8.

26 Town and Country Planning Act 1990 s 36(7), (8) (as substituted and repealed: see note 5 supra).

27 le subject to the provisions of the Town and Country Planning Act 1990 ss 37-54 (as amended; repealed with savings) (see PARA 177 et seq ante, PARA 196 et seq post) and s 287 (as amended) (see PARA 46 note 14 ante): s 36(10) (as substituted and repealed: see note 5 supra).

28 Ibid s 36(10) (as substituted and repealed: see note 5 supra). As to the validity of local plans see PARA 42 ante; and as to proceedings for questioning the validity of local plans see PARAS 42, 46 note 14 ante. As to the application of the Town and Country Planning Act 1990 s 36(10) (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively post.

29 As to alteration of the plan see ibid s 39 (as substituted; repealed with savings); and PARA 199 post.

30 See *R (on the application of JA Pye Ltd) v Oxford City Council* [2002] EWCA Civ 1116 at [26]-[30], [2002] All ER (D) 458 (Jul).

UPDATE

195 Preparation of local plan

TEXT AND NOTE 19--As to the meaning of 'general conformity' see *Persimmon Homes (Thames Valley) Ltd v Stevenage BC* [2005] EWCA Civ 1365, [2005] All ER (D) 291 (Nov).

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196. Minerals local plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a mineral planning authority³ for an area other than a National Park⁴ must, within such period, if any, as the Secretary of State⁵ may direct, prepare for the authority's area a plan to be known as a minerals local plan⁶. A minerals local plan must contain a written statement formulating the authority's detailed policies for its area in respect of development⁷ consisting of the winning and working of minerals⁸ or involving the depositing of mineral waste⁹.

The local planning authority¹⁰ for a National Park must, within such period, if any, as the Secretary of State may direct:

- 853 (1) prepare for the authority's area a plan to be known as a minerals local plan;
or
- 854 (2) include in its local plan¹¹ its detailed policies in respect of development consisting of the winning and working of minerals or involving the depositing of mineral waste¹².

In formulating the policies in a minerals local plan, the authority must have regard to such information and other considerations as the Secretary of State may prescribe or, in a particular case, direct¹³.

- 1 lie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 197 et seq post.
 - 2 See PARA 148 ante.
 - 3 For the meaning of 'mineral planning authority' see PARA 29 ante.
 - 4 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
 - 5 As to the Secretary of State see PARA 19 ante.
 - 6 Town and Country Planning Act 1990 s 37(1) (s 37 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). The title of a minerals local plan must consist of the name of the area of the local planning authority followed by 'minerals local plan': Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(1). Where waste policies are included in a minerals local plan, the minerals local plan including such policies must have a sub-title consisting of the words 'including waste policies': reg 4(2). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.
 - 7 For the meaning of 'development' see PARA 217 post.
 - 8 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.
 - 9 Town and Country Planning Act 1990 s 37(2) (as substituted and repealed: see note 6 supra). For the meaning of 'the depositing of mineral waste' see PARA 16 note 3 ante.
 - 10 As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.
 - 11 For the meaning of 'local plan' see PARA 195 ante.
 - 12 Town and Country Planning Act 1990 s 37(3) (as substituted and repealed: see note 6 supra). As to the validity of minerals local plans see PARA 42 ante; and as to proceedings for questioning the validity of minerals local plans see PARAS 42, 46 note 14 ante.
 - 13 Town and Country Planning Act 1990 s 37(4) (as substituted and repealed: see note 6 supra). A minerals local plan must contain a reasoned justification of the policies formulated in the plan; and that reasoned justification must be set out so as to be readily distinguishable from the other contents of the plan: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 7(1), (2). See further reg 20; and PARA 158 ante. As to waste policies see PARA 197 post.
- The Town and Country Planning Act 1990 s 36(4), (6), (10), (11) (as substituted; repealed with savings) (see PARA 195 ante) applies with respect to minerals local plans as it applies with respect to local plans (s 37(5) (as substituted and repealed: see note 6 supra)); and the provisions of ss 38-54 (as amended; repealed with savings) (see PARA 177 et seq ante, PARA 197 et seq post) apply with respect to minerals local plans as they apply with respect to local plans, but as if references to a local planning authority were, in relation to an area other than a National Park, references to a mineral planning authority (s 37(6) (as so substituted and repealed)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/197. Waste policies.

197. Waste policies.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a local planning authority³ other than an excluded authority⁴ must, within such period, if any, as the Secretary of State⁵ may direct:

- 855 (1) prepare a waste local plan⁶ for its area; or

856 (2) include its waste policies in its minerals local plan⁷.

A local planning authority for a National Park must, within such period, if any, as the Secretary of State may direct:

- 857 (a) prepare a waste local plan for its area; or
- 858 (b) include its waste policies in its minerals local plan or its local plan⁸.

In formulating its waste policies, the authority must have regard to such information and other considerations as the Secretary of State may prescribe⁹ or, in a particular case, direct¹⁰.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 198 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 38(2) (as substituted; repealed with savings) (see note 4 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 A local planning authority is an excluded authority for these purposes if it is an authority (1) for a National Park; or (2) for an area where waste policies are not a county matter for the purposes of ibid s 1(5), Sch 1 (as amended) (see PARA 38 ante): s 38(3) (s 38 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

5 As to the Secretary of State see PARA 19 ante.

6 For these purposes, 'waste local plan' means a plan containing waste policies; and 'waste policies' means detailed policies in respect of development which involves the depositing of refuse or waste materials other than mineral waste: Town and Country Planning Act 1990 s 38(1) (as substituted and repealed: see note 4 supra). For the meaning of 'development' see PARA 217 post.

7 Ibid s 38(2) (as substituted and repealed: see note 4 supra). As to the validity of waste local plans see PARA 42 ante; and as to proceedings for questioning the validity of waste local plans see PARAS 42, 46 note 14 ante. As to minerals local plans see PARA 196 ante.

The title of a waste local plan must consist of the name of the area of the local planning authority followed by 'waste local plan'; and, where waste policies are included in a local plan or a minerals local plan, the local plan or minerals local plan including such policies must have a sub-title consisting of the words 'including waste policies': Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 4(1), (2). The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

8 Town and Country Planning Act 1990 s 38(4) (as substituted and repealed: see note 4 supra). For the meaning of 'local plan' see PARA 195 ante.

9 For the meaning of 'prescribed' see PARA 16 note 5 ante.

10 Town and Country Planning Act 1990 s 38(5) (as substituted and repealed: see note 4 supra). A waste local plan must contain a reasoned justification of the policies formulated in the plan; and that reasoned justification must be set out so as to be readily distinguishable from the other contents of the plan: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 7(1), (2). See also reg 20; and PARA 158 ante.

The Town and Country Planning Act 1990 s 36(4), (6), (10), (11) (as substituted; repealed with savings) (see PARA 195 ante) applies with respect to waste local plans as it applies with respect to local plans (s 38(6) (as substituted and repealed: see note 4 supra)); and the provisions of ss 39-54 (as amended; repealed with savings) (see PARA 177 et seq ante, PARA 198 et seq post) apply with respect to waste local plans as they apply with respect to local plans, but as if references to a local planning authority were references to the authority which is entitled to prepare a waste local plan (s 38(7) (as so substituted and repealed)). As to the application of s 38 (as so substituted and repealed) to minerals local plans see PARA 196 note 13 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/198. Joint local plans.

198. Joint local plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where two or more local planning authorities³ jointly prepare proposals for the making, alteration or replacement of a local plan⁴:

859 (1) they each have the duty⁵ of making copies of the relevant documents available for inspection and objections to the proposals may be made to any of those authorities and the statement required⁶ to accompany the relevant documents must state that objections may be so made;

860 (2) it is for each of the local planning authorities to adopt⁷ the proposals but any modifications subject to which the proposals are adopted must have the agreement of all those authorities⁸.

Where a local plan has been made jointly, the power of making proposals for its alteration or replacement may be exercised as respects their respective areas by any of the authorities by which it was made; and the Secretary of State⁹ may direct¹⁰ any of them to make proposals as respects their respective areas¹¹.

The date of the coming into operation of a local plan or proposals for its alteration or replacement prepared jointly by two or more local planning authorities is a date jointly agreed by those authorities¹².

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 199 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 50(6), (8) (as amended; repealed with savings) (see the text and notes 4-11 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 For the meaning of 'local plan' see PARA 195 ante.

5 Ie imposed by the Town and Country Planning Act 1990 s 40(2) (as substituted; repealed with savings): see PARA 201 post.

6 Ie by *ibid* s 40(4) (as substituted; repealed with savings): see PARA 201 post.

7 Ie under *ibid* s 43(1) (as substituted; repealed with savings): see PARA 204 post.

8 *Ibid* s 50(6) (s 50(6), (8) amended, and s 50(9) substituted, by the Planning and Compensation Act 1991 ss 27, 84(6), Sch 4 paras 1, 24(4), (6), (7), Sch 19 Pt I; repealed with savings).

9 As to the Secretary of State see PARA 19 ante.

10 Ie under the Town and Country Planning Act 1990 s 39 (as substituted; repealed with savings): see PARA 199 post.

11 *Ibid* s 50(8) (as amended and repealed: see note 8 supra).

12 Ibid s 50(9)(b) (as substituted and repealed: see note 8 supra). As to the application of s 50 (as amended; repealed with savings) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/199. Proposals for alteration or replacement of local plan.

199. Proposals for alteration or replacement of local plan.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a local planning authority³ may at any time prepare proposals for alterations to the local plan⁴ for its area⁵, or for its replacement⁶. A local authority must:

- 861 (1) consider whether it needs to prepare such proposals, if it has been supplied with a statement⁷ that the local plan is not in general conformity with the structure plan⁸; and
- 862 (2) prepare such proposals, if it is directed to do so by the Secretary of State⁹, within such period, if any, as he may direct¹⁰.

An authority may not, however, prepare such proposals without the consent of the Secretary of State if the plan or any part of it has been approved by the Secretary of State¹¹.

Proposals for the alteration or replacement of a local plan become¹² operative on the date on which they have been adopted¹³.

1 Ibid under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 200 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 39 (as substituted; repealed with savings) (see the text and notes 3-13 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 For the meaning of 'local plan' see PARA 195 ante.

5 Proposals for the alteration of a local plan may relate to the whole or part of the area to which the plan relates: Town and Country Planning Act 1990 s 39(4) (s 39 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

6 Town and Country Planning Act 1990 s 39(1) (as substituted and repealed: see note 5 supra).

7 Ibid under the Town and Country Planning Act 1990 s 35C (as substituted; repealed with savings): see PARA 189 ante.

8 As to conformity between plans generally see PARA 208 post; and as to the continuity, form and content of a structure plan see PARA 183 ante.

9 As to the Secretary of State see PARA 19 ante.

10 Town and Country Planning Act 1990 s 39(2) (as substituted and repealed: see note 5 supra).

11 Ibid s 39(3) (as substituted and repealed: see note 5 supra).

12 le subject to *ibid* ss 40-54 (as amended; repealed with savings) (see PARA 177 et seq ante, PARA 200 et seq post) and s 287 (as amended) (see PARA 46 note 14 ante): s 39(5) (as substituted and repealed: see note 5 supra).

13 *Ibid* s 39(5) (as substituted and repealed: see note 5 supra). As to the application of the Town and Country Planning Act 1990 s 39 (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/200. Pre-deposit consultation.

200. Pre-deposit consultation.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ must, when preparing a local plan⁴ for its area or proposals for its alteration or replacement and before finally determining the contents of the plan or the proposals:

863 (1) comply with any requirements imposed by regulations⁵ and any particular direction given to it by the Secretary of State⁶ with regard to a specified matter⁷; and

864 (2) consider any representations made in accordance with those regulations⁸.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 201 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 40(1) (as substituted; repealed with savings) (see the text and notes 4-8 *infra*) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 For the meaning of 'local plan' see PARA 195 ante.

5 le regulations made under *ibid* s 53 (as amended; repealed with savings): see PARA 177 ante.

6 As to the Secretary of State see PARA 19 ante.

7 le a matter falling within any of the Town and Country Planning Act 1990 s 53(2)(a)-(c) or (e) (as amended; repealed with savings): see PARA 177 ante at heads (1)-(2), (4), (7) in the text.

8 *Ibid* s 40(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). As to the application of the Town and Country Planning Act 1990 s 40 (as substituted; repealed with savings) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

As to the prescribed consultation statement see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 22; and PARA 163 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/201. Deposit of proposals.

201. Deposit of proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where the local planning authority³ has prepared a local plan⁴ or proposals for its alteration or replacement, the authority must⁵:

- 865 (1) make copies of the relevant documents⁶ available for inspection at such places as may be prescribed⁷ by the regulations⁸;
- 866 (2) send a copy of the relevant documents to the Secretary of State⁹; and
- 867 (3) comply with any requirements imposed by those regulations¹⁰.

Each copy so made available for inspection or so sent must be accompanied by a statement of the prescribed period¹¹ within which objections may be made to the authority¹².

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 202 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 40 (as substituted; repealed with savings) (see the text and notes 4-12 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 For the meaning of 'local plan' see PARA 195 ante.

5 Ie subject to the Town and Country Planning Act 1990 s 46(1) (as substituted; repealed with savings): see PARA 208 post.

6 For these purposes, 'the relevant documents' means the plan or the proposals and any statement supplied under ibid s 46(2) (as substituted; repealed with savings) (see PARA 208 post): s 40(3) (s 40 substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings).

7 For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Ie regulations under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings): see PARA 177 ante.

9 As to the Secretary of State see PARA 19 ante.

10 Town and Country Planning Act 1990 s 40(2) (as substituted and repealed: see note 6 supra). In order for the transitional arrangements in relation to England set out in the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 (see PARA 125 et seq ante) to apply to a local plan, the local authority must have complied with the Town and Country Planning Act 1990 s 40(2) (as so substituted and repealed) before 28 September 2004: see PARA 130 ante.

11 For these purposes, 'the prescribed period' means such period as may be prescribed or determined in accordance with regulations made under the ibid s 53 (as amended; repealed with savings): s 40(5) (as substituted and repealed: see note 6 supra).

For the prescribed period see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 23(1); and PARA 163 note 10 ante.

12 Town and Country Planning Act 1990 s 40(4) (as substituted and repealed: see note 6 supra). As to the application of the Town and Country Planning Act 1990 s 40 (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

As to objections and representations see further the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 23, reg 24A (as added); and PARA 163 ante. As to the consideration of objections without a local inquiry or other hearing see reg 28; and PARA 164 note 14 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/202. Local inquiry or other hearing.

202. Local inquiry or other hearing.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², where any objections have been made, in accordance with the regulations³, to proposals for a local plan⁴ or for its alteration or replacement copies of which have been made available for inspection⁵, the local planning authority⁶ must cause a local inquiry or other hearing to be held for the purpose of considering the objections⁷. The local planning authority may cause a local inquiry or other hearing to be held for the purposes of considering any other objections to the proposals⁸.

The local inquiry or other hearing must be held by a person appointed by the Secretary of State⁹ or, in such cases as may be prescribed¹⁰, by the authority itself¹¹. No such inquiry or hearing need, however, be held if all persons who have made objections have indicated in writing that they do not wish to appear¹². Regulations may:

- 868 (1) make provision with respect to the appointment and qualifications for appointment of persons to hold such a local inquiry or other hearing;
- 869 (2) include provision enabling the Secretary of State to direct a local planning authority to appoint a particular person or one of a specified list or class of persons;
- 870 (3) make provision with respect to the remuneration and allowances of the person appointed¹³.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 203 et seq post.

2 See PARA 148 ante.

3 For these purposes, 'objections made in accordance with the regulations' means objections made in accordance with regulations made under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings) (see PARA 177 ante) and within the prescribed period: s 40(5) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). For the meaning of 'the prescribed period' see PARA 201 note 11 ante.

4 For the meaning of 'local plan' see PARA 195 ante.

5 le under the Town and Country Planning Act 1990 s 40(2) (as substituted; repealed with savings): see PARA 201 ante.

6 The functions of a local planning authority under ibid s 42 (as amended; repealed with savings) (see the text and notes 7-13 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

7 Town and Country Planning Act 1990 s 42(1) (s 42(1), (2), (2A) substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 18; repealed with savings). The Local Government Act 1972 s 250(2), (3) (as amended) (power to summon and examine witnesses: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held under the Town and Country Planning Act 1990 s 42 (as amended; repealed with savings) as it applies to an inquiry under the Local Government Act 1972 s 250 (as amended) (Town and Country Planning Act 1990 s 42(5) (repealed with savings)); and the Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held under the Town and Country Planning Act 1990 s 42 (as amended and repealed) as it applies to a statutory inquiry held by the Secretary of State, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State were a reference to a decision taken by a local planning authority (Town and

Country Planning Act 1990 s 42(6) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 24; repealed with savings)).

As to the duty to give reasons where the local planning authority does not adopt the recommendations of the person holding the inquiry see eg *R (on the application of Grant-Nicholas) v Bromsgrove District Council* [2004] EWHC 1452 (Admin), [2004] All ER (D) 105 (Jun); *Fairfield Partnership v Huntingdonshire District Council* [2003] EWHC 2430 (Admin), 147 Sol Jo LB 1273, [2003] All ER (D) 378 (Oct). There is no rule that the local planning authority is unable to disagree with an inspector's findings of 'primary fact' and adhere to views earlier expressed; the underlying rule that emerges from all of the authorities is that the reasons ought to demonstrate that the local planning authority has grappled with the reasoning underlying the inspector's recommendation: *Bainbridge v Hambleton District Council* (1999) 80 P & CR 61, [2000] JPL 796.

8 Town and Country Planning Act 1990 s 42(2) (as substituted and repealed: see note 7 supra). As to the application of the Town and Country Planning Act 1990 s 42 (as amended and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

9 As to the Secretary of State see PARA 19 ante.

10 For the meaning of 'prescribed' see PARA 16 note 5 ante.

11 Town and Country Planning Act 1990 s 42(3) (repealed with savings).

12 Ibid s 42(2A) (as substituted and repealed: see note 7 supra).

13 Ibid s 42(4) (repealed with savings). As to the remuneration etc of the person so appointed see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (England) Regulations 2004, SI 2004/421, regs 2, 3.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/203. Notice of intention to adopt.

203. Notice of intention to adopt.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², a local plan³ or proposals for its alteration or replacement may not be adopted⁴ by the local planning authority⁵ until after it has considered any objections made in accordance with the regulations⁶ or, if no such objections are made, until after the expiry of the prescribed⁷ period⁸.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 204 et seq post.

2 See PARA 148 ante.

3 For the meaning of 'local plan' see PARA 195 ante.

4 Ie under the Town and Country Planning Act 1990 s 43 (as amended; repealed with savings): see PARA 204 post.

5 The functions of a local planning authority under ibid s 40(6), (7) (as substituted; repealed with savings) (see the text and notes 6-8 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

6 The persons who may make objections in accordance with the regulations include, in particular, the Secretary of State: ibid s 40(6) (s 40(6), (7) substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 17; repealed with savings). For the meaning of 'objections made in accordance with the regulations' see PARA 202 note 3 ante. As to the Secretary of State see PARA 19 ante.

7 For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 s 40(7) (as substituted and repealed: see note 6 supra). See further the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 30 (as substituted); and PARA 167 note 8 ante. As to the application of the Town and Country Planning Act 1990 s 40 (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/204. Adoption of proposals.

204. Adoption of proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the local planning authority³ may⁴ by resolution adopt proposals for a local plan⁵ or for its alteration or replacement, either as originally prepared or as modified so as to take account of any objections to the plan or any other considerations which appear to the authority to be material⁶. The authority may not, however, adopt any proposals which do not conform generally to the structure plan⁷.

Proposals for a local plan, or for its alteration or replacement, become operative⁸ on the date on which they are adopted⁹.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 205 et seq post.

2 See PARA 148 ante.

3 The functions of a local planning authority under the Town and Country Planning Act 1990 s 43 (as amended; repealed with savings) (see the text and notes 4-7 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

4 Ie subject to ibid ss 43(3)-(5), 44 (as amended; repealed with savings): see the text and notes 5-7 infra; and PARA 205 et seq post.

5 For the meaning of 'local plan' see PARA 195 ante.

6 Town and Country Planning Act 1990 s 43(1) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 19(1); repealed with savings). As to notice of adoption see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 31 (as amended); and PARA 168 note 11 ante.

7 Town and Country Planning Act 1990 s 43(3) (repealed with savings). As to conformity with the structure plan see PARA 208 post; and as to the application of s 43 (as amended and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

8 Ie subject to ibid ss 37-54 (as amended; repealed with savings) (see PARA 176 et seq ante, PARA 205 et seq post) and s 287 (as amended) (see PARA 46 note 14 ante).

9 Ibid ss 36(10), 39(5) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 17; repealed with savings). See further PARAS 195, 199 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/205. Direction to modify proposals.

205. Direction to modify proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², after copies of the proposals³ have been sent to the Secretary of State⁴ and before they have been adopted by the local planning authority⁵, the Secretary of State may, if it appears to him that the proposals are unsatisfactory, direct the authority to modify the proposals in such respects as are indicated in the direction⁶. An authority to which a direction is so given may not adopt the proposals unless it satisfies the Secretary of State that the authority has made the modifications necessary to conform with the direction or the direction is withdrawn⁷.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 206 et seq post.

2 See PARA 148 ante.

3 Ie the proposals for a local plan, or for the alteration or replacement of a local plan: see PARA 195 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 The functions of a local planning authority under the Town and Country Planning Act 1990 s 43(4), (5) (as amended; repealed with savings) (see the text and notes 6-7 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

6 Ibid s 43(4) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 19(2); (repealed with savings).

7 Town and Country Planning Act 1990 s 43(5) (repealed with savings). As to the application of s 43 (as amended and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante. As to the procedure where such a direction is given see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 33 (as amended); and PARA 169 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/206. Calling in of proposals for approval.

206. Calling in of proposals for approval.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², after copies of proposals³ have been sent to the Secretary of State⁴ and before they have been adopted by the local planning authority⁵, the Secretary of State may direct that the proposals, or any part of them, shall be submitted to him for his approval⁶. If he gives such a direction:

- 871 (1) the local planning authority may not take any further steps for the adoption of any of the proposals until the Secretary of State has given his decision on the proposals or the relevant part of the proposals; and

872 (2) the proposals or the relevant part of the proposals do not have effect unless approved by him and do not require adoption⁷ by the authority⁸.

1 He under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 207 et seq post.

2 See PARA 148 ante.

3 He proposals for a local plan or for the alteration or replacement of a local plan: see PARA 195 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 The functions of a local planning authority under the Town and Country Planning Act 1990 s 44 (as amended; repealed with savings) (see the text and notes 6-8 infra) are exercisable by the district planning authority: see PARA 152 ante. As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

6 Ibid s 44(1) (s 44(1) amended and s 44(2) substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 20(1), (2); repealed with savings).

The Secretary of State may direct the authority not to adopt the proposals until he has decided whether to call them in: see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 34; and PARA 170 note 8 ante.

7 He under the Town and Country Planning Act 1990 s 43 (as amended; repealed with savings): see PARA 204 ante.

8 Ibid s 44(2) (as substituted and repealed: see note 6 supra). As to the application of the Town and Country Planning Act 1990 s 44 (as amended and so repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iii) Structure and Local Plans in England/C. LOCAL PLANS/207. Approval or rejection of called-in proposals.

207. Approval or rejection of called-in proposals.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the Secretary of State³ may, after considering⁴ proposals submitted to him⁵, either approve them, in whole or in part and with or without modifications or reservations, or reject them⁶. Where, on taking the proposals into consideration, the Secretary of State does not determine to reject them, he must, before determining whether or not to approve them:

873 (1) consider any objections to them made in accordance with the regulations⁷;

874 (2) give any person who made such an objection which has not been withdrawn an opportunity of appearing before, and being heard by, a person appointed by him for the purpose; and

875 (3) if a local inquiry⁸ or other hearing is held, also give such an opportunity to the local planning authority and such other persons as he thinks fit,

except so far as the objections have already been considered, or a local inquiry or other hearing into the objections has already been held, by the authority⁹.

Proposals so approved by the Secretary of State become operative¹⁰ on such day as he may appoint¹¹.

1 le under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 208 et seq post.

2 See PARA 148 ante.

3 As to the Secretary of State see PARA 19 ante.

4 In considering the proposals the Secretary of State (1) may take into account any matters which he thinks are relevant, whether or not they were taken into account in the proposals as submitted (Town and Country Planning Act 1990 s 45(2) (repealed with savings)); (2) may consult with, or consider the views of, any local planning authority or any other person, but he need not do so, or give an opportunity for the making of representations or objections, or cause a local inquiry or other hearing to be held, except as provided by s 45(3) (as amended and repealed: see note 9 infra) (s 45(4) (as so repealed)). For the meaning of 'consult' see PARA 2 note 1 ante; as to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

5 le under ibid s 44 (as amended; repealed with savings): see PARA 206 ante.

6 Ibid s 45(1) (repealed with savings).

7 For the meaning of 'objections made in accordance with the regulations' see PARA 202 note 3 ante.

8 As to local inquiries generally see PARA 651 et seq post. As to the notice to be given see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(4); and PARA 171 note 14 ante.

9 Town and Country Planning Act 1990 s 45(3) (amended by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 21(1); repealed with savings). As to the procedure to be followed on notification of the Secretary of State's decision to the local planning authority see the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 35(7) (as amended); and PARA 173 note 10 ante.

10 le subject to the Town and Country Planning Act 1990 s 287 (as amended): see PARA 46 note 14 ante.

11 Ibid s 45(5) (added by the Planning and Compensation Act 1991 Sch 4 paras 1, 21(2); repealed with savings). As to the application of the Town and Country Planning Act 1990 s 45 (as amended and so repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(iv) Conformity and Conflict/208. Conformity between plans.

(iv) Conformity and Conflict

208. Conformity between plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², an authority responsible for a local plan³ may not make copies available⁴ unless:

876 (1) it has served on the authority responsible for the structure plan⁵ in its area a copy of the plan or the proposals; and

877 (2) such period as may be prescribed⁶ has elapsed since it served the copy of the plan or proposals⁷.

Where a local planning authority⁸ has been so served with a copy, the authority must, before the end of any period so prescribed⁹, supply the authority responsible for the local plan with:

- 878 (a) a statement that the plan or the proposals is or are in general conformity with the structure plan; or
- 879 (b) a statement that the plan or the proposals is or are not in such conformity¹⁰.

A statement under head (b) above must specify the respects in which the plan or proposals is or are not in such conformity¹¹; and any such statement is to be treated¹² as an objection made in accordance with the regulations¹³.

Where:

- 880 (i) a local planning authority proposes to make, alter or replace a local plan;
- 881 (ii) copies of proposals for the alteration or replacement of the structure plan for its area have been made available for inspection¹⁴; and
- 882 (iii) the authority mentioned in head (i) above includes in any relevant copy¹⁵ of the plan or proposals a statement that the authority is making the permitted assumption¹⁶,

the permitted assumption must be made for all purposes, including in particular any question as to conformity between plans¹⁷, but may not be made at any time after that authority knows that the proposals mentioned in head (ii) above have been withdrawn¹⁸.

Nothing in the above provisions requires an authority to serve a copy on or supply a statement to itself¹⁹.

Where a structure plan has been jointly prepared by two or more local planning authorities²⁰, the duty to supply a statement under the above provisions applies to each of those authorities²¹; and, where a local plan or proposals for its alteration or replacement have been jointly prepared by two or more local planning authorities²², the requirement to serve a copy²³ and the right to be supplied with a statement²⁴ apply to each of those authorities²⁵.

In the case of a London borough, Part I of the unitary development plan must be in general conformity with the spatial development strategy for the time being in force²⁶.

1 Ie under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante, PARA 209 et seq post.

2 See PARA 148 ante.

3 The Town and Country Planning Act 1990 s 35C(5)(b) (as substituted; repealed with savings) (circumstances in which an authority is regarded as responsible for a local plan: see PARA 189 note 10 ante) applies for the purposes of s 46 (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 22; repealed with savings) as it applies for the purposes of the Town and Country Planning Act 1990 s 35C (as substituted; repealed with savings): s 46(12) (as so substituted and repealed). For the meaning of 'local plan' see PARA 195 ante.

4 Ie as mentioned in ibid s 40(2) (as substituted; repealed with savings): see PARA 201 ante.

5 Ibid s 35C(5)(a) (as substituted; repealed with savings) (circumstances in which an authority is regarded as responsible for a structure plan: see PARA 189 note 9 ante) applies for the purposes of s 46 (as substituted and repealed: see note 3 supra) as it applies for the purposes of s 35C (as substituted; repealed with savings): s 46(12) (as so substituted and repealed). As to the continuity, form and content of a structure plan see PARA 183 ante.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante. The period so prescribed is 28 days: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 40. The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

7 Town and Country Planning Act 1990 s 46(1) (as substituted and repealed: see note 3 supra).

8 As to local planning authorities generally see PARA 28 et seq ante; and as to the authorities to which these provisions apply see PARA 176 ante.

9 See note 6 supra.

10 Town and Country Planning Act 1990 s 46(2) (as substituted and repealed: see note 3 supra). The requirement is for 'general conformity' not 'conformity' and the word 'general' imports a degree of flexibility: see *Persimmon Homes (Thames Valley) Ltd v Stevenage Borough Council* [2005] All ER (D) 316 (May).

An authority responsible for a structure plan must, where any of its proposals for the alteration or replacement of a structure plan are adopted or approved, prepare a statement in respect of any local plan for which the authority is responsible, and any minerals local plan and waste local plan for its area, stating whether the plan is, or as the case may be, is not, in general conformity with the altered or new structure plan: Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 41(1). A statement so prepared stating that a local plan, minerals local plan or waste local plan is not in general conformity with a structure plan must specify the respects in which it is not in such conformity: reg 41(2). A local planning authority which makes available for inspection a plan to which a statement under the Town and Country Planning Act 1990 s 35C (as substituted; repealed with savings) (see PARA 189 ante) or the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 41(1) relates, must make a copy of the statement available for inspection at any place at which the plan is made available for inspection: reg 41(3). For these purposes, references to an authority responsible for a structure plan or a local plan are to be construed in accordance with the Town and Country Planning Act 1990 s 35C(5) (as substituted; repealed with savings) (see PARA 189 notes 9-10 ante): Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 41(4).

11 Town and Country Planning Act 1990 s 46(3) (as substituted and repealed: see note 3 supra).

12 Ie for the purposes of *ibid* Pt II Ch II (ss 29-54) (as amended; repealed with savings): see PARA 176 et seq ante, PARA 209 post.

13 *Ibid* s 46(4) (as substituted and repealed: see note 3 supra). For the meaning of 'objections made in accordance with the regulations' see PARA 202 note 3 ante.

14 Ie under *ibid* s 33(2) (as substituted; repealed with savings): see PARA 187 ante.

15 For these purposes, a copy is a relevant copy of a plan or proposals if it is served under *ibid* s 46(1)(a) (as substituted and repealed: see note 3 supra) or made available or sent under s 40(2) (as substituted; repealed with savings) (see PARA 201 ante): s 46(8) (as so substituted and repealed).

16 For these purposes, 'the permitted assumption' means the assumption that (1) the proposals mentioned in *ibid* s 46(6)(b) (as substituted and repealed: see note 3 supra); or (2) if any proposed modifications to those proposals are published in accordance with regulations made under s 53 (as amended; repealed with savings) (see PARA 177 ante), the proposals as so modified, have been adopted: s 46(7) (as so substituted and repealed).

17 *Ibid* s 46(6) (as substituted and repealed: see note 3 supra).

18 *Ibid* s 46(9) (as substituted and repealed: see note 3 supra).

19 *Ibid* s 46(5) (as substituted and repealed: see note 3 supra). As to the application of s 46 (as so substituted and repealed) to minerals local plans and waste local plans see PARAS 196 note 13, 197 note 10 respectively ante.

20 As to joint structure plans see PARA 185 ante.

21 Town and Country Planning Act 1990 s 50(7)(b) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(5); repealed with savings). The functions of a local planning authority under the Town and Country Planning Act 1990 s 50(7)(b) (as so substituted and repealed) are exercisable by the county planning authority: see PARA 152 ante.

22 As to joint local plans see PARA 198 ante.

23 Ie under the Town and Country Planning Act 1990 s 46(1) (as substituted and repealed: see note 3 supra).

24 Ie under *ibid* s 46(2) (as substituted and repealed: see note 3 supra).

25 *Ibid* s 50(7A) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 24(5); repealed with savings). The functions of a local planning authority under the Town and Country Planning Act 1990 s 50(7A) (as so substituted and repealed) are exercisable by the district planning authority: see PARA 152 ante.

26 See *ibid* s 12(3C) (as added; repealed with savings); and PARA 158 note 11 ante.

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209. Conflict between or within plans.

Under Part II of the Town and Country Planning Act 1990¹, so far as still in force², the provisions of a local plan³ prevail for all purposes over any conflicting provisions in the relevant structure plan⁴ unless the local plan is one:

- 883 (1) stated⁵ not to be in general conformity with the structure plan; and
- 884 (2) neither altered nor replaced after the statement was supplied⁶.

The Secretary of State⁷ may make regulations with respect to cases where:

- 885 (a) provisions in a structure plan or a local plan conflict with provisions in a minerals local plan⁸ or a waste local plan⁹;
- 886 (b) a structure plan and a local plan are made by the same authority and the provisions of the two plans conflict¹⁰.

Where there is a conflict between the written statement of a statutory plan¹¹ and any other document forming part of the plan, the provisions of the written statement prevail¹².

1 *Ie* under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended; repealed with savings): see PARA 149 et seq ante.

2 See PARA 148 ante.

3 For the meaning of 'local plan' see PARA 195 ante.

4 As to the continuity, form and content of a structure plan see PARA 183 ante.

5 *Ie* under the Town and Country Planning Act 1990 s 35C (as substituted; repealed with savings): see PARA 189 ante.

6 *Ibid* s 46(10) (substituted by the Planning and Compensation Act 1991 s 27, Sch 4 paras 1, 22; repealed with savings).

7 As to the Secretary of State see PARA 19 ante.

8 For the meaning of 'minerals local plan' see PARA 196 ante.

9 For the meaning of 'waste local plan' see PARA 197 note 6 ante.

10 Town and Country Planning Act 1990 s 46(11) (substituted by the Planning and Compensation Act 1991 Sch 4 paras 1, 22; repealed with savings).

The provisions of a local plan prevail for all purposes over any conflicting provisions in a structure plan made by the same authority, and the provisions of a minerals local plan and of a waste local plan prevail for all purposes over any conflicting provisions in a structure plan, unless the local plan, minerals local plan or waste local plan is one: (1) stated under the Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 41(1) (see PARA 208 note 10 ante) not to be in general conformity with the structure plan; and

(2) neither altered nor replaced after the statement was prepared: reg 42. Where there is a conflict between provisions in a local plan and provisions in a minerals local plan or waste local plan, the more recently adopted or approved provisions prevail: reg 43. The 1999 Regulations apply for transitional purposes: see PARA 148 ante.

11 For the meaning of 'statutory plan' see PARA 163 note 11 ante.

12 Town and Country Planning (Development Plan) (England) Regulations 1999, SI 1999/3280, reg 44. See eg *South Western Regional Health Authority v Avon County Council* (1990) 62 P & CR 629, CA (decided under the Town and Country Planning (Structure and Local Plans) Regulations 1982, SI 1982/555, reg 43 (revoked)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(v) Previous Transitional Arrangements/210. Transition from 1991 to 1994 legislation in Wales.

(v) Previous Transitional Arrangements

210. Transition from 1991 to 1994 legislation in Wales.

Transitional provision has been made:

887 (1) by Part III of Schedule 5 to the Local Government (Wales) Act 1994¹ with regard to the area of any local planning authority² in Wales during the period beginning on 1 April 1996 and ending when a unitary development plan³ has become fully operative⁴ for that area⁵;

888 (2) by Part IA of Schedule 2 to the Town and Country Planning Act 1990⁶ with regard to the continuation of structure, local and old development plans in Wales on and after 1 April 1996⁷.

1 See the Local Government (Wales) Act 1994 s 20(3), Sch 5 Pt III (paras 9-23) (as amended).

2 Ibid Sch 5 para 9(4)-(6) applies where the area of a local planning authority in Wales includes (1) the whole or any part of an area prescribed under the Town and Country Planning Act 1990 s 23B(2) (as added; repealed with savings) (see PARA 160 ante) in relation to a National Park; (2) other land: Local Government (Wales) Act 1994 Sch 5 para 9(3). The provisions of Sch 5 Pt III (as amended) apply separately in relation to the Park area or, if there is more than one, each Park area, and the remaining area: Sch 5 para 9(4). Any reference in Sch 5 Pt III (as amended) to the area of the local planning authority (including any reference which falls to be so construed) must be construed in its application in relation to any Park area, as a reference to that Park area, and in its application in relation to the remaining area, as a reference to that area: Sch 5 para 9(5). For these purposes, 'the Park area', in relation to a National Park, means the part of the local planning authority's area which is within the area prescribed under the Town and Country Planning Act 1990 s 23B(2) (as added; repealed with savings) in relation to that Park or, where there is more than one such part, those parts taken as a whole; and 'the remaining area' means the part of the local planning authority's area which is not within an area so prescribed in relation to any National Park: Local Government (Wales) Act 1994 Sch 5 para 9(6). As to local planning authorities generally see PARA 28 et seq ante.

3 As to unitary development plans see PARA 155 et seq ante.

4 For these purposes, a unitary development plan for the area of a local planning authority in Wales has become fully operative (1) when it has become operative under the Town and Country Planning Act 1990 Pt II Ch I (ss 10-28A) (as amended) (repealed with savings) (see PARA 155 et seq ante); or (2) where different parts of it have become operative at different times, when all parts of it have become so operative: Local Government (Wales) Act 1994 Sch 5 para 9(2). Where a unitary development plan is operative in part, but has not become fully operative, in the area of a new planning authority, to the extent that they conflict with any provision of any structure plan, local plan, minerals local plan, waste local plan, or modified plan, in force for that area or any part of it, the provisions of the unitary development plan prevail: Sch 5 para 20.

5 Ibid Sch 5 para 9(1). Transitional provision is so made in relation to (1) the preparation of modified schemes (see Sch 5 para 12); (2) default powers (see Sch 5 para 13); (3) the effect of adoption or approval of a modified plan (see Sch 5 para 14); (4) the principle that other plans are to prevail over old development plans and saved local plans (see Sch 5 para 15); (6) the principle that local plans are to prevail over structure plans (see Sch 5 para 16); (7) development plans for compensation purposes (see Sch 5 para 17); (8) revocation of the old development plan (see Sch 5 para 18); (9) the authority's temporary duty in relation to the existing structure plan (see Sch 5 para 19); (10) the position where a unitary development plan is operative in part (see Sch 5 para 20; and note 4 *supra*); (11) planning blight and structure plans (see Sch 5 paras 21-22); and (12) the power to make regulations and give directions (see Sch 5 para 23; those powers, previously exercisable by the Secretary of State, are now transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*). As to interpretation see the Local Government (Wales) Act 1994 Sch 5 para 11.

6 See the Town and Country Planning Act 1990 s 28A(1)(a), Sch 2 Pt IA (paras 1-4) (added by the Local Government (Wales) Act 1994 s 20(2), (3)(b), Sch 5 Pt II para 8).

7 Every existing plan which related to any part of Wales continued in force on and after 1 April 1996: see the Town and Country Planning Act 1990 Sch 2 Pt IA para 1(1) (as added: see note 6 *supra*). When a unitary development plan has become fully operative for the area of a local planning authority in Wales, any existing plan which is for the time being in force and any interim plan ceases to have effect in respect of its plan area to the extent that it is comprised in the area of that local planning authority: Sch 2 Pt IA para 1(2) (as so added). Any existing plan or interim plan, while it continues in force in respect of the area, or part of the area, of any local planning authority in Wales, is to be treated for the purposes of (1) the Town and Country Planning Act 1990; (2) any other enactment relating to town and country planning; (3) the Land Compensation Act 1961; and (4) the Highways Act 1980, as being, or as being comprised in, the development plan in respect of that area or, as the case may be, that part of that area: Town and Country Planning Act 1990 Sch 2 Pt IA para 1(3) (as so added). Schedule 2 Pt IA para 1(1)-(3) (as so added) has effect subject to the provisions of Sch 2 Pt IA paras 1(4)-4 (as added) and the 1994 Act transitional provisions (Sch 2 Pt IA para 1(4) (as so added)); and for these purposes, 'the 1994 Act transitional provisions' means the provisions of the Local Government (Wales) Act 1994 Sch 5 Pt III (as amended) (see head (1) in the text); 'existing plan' means a structure plan, local plan or old development plan, to the extent that it was in force in respect of any area in Wales immediately before 1 April 1996 (and includes any alteration made to, or replacement of, the plan after that date under the 1994 Act transitional provisions); 'interim plan' means any modified plan (within the meaning of the 1994 Act transitional provisions) which comes into force in respect of any area in Wales on or after 1 April 1996 under those provisions; 'old development plan' means any plan which was in force immediately before 1 April 1996 by virtue of the Town and Country Planning Act 1971 Sch 7 (repealed) and the Town and Country Planning Act 1990 Sch 2 Pt III (paras 1-10) (repealed with savings) (see PARA 212 *post* at head (3) in the text); and 'plan area', in relation to an existing plan or interim plan, means the area in respect of which it was in force immediately before 1 April 1996 or, as the case may be, comes into force on or after that date: Sch 2 Pt IA para 1(5) (as so added). 'Local plan' includes a minerals local plan, a waste local plan and a local plan adopted or approved before the commencement of the Planning and Compensation Act 1991 Sch 4 Pt I (paras 1-29) (amendments to the Town and Country Planning Act 1990) or under the Planning and Compensation Act 1991 Sch 4 Pt III (paras 40-51) (repealed with savings) (see PARA 211 *post*): Town and Country Planning Act 1990 Sch 2 Pt IA para 4 (as so added).

Transitional provision is made with regard to (a) revocation of the structure plan (see Sch 2 Pt IA para 2 (as so added)); (b) incorporation of the current local plan into the unitary development plan (see Sch 2 Pt IA para 3 (as so added)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(v) Previous Transitional Arrangements/211. Transition from 1990 to 1991 legislation in England and Wales.

211. Transition from 1990 to 1991 legislation in England and Wales.

Transitional provision was made by Part III of Schedule 4 to the Planning and Compensation Act 1991¹ with regard to the transition from the 1990 to the 1991 legislation relating to development plans in England and Wales².

1 See the Planning and Compensation Act 1991 s 27, Sch 4 Pt III (paras 40-51) (repealed with savings by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 16, Sch 9; the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4, Sch 2; the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 2(f), (g), Schedule).

2 Transitional provision was so made in relation to (1) unitary development plans (see the Planning and Compensation Act 1991 Sch 4 para 41); (2) structure plans (see Sch 4 para 42); (3) local plans (see Sch 4 paras 43-45); (4) minerals and waste local plans (see Sch 4 para 46); (5) the duty of the structure plan authority to notify the authorities responsible for saved local plans etc (see Sch 4 para 47); (6) consultation (see Sch 4 para 48); (7) joint plans (see Sch 4 para 49); (8) proceedings for questioning the validity of development plans (see Sch 4 para 50); and (9) the Isles of Scilly (see Sch 4 para 51). All the provisions cited in this note are repealed with savings: see note 1 *supra*.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/3. LOCAL DEVELOPMENT PLANNING/(3) UNITARY, STRUCTURE AND LOCAL PLANS UNDER THE 1990 ACT/(v) Previous Transitional Arrangements/212. Transition from pre-1990 legislation in England and Wales.

212. Transition from pre-1990 legislation in England and Wales.

Transitional provision was made:

889 (1) by Part I of Schedule 2 to the Town and Country Planning Act 1990¹ with regard to the continuation of structure plans, local plans and old development plans in force in the metropolitan counties immediately before 24 August 1990²;

890 (2) by Part II of Schedule 2 to the Town and Country Planning Act 1990³ with regard to the continuation of the former Greater London Development Plan, local plans and old development plans in force in Greater London immediately before 24 August 1990⁴;

891 (3) by Part III of Schedule 2 to the Town and Country Planning Act 1990⁵ with regard to old development plans⁶ in force in any district immediately before 24 August 1990⁷.

1 See the Town and Country Planning Act 1990 Sch 2 Pt I (paras 1-4) (as amended; Sch 2 Pts I, II, III repealed with savings by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 17, Sch 9; the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4, Sch 2; the Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 2(e), (g), Schedule).

2 Transitional provision was so made in relation to (1) the continuation of structure plans, local plans and old development plans until a unitary development plan became operative (see the Town and Country Planning Act 1990 Sch 2 Pt I para 1(1)-(3)); (2) revocation of the structure plan (see Sch 2 Pt I para 2(1)-(3)); (3) incorporation of the current local plan in the unitary development plan (see Sch 2 Pt I para 4(1)-(3) (substituted by the Planning and Compensation Act 1991 Sch 4 Pt II para 36(2))). All the provisions cited in this note are repealed with savings: see note 1 *supra*.

3 See the Town and Country Planning Act 1990 Sch 2 Pt II (paras 1-17) (as amended; repealed with savings (see note 1 *supra*)).

4 Transitional provision was so made in relation to (1) the continuation of the Greater London Development Plan, local plans and old development plans (see the Town and Country Planning Act 1990 Sch 2 Pt II para 1(1)-(3)); (2) revocation of the Greater London Development Plan (see Sch 2 Pt II para 2(1)-(3)); (3) incorporation of the current local plan in the unitary development plan (see Sch 2 Pt II para 17(1)-(3) (substituted by the Planning and Compensation Act 1991 Sch 4 Pt II para 36(2))). All the provisions cited in this note are repealed with savings: see note 1 *supra*. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 See the Town and Country Planning Act 1990 Sch 2 Pt III (paras 1-10) (as amended; repealed with savings (see note 1 supra)).

6 For these purposes, 'old development plan' means a development plan to which the Town and Country Planning Act 1971 Sch 7 para 2 (repealed) (continuation in force of development plans prepared before structure plans became operative) applied immediately before 24 August 1990: Town and Country Planning Act 1990 Sch 2 Pt III para 1 (repealed with savings: see note 1 supra).

7 Transitional provision was so made in relation to (1) the continuation in force of old development plans (see *ibid* Sch 2 Pt III para 2); (2) the principle that other plans are to prevail over old development plans (see Sch 2 Pt III para 3); (3) development plans for compensation purposes (see Sch 2 Pt III para 5); (4) discontinuance of the old development plan on adoption of the local plan (see Sch 2 Pt III paras 6-10). All the provisions cited in this note are repealed with savings: see note 1 supra. Schedule 2 Pt III para 4 (which made provision with regard to the treatment of former street authorisation maps) is not saved by the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4, Sch 2: see PARA 125 note 13 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(1) EXERCISE OF FUNCTIONS RELATING TO DEVELOPMENT CONTROL/(i) Exercise of Certain Functions in England/213. Planning permissions; certificates of lawfulness of existing or proposed use or development.

4. DEVELOPMENT CONTROL; IN GENERAL

(1) EXERCISE OF FUNCTIONS RELATING TO DEVELOPMENT CONTROL

(i) Exercise of Certain Functions in England

213. Planning permissions; certificates of lawfulness of existing or proposed use or development.

The functions¹ of a local planning authority² of determining:

- 892 (1) applications for planning permission³;
- 893 (2) applications for a certificate of lawfulness of existing or proposed use or development⁴,

must be exercised, in England, by the district planning authority⁵. The functions of a local planning authority of determining any such application as is mentioned in heads (1) and (2) above which relates to a county matter⁶ must, however, be exercised by the county planning authority⁷.

The above provisions do not apply to applications relating to land in a National Park⁸; nor do they apply in Greater London⁹.

If requested to do so by the council of any parish situated in its area, a local planning authority which has the functions of determining applications for planning permission must notify that council of any relevant planning application and any alteration to that application accepted by the authority¹⁰.

1 For the meaning of 'functions' see PARA 2 note 1 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante. As to applications for planning permission see PARA 452 et seq post.

4 le a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 post) or s 192 (as substituted) (see PARA 587 post).

5 Ibid s 1(3), (5)(c), Sch 1 para 3(1) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 53(1), (2); the Local Government (Wales) Act 1994 ss 18(1), (2), (6), 66(8), Sch 18; the Environment Act 1995 s 120(3), Sch 24)). As to district planning authorities (which do not exist in Wales) see PARA 28 ante. A local planning authority does not have jurisdiction to determine whether a proposed development requires planning permission; however, in considering whether permission ought to be granted, the authority may give weight to the fact that permission might not in reality be needed. The appropriate course of action for an applicant who seeks a binding determination as to whether permission is needed is to apply for a certificate of established use under the Town and Country Planning Act 1990 s 192 (as substituted) (see PARA 587 post): *Saxby v Secretary of State for the Environment* [1998] JPL 1132.

6 For the meaning of 'county matter' see PARA 38 ante.

7 Town and Country Planning Act 1990 Sch 1 para 3(2) (amended by the Planning and Compensation Act 1991 s 19(2)(a)). As to county planning authorities see PARA 28 ante. An application for planning permission relates to a county matter if, having regard to the proposed overall user of the site, that part of the application which relates to a county matter is a substantial element: *R v Berkshire County Council, ex p Wokingham District Council* (1996) 73 P & CR 430, [1997] JPL 461, CA.

8 Town and Country Planning Act 1990 Sch 1 para 3(7) (amended by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6, PARAS 1, 16(1), (3), Sch 9, partly as from a day to be appointed under s 121; at the date at which this title states the law, that amendment was not fully in force in relation to Wales: see PARA 4 note 8 ante). As to applications relating to land in a National Park see PARA 39 the text and notes 13-17 ante; and as to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

9 Town and Country Planning Act 1990 Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

10 See ibid Sch 1 para 8 (as substituted and amended); and PARA 253 note 21 post.

UPDATE

213 Planning permissions; certificates of lawfulness of existing or proposed use or development

TEXT AND NOTES 1-5--Town and Country Planning Act 1990 Sch 1 para 3(1) further amended: Planning Act 2008 s 190(1), (6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(1) EXERCISE OF FUNCTIONS RELATING TO DEVELOPMENT CONTROL/(i) Exercise of Certain Functions in England/214. Revocation or modification of planning permission etc.

214. Revocation or modification of planning permission etc.

The functions¹ of a local planning authority² of:

- 894 (1) making orders³ revoking or modifying planning permission⁴, or requiring⁵ discontinuance of use⁶, imposing conditions on continuance of use or requiring the alteration or removal of buildings or works⁷; or
- 895 (2) issuing enforcement notices⁸ or serving planning contravention notices⁹ or stop notices¹⁰ or breach of condition notices¹¹,

are exercisable in England by the district planning authority¹².

In a case, however, where it appears to the district planning authority of a district in a non-metropolitan county¹³ that the above functions relate to county matters¹⁴, the authority may not exercise those functions without first consulting¹⁵ the county planning authority¹⁶.

In a non-metropolitan county those functions are also exercisable by a county planning authority in a case where it appears to that authority that they relate to a matter which should properly be considered a county matter¹⁷.

The above provisions do not apply in Greater London¹⁸.

1 For the meaning of 'functions' see PARA 2 note 1 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Ie under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 post.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 Ie under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 post.

6 For the meaning of 'use' see PARA 221 note 4 post.

7 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

8 Ie under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 post.

9 Ie under ibid s 171C (as added and amended): see PARA 559 post.

10 Ie under ibid s 183 (as amended): see PARAS 577-579 post.

11 Ie under ibid s 187A (as added): see PARA 583 post.

12 Ibid s 1(3), (5)(c), Sch 1 para 11(1) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 53(6); the Local Government (Wales) Act 1994 ss 18(1), (2), (6), 66(8), Sch 18; the Environment Act 1995 s 120(3), Sch 24). The Town and Country Planning Act 1990 Sch 1 para 11(1) (as so amended) is subject to Sch 1 para 11(2)-(4) (see the text and notes 13-17 infra); Sch 1 para 11(1) (as so amended). As to district planning authorities (which do not exist in Wales) see PARA 28 ante.

The validity of the exercise of the functions mentioned in Sch 1 para 11(1) (as so amended) may not be called into question on the ground that Sch 1 para 11(2) (see the text and notes 13-16 infra) has not been complied with: see s 286(2) (as amended); and PARA 45 ante.

13 For the meaning of 'non-metropolitan county' see PARA 28 note 1 ante.

14 For the meaning of 'county matter' see PARA 38 ante.

15 For the meaning of 'consult' see PARA 2 note 1 ante.

16 Town and Country Planning Act 1990 Sch 1 para 11(2). See also note 12 supra. As to county planning authorities see PARA 28 ante.

17 Ibid Sch 1 para 11(3). See also note 12 supra. In relation to a matter which is a county matter by virtue of any of the provisions of Sch 1 para 1(1)(a)-(h) (as amended) (see PARA 38 ante at heads (1)-(8) in the text) the functions of a local planning authority specified in Sch 1 para 11(1)(b) (as amended: see note 12 supra) are only exercisable by the county planning authority in its capacity as mineral planning authority: Sch 1 para 11(4). For the meaning of 'mineral planning authority' see PARA 29 ante.

18 Ibid Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(1) EXERCISE OF FUNCTIONS RELATING TO DEVELOPMENT CONTROL/(i) Exercise of Certain Functions in England/215. Other functions relating to development control.

215. Other functions relating to development control.

The functions of local planning authorities¹ under the provisions of the Town and Country Planning Act 1990 relating to simplified planning zone schemes² must be exercised in non-metropolitan counties in England by the district planning authorities³.

Elsewhere than in a National Park⁴, the functions of a local planning authority under the provisions relating to completion notices⁵ are exercisable by the district planning authority, except that where the relevant planning permission⁶ was granted by the county planning authority⁷, those functions, so far as relating to that permission, are exercisable by the county planning authority and also by the district planning authority after consulting⁸ the county planning authority⁹.

The exercise of functions relating to tree preservation orders is discussed below in that context¹⁰.

Provision is made with regard to the exercise of certain enforcement functions¹¹ and other functions relating to development control¹².

The above provisions do not apply in Greater London¹³.

1 As to local planning authorities see PARA 28 et seq ante.

2 As to simplified planning zone schemes see PARA 426 et seq post.

3 Town and Country Planning Act 1990 s 1(3), (5)(c), Sch 1 para 9(1) (amended by the Local Government (Wales) Act 1994 ss 18(1), (2), (6), 66(8), Sch 18; the Environment Act 1995 s 120(3), Sch 24). As to the non-metropolitan counties see PARA 28 note 1 ante; and as to district planning authorities (of which there are none in Wales) see PARA 28 ante.

4 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

5 ie under the Town and Country Planning Act 1990 s 94: see PARA 538 post.

6 For the meaning of 'planning permission' see PARA 43 note 6 ante.

7 As to county planning authorities see PARA 28 ante.

8 For the meaning of 'consult' see PARA 2 note 1 ante.

9 Town and Country Planning Act 1990 Sch 1 para 10.

10 See ibid Sch 1 para 13 (as amended); and PARAS 850 note 20, 852 note 6 post.

11 See ibid Sch 1 para 12, Sch 1 para 12A (as added); and PARAS 568 note 3, 571 note 6, 585 note 5, 597 note 9 post.

12 See ibid Sch 1 paras 14, 15, 19, 20 (as amended); and PARAS 244 note 9, 251 note 9, 466 note 2, 540 note 7, 544 note 6, 550 note 6, 556 note 6, 562 note 5, 580 note 7, 708 note 22, 769 note 6, 771 note 4, 830 note 5, 831 note 4, 851 note 4, 877 note 5, 880 note 8, 887 note 6, 900, 983 note 13 post.

13 Ibid Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

RELATING TO DEVELOPMENT CONTROL/(ii) Exercise of Certain Functions in Wales/216.
Exercise of development control functions in Wales; in general.

(ii) Exercise of Certain Functions in Wales

216. Exercise of development control functions in Wales; in general.

Provision is made in relation to the exercise of certain enforcement and other development control functions in any area of Wales for which there is more than one local planning authority¹. The specific provision made is discussed below in the relevant context².

If requested to do so by the council for any community or group of communities situated in its area, a local planning authority which has the functions of determining applications for planning permission must notify that council of any relevant planning application and any alteration to that application accepted by the authority³.

1 See the Town and Country Planning Act 1990 s 1(6), Sch 1A paras 3-7, 11 (added by the Local Government (Wales) Act 1994 s 18, Sch 4; the Town and Country Planning Act 1990 s 1(6) amended by the Environment Act 1995 s 120(3), Sch 24).

2 See also PARA 39 ante.

3 See the Town and Country Planning Act 1990 Sch 1A para 2 (as added: see note 1 supra); and PARA 253 note 21 post.

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(2) WHAT CONSTITUTES DEVELOPMENT

(i) In general

217. Meaning of 'development'.

Except where the context otherwise requires, and subject to the provisions set out in the following paragraphs¹, 'development' means the carrying out of building², engineering³, mining⁴ or other operations⁵ in, on, over or under land⁶, or the making of any material change in the use⁷ of any buildings⁸ or other land⁹.

1 ie subject to the Town and Country Planning Act 1990 s 55(1A)-(5) (as amended): see PARA 218 et seq post.

2 For the meaning of 'building operations' see PARA 218 post.

3 For the meaning of 'engineering operations' see PARA 219 post.

4 For the meaning of 'mining operations' see PARA 220 post.

5 The operations must involve a change in the physical character of the land or what is under or over the land, and that with some degree of permanence: *Parkes v Secretary of State for the Environment* [1979] 1 All ER 211, [1978] 1 WLR 1308, CA; *Cheshire County Council v Woodward* [1962] 2 QB 126, [1962] 1 All ER 517, DC. See also *Bedfordshire County Council v Central Electricity Generating Board* [1985] JPL 43, CA (preliminary testing of suitability of land for storage of radioactive waste not development).

'Other operations' is not to be construed ejusdem generis with building, engineering or mining operations: *Coleshill and District Investment Co Ltd v Minister of Housing and Local Government* [1969] 2 All ER 525 at 532, [1969] 1 WLR 746 at 759, HL, per Lord Guest, at 537 and 764 per Lord Wilberforce, and at 543 and 771 per Lord Pearson. Nevertheless 'development' does not include every operation: *Coleshill and District Investment Co Ltd v Minister of Housing and Local Government* supra at 529 and 755 per Lord Morris of Borth-y-Gest.

Demolition of buildings falls within the statutory definition of 'building operations': see PARA 218 post at head (1) in the text.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 As to material change of use see PARA 222 post.

8 For the meaning of 'building' see PARA 2 note 10 ante.

9 Town and Country Planning Act 1990 ss 55(1), 336(1). 'Develop' is to be construed accordingly: s 336(1). Accordingly, where a local development policy refers to 'development' that includes 'material change of use': see *Holding v First Secretary of State* [2003] All ER (D) 206 (Nov).

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218. Meaning of 'building operations'.

'Building operations' includes:

- 896 (1) demolition of buildings¹;
- 897 (2) rebuilding²;
- 898 (3) structural alterations of or additions to buildings; and
- 899 (4) other operations normally undertaken by a person carrying on business as a builder³.

1 For the meaning of 'building' see PARA 2 note 10 ante. When considering whether an item is a building or structure, a threefold test of size, permanence and degree of physical attachment is to be applied, permanence being a matter of degree: *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2000] 2 PLR 102, CA (temporary nature of large marquee, erected in hotel grounds for eight months each year, did not exclude it from the Town and Country Planning Act 1990 s 55 (as amended)). A mobile shed on a wheeled chassis which is in no way attached to the land and which can be moved freely is not a 'building', and its erection does not constitute a 'building operation' under the Town and Country Planning Act 1990 s 55(1) (see PARA 218 ante): *Tewkesbury Borough Council v Keeley* [2004] EWHC 2594 (QB), [2004] All ER (D) 231 (Nov). As to demolition in the context of a listed building see *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481, [1997] 1 WLR 168, HL; and PARA 1109 note 2 post.

2 Where no building has stood on a site for many years, the proposed erection of a building there may properly be treated as proposed new development rather than rebuilding: see eg *Smith v First Secretary of State* [2005] All ER (D) 157 (Sep).

3 Town and Country Planning Act 1990 s 55(1A) (added by the Planning and Compensation Act 1991 s 13(1)); Town and Country Planning Act 1990 s 336(1) (definition added by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 52(1), (2)(c)). Certain building operations do not, however, involve development: see PARA 223 post.

UPDATE

218 Meaning of 'building operations'

NOTE 1--See also *R (on the application of Hall Hunter Partnership) v First Secretary of State* [2006] EWHC 3482 (Admin), [2007] 2 P & CR 73 (fact that polytunnels could be dismantled annually not conclusive of issue of permanence).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(i) In general/219. Meaning of 'engineering operations'.

219. Meaning of 'engineering operations'.

Except in so far as the context otherwise requires, 'engineering operations' includes the formation or laying out of means of access¹ to highways².

Where the placing or assembly of any tank³ in any part of any inland waters⁴ for the purpose of fish farming there would not otherwise⁵ involve development⁶ of the land⁷ below, the Town and Country Planning Act 1990 has effect as if the tank resulted from carrying out engineering operations over that land⁸.

1 For these purposes, except in so far as the context otherwise requires, 'means of access' includes any means of access, whether private or public, for vehicles or for foot passengers, and includes a street: Town and Country Planning Act 1990 s 336(1).

2 Ibid s 336(1). For the meaning of 'highway' see PARA 50 note 5 ante.

Engineering operations are operations of the kind usually undertaken by engineers, although an engineer need not actually be engaged on the activity under consideration: *Fayrewood Fish Farms v Secretary of State for the Environment and Hampshire County Council* [1984] JPL 267. The removal of earth embankments surrounding a building operation may be an engineering operation: *Coleshill and District Investment Co Ltd v Minister of Housing and Local Government* [1969] 2 All ER 525, [1969] 1 WLR 746, HL. The tipping of refuse or waste material to raise the level of agricultural land to facilitate drainage is an engineering operation, provided it is shown that the object of the exercise is genuinely to improve the quality of the land: *Northavon District Council v Secretary of State for the Environment* (1980) 40 P & CR 332, DC. As to the tipping of refuse and waste materials generally see PARA 222 note 23 post. The Secretary of State has held that filling in a ha-ha is an engineering operation: see [1957] JPL 452.

3 For these purposes, 'tank' includes any cage and any other structure for use in fish farming; and 'fish farming' means the breeding, rearing or keeping of fish or shellfish, which includes any kind of crustacean and mollusc: Town and Country Planning Act 1990 s 55(4A) (added by the Planning and Compensation Act 1991 s 14(1)).

4 For these purposes, 'inland waters' means waters which do not form part of the sea or of any creek, bay or estuary or of any river as far as the tide flows: Town and Country Planning Act 1990 s 55(4A) (as added: see note 3 supra).

5 Ie apart from ibid s 55(4A) (as added: see note 3 supra).

6 For the meaning of 'development' see PARA 217 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 s 55(4A) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(i) In general/220. Meaning of 'mining operations'.

220. Meaning of 'mining operations'.

Mining operations include:

- 900 (1) the removal of material of any description:
85
121. (a) from a mineral-working deposit¹;
122. (b) from a deposit of pulverised fuel ash or other furnace ash or clinker; or
123. (c) from a deposit of iron, steel or other metallic slags; and
86
901 (2) the extraction of minerals² from a disused railway embankment³.

1 For the meaning of 'mineral-working deposit' see PARA 16 note 2 ante.

2 For the meaning of 'minerals' see PARA 16 note 2 ante.

3 Town and Country Planning Act 1990 s 55(4).

Where mining operations are taking place, each shovelful or cut by the bulldozer is a separate act of development: *Thomas David (Porthcawl) Ltd v Penybont RDC* [1972] 1 All ER 733 at 738, [1972] 1 WLR 354 at 359, DC, per Lord Widgery CJ; affd [1972] 3 All ER 1092, [1972] 1 WLR 1526, CA. See also *Bedfordshire County Council v Central Electricity Generating Board* [1985] JPL 43, CA (cited in PARA 217 note 5 ante).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(i) In general/221. Time when development is begun.

221. Time when development is begun.

Development¹ of land² is taken³ to be initiated:

- 902 (1) if the development consists of the carrying out of operations, at the time when those operations are begun;
903 (2) if the development consists of a change in use⁴, at the time when the new use is instituted;
904 (3) if the development consists both of the carrying out of operations and of a change in use, at the earlier of the times mentioned in heads (1) and (2) above⁵.

For the purposes of specified provisions⁶ of the Town and Country Planning Act 1990, however, development is taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out⁷; and for these purposes, 'material operation' means:

- 905 (a) any work of construction in the course of the erection⁸ of a building⁹;
906 (b) any work of demolition of a building;
907 (c) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
908 (d) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building or to any such trench as is mentioned in head (c) above;
909 (e) any operation in the course of laying out or constructing a road or part of a road;

910 (f) any change in the use of any land which constitutes material development¹⁰.

For certain of the statutory purposes mentioned above¹¹, development consisting of the winning and working of minerals¹² is taken to be begun on the earliest date on which the winning and working of minerals to which the relevant grant of planning permission relates begins; and the provisions set out above do not apply¹³.

For the purposes of certain transitional provisions under previous legislation¹⁴, certain acts which were not specified operations under that legislation may have amounted to the beginning of development¹⁵.

1 For the meaning of 'development' see PARA 217 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Ie for the purposes of the Town and Country Planning Act 1990 but subject to s 56(2)-(6) (as amended): see the text and notes 4-10 infra. See also the text and notes 11-13 infra.

4 Except so far as the context otherwise requires, 'use', in relation to land, does not include the use of land for the carrying out of any building or other operations on it: *ibid* s 336(1). For the purpose of the provisions specified in s 315(1), Sch 16 Pts I, II (as amended), however (see PARA 16 note 4 ante), 'use' in relation to the discontinuance of a use of land includes the discontinuance of the use of land for development consisting of the winning and working of minerals; and save as so provided, for the purpose of those provisions 'use', in relation to land, does not include the use of land for development consisting of the winning and working of minerals: Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863, reg 2. 'Development consisting of the winning and working of minerals' does not include the winning and working, on land held or occupied with land used for the purposes of agriculture, of any minerals reasonably required for the purposes of that use, including the fertilisation of the land so used and the maintenance, improvement or alteration of buildings or works on it which are occupied or used for those purposes: reg 1.

5 Town and Country Planning Act 1990 s 56(1). Section 56 (as amended) applies for determining, for the purposes of the Town and Country Planning Act 1990, when development of land is taken to be initiated: s 336(6).

6 Ie for the purposes of *ibid* s 85(2) (see PARA 432 post), s 86(6) (see PARA 443 post), s 87(4) (see PARA 427 post), s 89 (see PARA 1503 post), s 91 (as amended) (see PARA 537 post), s 92 (as amended) (see PARA 519 post) and s 94 (see PARA 538 post).

7 *Ibid* s 56(2), (3) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 10(1)). The test as to whether an operation is material is not the quantum of work carried out but whether it relates to the planning permission involved: *Malvern Hills District Council v Secretary of State for the Environment* (1982) 81 LGR 13, 46 P & CR 58, CA; *Thayer v Secretary of State for the Environment* [1992] JPL 264, CA. The test for determining whether the developer intends to complete the works is an objective test: *Riordan Communications Ltd v South Buckinghamshire District Council* (1999) 81 P & CR 85, [2000] 1 PLR 45. Whether the land that is the subject of the relevant planning permission is, at the moment of commencement, in the ownership of the developer or of the developer and others makes no difference to the principle that a starting point has to be identified to determine whether the planning permission remains extant: *Ashfield v National Assembly for Wales* [2003] EWHC 3309 (Admin), [2004] All ER (D) 240 (Jan). As to the significance of differences in the original plan and the works later carried out see *Commercial Land Ltd v Secretary of State for Transport, Local Government and the Regions* [2003] JPL 358, [2002] All ER (D) 444 (May).

8 For the meaning of 'erection' see PARA 2 note 10 ante.

9 For the meaning of 'building' see PARA 2 note 10 ante.

10 Town and Country Planning Act 1990 s 56(4) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 10(2)). Pegging of an access road and surface clearance may fall within head (e) in the text: see *Aerlink Leisure Ltd (in liquidation) v First Secretary of State* [2004] EWHC 3198 (Admin), [2004] All ER (D) 359 (Dec). For these purposes, 'material development' means any development other than (1) development for which planning permission is granted by a general development order or local development order for the time being in force and which is carried out so as to comply with any condition or limitation subject to which planning permission is so granted; (2) development of a class specified in the Town and Country Planning Act 1990 Sch 3 para 1 or Sch 3 para 2 (see PARA 920 post); (3) development of any class prescribed for the purposes of s 56(4) (as so amended): s 56(5) (amended by the Planning and Compensation Act 1991 Sch 6 paras 8, 10; and by the Planning and Compulsory Purchase Act 2004 s 40(2)(a) (partly as from a day to be appointed under s 121; at

the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante)). 'General development order' means a development order, within the meaning of the Town and Country Planning Act 1990 s 59 (see PARA 252 post), made as a general order applicable, subject to such exceptions as may be specified in it, to all land in England and Wales: s 56(6). As to local development orders see PARA 419 et seq post. For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'prescribed' see PARA 16 note 5 ante.

At the date at which this title states the law no classes of development had been prescribed by regulations made under head (3) supra; it is apprehended that the Material Development Regulations 1967, SI 1967/494, which previously had effect as if so made, lapsed on the repeal of their enabling power by the Statute Law (Repeals) Act 1998.

11 le for the purposes the Town and Country Planning Act 1990 s 91 (as amended) (see PARA 537 post), s 92 (as amended) (see PARA 519 post) and s 94 (see PARA 538 post).

12 See note 4 supra.

13 Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863, reg 3, Schedule para 1.

14 le for the purposes of the Town and Country Planning Act 1971 Sch 24 para 20 (repealed) (transitional provisions in respect of outline planning permission).

15 See *Field v First Secretary of State* [2004] 06 EG 145 (CS), [2004] All ER (D) 199 (Jan).

UPDATE

221 Time when development is begun

NOTE 10--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

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222. Material change of use.

In considering and determining whether there has been a material change¹ in the use² of buildings³ or other land⁴, the matter to be considered is the character of the use and not the particular purpose of the particular occupier; and thus, where goods are sold, the mere fact that they were formerly manufactured by the dealer but are now bought from another manufacturer does not involve a material change; nor does the mere fact that goods are sold or stored which were not dealt in before. Similarly, a change in ownership of the land has no relevance⁵.

Nevertheless, it seems that many considerations are material in determining the character of a use⁶; the use of land may thus be narrowly defined⁷; and some uses have been described as sui generis⁸. The question whether there has been a material change of use is⁹ primarily one of fact and degree¹⁰. Whether a material change in the use of buildings or other land has taken place is to be considered and determined in the context of the appropriate planning unit¹¹. Save in very exceptional circumstances, a single dwelling house ought to be treated as a single planning unit¹².

The planning unit may accommodate more than one activity and may include activities which are primary and ancillary¹³ activities or are primary activities alone¹⁴. The right to use land for an activity hitherto ancillary to a primary use is lost on the cessation of the primary activity¹⁵. A change in the character of an ancillary use may amount to a material change in the use of the

land in, over or under which it is carried on¹⁶. There may be a material change in the use of the land as the result of the intensification of an existing use of land, the test being whether the use has been intensified to such a degree that it can be said to have become a materially different use compared with the original¹⁷.

The use of land may be of an intermittent or seasonal nature; in such a case the resumption of activity is not development¹⁸. Where the use to which land has been put has been suspended without there being any intervening use, *prima facie* the resumption of that use does not constitute development¹⁹; but, where land has remained unused for a considerable time, the circumstances may be such that the use will be taken to have been abandoned²⁰.

For the avoidance of doubt:

- 911 (1) the use as two or more separate dwelling houses of any building previously used as a single dwelling house involves a material change in the use of the building and of each part of it which is so used²¹;
- 912 (2) the deposit of refuse or waste materials²² on land involves a material change in its use, notwithstanding that the land is comprised in a site already used for that purpose if the superficial area of the deposit is extended or the height of the deposit is extended and exceeds the level of the land adjoining the site²³.

The use for the display of advertisements²⁴ of any external part of a building which is not normally used for that purpose is treated²⁵ as involving a material change in the use of that part of the building²⁶.

The use as temporary sleeping accommodation²⁷ of any residential premises²⁸ in Greater London²⁹ involves a material change of use of the premises and of each part thereof which is so used³⁰; and there is a material change of use of a dwelling house³¹ in Greater London if, not being subject to a time-sharing scheme³², it becomes so subject³³.

A change in the use of land or buildings to a use as a waste disposal installation for a specified purpose³⁴ involves a material change in the use of that land or those buildings³⁵.

The test for determining whether a material change of use has occurred is an objective test, the application of which is unaffected by the health or infirmity of the landowner³⁶.

1 le a change which is material for the purposes of town and country planning: *Marshall v Nottingham City Corpn* [1960] 1 All ER 659 at 666, [1960] 1 WLR 707 at 719; *East Barnet UDC v British Transport Commission* [1962] 2 QB 484 at 491, [1961] 3 All ER 878 at 884, DC, per Lord Parker CJ; *Westminster City Council v British Waterways Board* [1985] AC 676 at 683-684, [1984] 3 All ER 737 at 742-743, HL, per Lord Bridge.

2 For the meaning of 'use' see PARA 221 note 4 ante.

3 For the meaning of 'building' see PARA 2 note 10 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 *Marshall v Nottingham City Corpn* [1960] 1 All ER 659, [1960] 1 WLR 707; *East Barnet UDC v British Transport Commission* [1962] 2 QB 484, [1961] 3 All ER 878, DC; *Westminster City Council v British Waterways Board* [1985] AC 676 at 683-684, [1984] 3 All ER 737 at 742-743, HL, per Lord Bridge. See also *Lewis v Secretary of State for the Environment* (1971) 23 P & CR 125, DC (vehicle repair depot); *Snook v Secretary of State for the Environment* (1975) 33 P & CR 1, DC (storage of building materials); *Philip Farrington Properties Ltd v Secretary of State for the Environment and Lewes District Council* [1982] JPL 638 (vehicle repair use). The purpose for which a caravan has been stationed on land may, however, be relevant in determining whether there has been a material change of use: *Restormel Borough Council v Secretary of State for the Environment and Rabey* [1982] JPL 785. See also *Wealden District Council v Secretary of State for the Environment and Colin Day* [1988] JPL 268, CA (use of caravan for storage of feed and shelter). It has been held that a decision whether permission to use the river bed for water and ships included permission to use it for water and ships which attracted helicopter traffic, and therefore whether such use amounted to a change of use, ought to be left to the planning authorities with whom Parliament had entrusted such decisions; and that a court which said that such changes would, rather than could, amount to a change of use had gone too far, even though the parties

had expressly consented to such a finding: see *Thames Heliport plc v Tower Hamlets London Borough Council* (1997) 74 P & CR 164, [1997] 2 PLR 72, CA.

6 See *Williams v Minister of Housing and Local Government* (1967) 65 LGR 495, DC, per Widgery J.

7 See eg *Clarke v Minister of Housing and Local Government* (1966) 18 P & CR 82, DC (lodge occupied by gardener employed by owner of main house; on conversion of main house to hotel, lodge used as hostel for staff of hotel); *Mayflower Cambridge Ltd v Secretary of State for the Environment* (1975) 30 P & CR 28, DC (change of use from bed-sitting rooms to hotel); *Winmill v Secretary of State for the Environment and Royal Borough of Kingston-upon-Thames* [1982] JPL 445 (change of use from bed-sitting rooms and flats to guest house); *Commercial and Residential Property Development Co Ltd v Secretary of State for the Environment and the Royal Borough of Kensington and Chelsea* [1982] JPL 513 (change of use from hostel providing semi-permanent accommodation to one providing short-stay accommodation); *Panayi v Secretary of State for the Environment* (1985) 50 P & CR 109 (change of use of building containing self-contained flats to homeless persons' hostel). Cf *Blackpool Borough Council v Secretary of State for the Environment and Keenan* [1980] JPL 527, DC (change of use from private dwelling house to holiday lettings not material). See also *London Residuary Body v Secretary of State for the Environment* [1988] 2 PLR 79; affd in part [1989] 3 PLR 105, CA (County Hall, formerly occupied by the Greater London Council, had a London governmental use as opposed to an ordinary office use); *Pittman v Secretary of State for the Environment and Canterbury City Council* [1988] JPL 391 (change from agricultural use to leisure plots); *Sussex Investments Ltd v Secretary of State for the Environment and Spelthorne Borough Council* [1997] NPC 190, [1998] PLCR 172, CA (change of use from mooring of residential houseboat to mooring of house built on floating platform); *Richmond upon Thames London Borough Council v Secretary of State for the Environment, Transport and the Regions* [2000] 2 PLR 115, DC (change of use of building containing self-contained flats to single dwelling house).

8 See *Mornford Investments Ltd v Minister of Housing and Local Government* (1970) 21 P & CR 609, DC (students' hostel); *Tessier v Secretary of State for the Environment* (1975) 74 LGR 279, DC (sculptor's studio). Cf *Forkhurst Ltd v Secretary of State for the Environment and Brentwood District Council* [1982] JPL 448 (car breaking and recovery of metal held not to be sui generis); *London Residuary Body v Secretary of State for the Environment* [1988] 2 PLR 79; affd in part [1989] 3 PLR 105, CA (County Hall, formerly occupied by the Greater London Council).

9 Certain matters are, however, expressly declared by the Town and Country Planning Act 1990 to involve a material change of use (see the text and notes 21-26 infra); and certain uses of land do not involve development (see PARA 223 post).

It has been held that an intention to operate refuse collection vehicles on land should not be equated with actual operation of those vehicles so as to amount to a change of use (see *MDJ Light Brothers Ltd v First Secretary of State* [2003] All ER (D) 158 (May)); however, while a claimant's intention in respect of the use of the land is in no way definitive as to whether or not a change of use has taken place, his stated intention to carry out works is a relevant factor when considering the overall picture (*Fox v First Secretary of State* [2003] EWHC 887 (Admin), [2003] All ER (D) 453 (Mar)).

10 *East Barnet UDC v British Transport Commission* [1962] 2 QB 484, [1961] 3 All ER 878, DC; *Bendles Motors Ltd v Bristol Corp* [1963] 1 All ER 578, [1963] 1 WLR 247, DC; *Westminster City Council v British Waterways Board* [1985] AC 676 at 683-684, [1984] 3 All ER 737 at 742-743, HL, per Lord Bridge. The supply on prescription of pharmaceutical goods from a supermarket does not constitute a material change of use: *R v Maldon District Council, ex p Pattani* (1998) 47 BMLR 54, [1999] PLCR 1, CA. Whether land is used for grazing is a question of fact and degree: *Fox v First Secretary of State* [2003] EWHC 887 (Admin), [2003] All ER (D) 453 (Mar). Use of a building as a dwelling does not cease if the landowner or his invitees do not actually sleep there for even quite long periods of time; thus an absence from the building while the owner takes a substantial holiday does not mean that he has ceased to use the building as his dwelling; by contrast indications that there had been such cessation of use would be absence combined with removal of all personal effects and disconnection of services: see *Swale Borough Council v First Secretary of State* [2005] EWHC 290 (Admin) at [19], [2005] All ER (D) 118 (Mar) per Evans-Lombe J.

11 *G Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 All ER 701, [1966] 1 WLR 506, CA. The planning unit will normally be the unit of occupation; but, where land is used for two or more different and unrelated purposes each in separate areas, each such area should be treated as a separate planning unit: *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240, [1972] 1 WLR 1207, DC; but see *Rawlins v Secretary of State for the Environment, Gregory v Secretary of State for the Environment* [1989] JPL 439; affd [1990] 1 PLR 110, CA (planning unit comprised a number of individual plots of land under separate ownership). See also *East Barnet UDC v British Transport Commission* [1962] 2 QB 484, [1961] 3 All ER 878, DC (vacant land within former railway goods yard); *Williams-Denton v Watford RDC* (1963) 15 P & CR 11, DC (land used partly for agriculture, partly as caravan site); *Johnston v Secretary of State for the Environment* (1974) 73 LGR 22, DC (block of garages let as separate units); *Hilliard v Secretary of State for the Environment* (1978) 37 P & CR 129, CA (sale of produce from building on farm); *Jennings Motors Ltd v Secretary of State for the Environment* [1982] QB 541, [1982] 1 All ER 471, CA (composite unit for taxi and car hire business, vehicle repairs and car sales).

Where caravans are dotted about a field with open spaces between them, the whole field is the caravan site: *Thomas David (Porthcawl) Ltd v Penybont RDC* [1972] 3 All ER 1092 at 1095, [1972] 1 WLR 1526 at 1530, CA, obiter per Lord Denning MR.

The erection of a new building does not necessarily create a new planning unit or open a new chapter in the planning history; but a change in the physical nature of the premises or its planning status may give rise to an inference that reliance on a prior use is being abandoned and a new planning history about to begin, the question being one of fact and degree in each case: *Jennings Motors Ltd v Secretary of State for the Environment* supra; *Prosser v Minister of Housing and Local Government* (1968) 67 LGR 109, DC; *Petticoat Lane Rentals Ltd v Secretary of State for the Environment* [1971] 2 All ER 793, [1971] 1 WLR 1112, DC; *Leighton and Newman Car Sales Ltd v Secretary of State for the Environment* (1976) 32 P & CR 1, CA; *Joyce Shopfitters Ltd v Secretary of State for the Environment* [1976] JPL 236, DC; *Hilliard v Secretary of State for the Environment* supra; *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL.

A material change of use may occur when the planning unit is sub-divided: see *Wakelin v Secretary of State for the Environment* (1978) 46 P & CR 214, CA; *Winton v Secretary of State for the Environment* (1982) 46 P & CR 205; *Pope v Secretary of State for the Environment and Teignbridge District Council* (1991) 63 P & CR 442.

The use of part of a farm for a non-agricultural use may constitute a new and separate planning unit: *Warnock v Secretary of State for the Environment and Dover District Council* [1980] JPL 590, DC (lairage).

12 *Wood v Secretary of State for the Environment* [1973] 2 All ER 404 at 408, 409, [1973] 1 WLR 707 at 712, DC, per Lord Widgery CJ. See also *Brooks v Gloucestershire County Council* (1967) 66 LGR 386, DC (dwelling house part residential, part shop). The question whether the use by the owner of a dwelling house of one or two rooms for his professional or business purposes constitutes a material change of use of the whole house is one of fact and degree in each case. For ministerial decisions that such use constitutes a material change see eg Selected Appeals VI/20 (use of outbuildings for mending cloth); [1968] JPL 637 (tailoring business); [1970] JPL 156 (dog breeding); [1974] JPL 554 (one room as nursing agency); [1976] JPL 328 (veterinary operating theatre); [1980] JPL 885 (use of kitchen to prepare sandwiches and salads for local firms).

13 If ancillary to a primary use of the same planning unit. Where a particular building or parcel of land is part of a larger unit and the activity in, over or under it is merely ancillary to the use of the unit as a whole, its use is determined by that of the unit as a whole: *Vickers-Armstrong Ltd v Central Land Board* (1957) 9 P & CR 33, CA (administration block in general industrial unit); *G Percy Trentham Ltd v Gloucestershire County Council* [1966] 1 All ER 701, [1966] 1 WLR 506, CA (farm buildings); *Brazil (Concrete) Ltd v Amersham RDC* (1966) 65 LGR 207, DC; affd (1967) 65 LGR 365, CA (carpenter's shop in builders' yard). Cf *Duffy v Secretary of State for the Environment and Westminster London Borough Council* [1981] JPL 811 (staff accommodation building 'geographically separated' from main hotel building); and see *Swinbank v Secretary of State for the Environment and Darlington Borough Council* [1987] JPL 781; *Fuller v Secretary of State for the Environment* [1987] JPL 854. The ancillary link may be lost where the ancillary use grows to such a point that it can no longer be said to be ancillary, but to have become a separate use in its own right: *Trio Thames Ltd v Secretary of State for the Environment and Reading Borough Council* [1984] JPL 183. It is a misapplication of this concept to treat the use or uses of a single planning unit as ancillary to activities carried on outside the unit altogether: *Westminster City Council v British Waterways Board* [1985] AC 676 at 684, [1984] 3 All ER 737 at 743, HL, per Lord Bridge. The commencement of a use ancillary to an established use does not require planning permission: *Emma Hotels Ltd v Secretary of State for the Environment* (1980) 41 P & CR 255, DC (non-residents' bar in private hotel). See also *Allen v Secretary of State for the Environment* [1990] 1 PLR 25 (retail sale of home-grown plants and shrubs); *Harrods Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 412, [2002] 12 LS Gaz R 36, [2002] All ER (D) 73 (Mar) (when deciding whether a proposed change of use of retail premises amounts to development, it is appropriate to consider shops in general, rather than a particular shop, to determine what ancillary activities may be); *R (on the application of I'm Your Man Ltd) v North Somerset Council* [2004] EWHC 342 (Admin), [2004] All ER (D) 423 (Feb) (helicopter experience flights and helicopter flights by visitors constituting ancillary use of site operating as a helicopter museum).

14 Where two or more primary activities are carried on within the same planning unit, its use is determined by reference to all the activities concerned, and the use is said to be a composite or mixed use: see eg *Wipperman v Barking London Borough Council* (1965) 64 LGR 97, DC; *Burdle v Secretary of State for the Environment* [1972] 3 All ER 240, [1972] 1 WLR 1207, DC. Where there is a composite or mixed use, the cessation of one of the component activities would not of itself amount to a material change of use, but there may be a material change of use if one component use absorbs the entire site to the exclusion of the other: *Wipperman v Barking London Borough Council* supra. See also *Cook v Secretary of State for the Environment and Penwith District Council* [1982] JPL 644; *Philglow Ltd v Secretary of State for the Environment* (1984) 51 P & CR 1, CA. See also *R (on the application of Lowther) v Durham County Council* [2001] EWCA Civ 781, [2002] 1 P & CR 283, [2001] 3 PLR 83 (waste disposal not a land use merely because owner uses fuel derived from waste); *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, [2003] 1 WLR 348 (generation of electricity from waste ancillary to use of waste disposal site).

15 *David W Barling Ltd v Secretary of State for the Environment and Swale District Council* [1980] JPL 594, DC (use involving storage of materials in connection with housebuilding).

16 See eg *Williams v Minister of Housing and Local Government* (1967) 65 LGR 495, DC (sale of imported produce from nursery garden); *Felton & Sons (Motors) Ltd v Secretary of State for the Environment* (1973) 227 Estates Gazette 1475, DC (vehicle repairs); *Jones v Secretary of State for the Environment* (1974) 28 P & CR 362, DC (road haulage business and manufacture of trailers); *Chrysanthou v Secretary of State for the Environment and Haringey London Borough Council* [1976] JPL 371, DC (bakery); *Wakelin v Secretary of State for the Environment and St Albans District Council* [1978] JPL 769, CA (lodge converted to a separate dwelling); *Newport v Secretary of State for the Environment* (1980) 40 P & CR 261, DC (sale of cars); *Winton v Secretary of State for the Environment* (1982) 46 P & CR 205 (change of use of part of building to independent industrial use); *Pope v Secretary of State for the Environment and Teignbridge District Council* (1991) 63 P & CR 442 (former boiler house converted for residential occupation by owner while main house renovated; material change of use when boiler house subsequently let to tenants on completion of work to main house).

17 *Guildford RDC v Fortescue, Guildford RDC v Penny* [1959] 2 QB 112, [1959] 2 All ER 111, CA; *Royal Borough of Kensington and Chelsea v Secretary of State for the Environment and Mia Carla Ltd* [1981] JPL 50, DC. The language of intensification applies most usefully where there is no convenient or distinctive description to distinguish the former and later uses being compared except only in terms of their scale: *Blum v Secretary of State for the Environment and Richmond upon Thames London Borough Council* [1987] JPL 278 at 281 per Simon Brown J. See also *Birmingham Corp v Minister of Housing and Local Government and Habib Ullah* [1964] 1 QB 178, [1963] 3 All ER 668, DC (multiple occupation of dwelling house); *Peake v Secretary of State for Wales* (1971) 70 LGR 98, DC (vehicle repairs in private garage); *Brooks and Burton Ltd v Secretary of State for the Environment* [1978] 1 All ER 733, [1977] 1 WLR 1294, CA (industrial use of open land); *Childs v First Secretary of State* [2005] All ER (D) 190 (Oct) (significant increase in the number of caravans stationed on a site would be a material change of use).

18 *Hawes v Thornton Cleveleys UDC* (1965) 17 P & CR 22, DC (summer use of forecourt building); *Webber v Minister of Housing and Local Government* [1967] 3 All ER 981, [1968] 1 WLR 29, CA (summer use for camping; winter use for grazing).

19 *Fyson v Buckinghamshire County Council* [1958] 2 All ER 286n, [1958] 1 WLR 634, DC (land vacant for seven years). See also *Hamblett v Flintshire County Council* (1960) 11 P & CR 284, DC.

20 *Hartley v Minister of Housing and Local Government* [1969] 2 QB 46, [1969] 1 All ER 309, DC; affd [1970] 1 QB 413, [1969] 3 All ER 1658, CA; *Young v Secretary of State for the Environment* [1983] JPL 465, CA; affd [1983] 2 AC 662, [1983] 2 All ER 1105, HL. The intention of the owner or occupier is a material factor in determining whether or not a use has been abandoned, but the intention may be established both from direct evidence and from the conduct and behaviour of the owner or occupier: *Nicholls v Secretary of State for the Environment and Bristol City Council* [1981] JPL 890. Where, in the case of a composite use, one of the component uses absorbs the whole site to the exclusion of the other, the latter is taken to have been abandoned: *Hartley v Minister of Housing and Local Government* supra at 57 and at 315 per Ashworth J. See also *TA Miller v Minister of Housing and Local Government* [1968] 2 All ER 633, [1968] 1 WLR 992, CA (abandonment); *Ratcliffe v Secretary of State for the Environment* [1975] JPL 728, DC (abandonment); *Hale v Lichfield District Council* (1979) unreported (cottage unoccupied for 13 years; residential use not abandoned); *Castell-y-Mynach Estate Trustees v Secretary of State for Wales and Taff Ely Borough Council* [1985] JPL 40 (abandonment of residential use where house unoccupied for 18 years); *White v Secretary of State for the Environment* [1989] 2 PLR 29, CA (abandonment of use not requiring planning permission because begun before 1 July 1948; subsequent resumption of use; resumption amounted to material change of use requiring planning permission). As to the factors to be taken into consideration in determining whether abandonment has occurred, including the weight to be given to the owner's intentions, see *Hughes v Secretary of State for the Environment, Transport and the Regions* (1999) 80 P & CR 397, [2000] 1 PLR 76, [2000] JPL 826, CA. A grant of planning permission enures for the benefit of the land to which it relates and all persons for the time being interested in it; consequently a valid planning permission capable of implementation cannot be abandoned by conduct of the owner or occupier of the land for the time being: *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment and the Peak Park Joint Planning Board* [1985] AC 132, [1984] 2 All ER 358, HL.

21 Town and Country Planning Act 1990 s 55(3)(a). The question whether there has been a change of use within the ambit of s 55(3)(a) is one of fact and degree to be determined (inter alia) by the existence or absence of any degree of physical reconstruction, and the extent to which the alleged separate dwellings can be regarded as separate in the sense of being self-contained and independent of other parts of the same property: *Ealing Corp v Ryan* [1965] 2 QB 486, [1965] 1 All ER 137, DC. It is doubtful whether the principles enunciated in cases decided under the Rent Acts are applicable for the purposes of the Town and Country Planning Act 1990 s 55(3)(a): *Birmingham Corp v Minister of Housing and Local Government and Habib Ullah* [1964] 1 QB 178 at 187, [1963] 3 All ER 668 at 674, DC, per Lord Parker CJ. As to the effect of the Town and Country Planning Act 1990 s 55(3)(a) in the context of enforcement action see *Doncaster Borough Council v Secretary of State for the Environment and Dunnill, Van Dyck v Secretary of State for the Environment and*

Southend-on-Sea BC (1993) 91 LGR 459, 66 P & CR 61, CA; *Worthing Borough Council v Secretary of State for the Environment* (1991) 63 P & CR 446. As to enforcement see PARA 551 et seq post.

22 For these purposes, references to waste are modified to include 'Directive Waste' as defined by the Waste Management Licensing Regulations 1994, SI 1994/1056, reg 1(3), Sch 4 Pt II: see reg 19, Sch 4 Pt I para 11. See further ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

23 Town and Country Planning Act 1990 s 55(3)(b). The effect of s 55(3)(b) is that the tipping on sites of refuse or waste materials is to be treated as a material change of use and not as operational development: *Bilboe v Secretary of State for the Environment* (1980) 39 P & CR 495, CA; *Roberts v Vale Royal District Council* (1977) 39 P & CR 514, DC. The Town and Country Planning Act 1990 s 55(3)(b) permits the continuance of tipping on sites used for that purpose on 1 July 1948 subject to limitations: see *Macdonald v Glasgow Corp'n* 1960 SLT (Sh Ct) 21 per Sheriff RH Sherwood Calver QC. Where land was so used on 1 July 1948, that use may subsequently have been abandoned, in which case the resumption of tipping would require planning permission: *Ratcliffe v Secretary of State for the Environment* [1975] JPL 728, DC. Where the backfilling of quarry refuse has been part of the use as a quarry, filling with household refuse subsequent to the cessation of quarrying is a material change of use even though the superficial area of the tip has not been extended nor its height raised above the level of the adjoining ground: *Alexandra Transport Co Ltd v Secretary of State for Scotland* 1974 SLT 81. Cf *R v Surrey County Council, ex p Monk* (1986) 53 P & CR 410 (planning permission subject to condition requiring infilling of quarry with materials suitable for plant growth; materials could include waste if agreed with local authority to be suitable for that purpose). See also *Northavon District Council v Secretary of State for the Environment* (1980) 40 P & CR 332, DC; *MacPherson v Secretary of State for Scotland* [1985] JPL 788, Ct of Sess; *Surrey County Council v Verrechia* [1998] JPL 219, CA.

24 For the meaning of 'advertisement' see PARA 770 post.

25 le without prejudice to any regulations made under any provisions of the Town and Country Planning Act 1990 relating to the control of advertisements. As to such regulations see PARA 769 et seq post.

26 Ibid s 55(5). Permission is deemed to be granted where the display is in accordance with the relevant regulations: see PARA 773 post.

27 For these purposes, 'use as temporary sleeping accommodation' means use as sleeping accommodation which is occupied by the same person for less than 90 consecutive nights and which is provided, with or without other services, for a consideration arising either (1) by way of trade for money or money's worth; or (2) by reason of the employment of the occupant, whether or not the relationship of landlord and tenant is thereby created: Greater London Council (General Powers) Act 1973 s 25(2)(a) (amended by the Greater London Council (General Powers) Act 1983 s 4). The word 'consideration' in the Greater London Council (General Powers) Act 1973 s 25(2)(a) (as amended) is not limited to valuable consideration in the strict sense of contract law: *R v Kensington and Chelsea London Borough Council, ex p Lawrie Plantation Services Ltd* [1999] 3 All ER 929, [1999] 1 WLR 1415, HL. The Town and Country Planning (Use Classes) Order 1987, SI 1987/764 (as amended) (see PARA 224 et seq post), does not repeal, modify or disapply the effect of the Greater London Council (General Powers) Act 1973 Act s 25 (as amended): *Hyde Park Residence Ltd v Secretary of State for the Environment, Transport and the Regions* (2000) 80 P & CR 419, [2000] All ER (D) 64, CA.

28 For these purposes, 'residential premises' means a building, or any part of a building, which was previously used, or was designed or constructed for use, as one or more permanent residences: Greater London Council (General Powers) Act 1973 s 25(2)(b).

29 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

30 Greater London Council (General Powers) Act 1973 s 25(1); Planning (Consequential Provisions) Act 1990 s 2. For the meaning of 'hostel' for these purposes see *Panayi v Secretary of State for the Environment* (1985) 50 P & CR 109. The Greater London Council (General Powers) Act 1973 s 25(1) is a deeming provision and has the effect that, in the absence of some specific reference in the grant of planning permission to the right to use the premises for temporary purposes, it is unlawful so to use them even on a first use in the area to which s 25 (as amended) applies: *Westminster City Council v Secretary of State for the Environment* [1991] 2 PLR 44. As to breach of the Greater London Council (General Powers) Act 1973 s 25 (as amended) see also *Fairstate Ltd v First Secretary of State* [2005] EWCA Civ 238, [2005] All ER (D) 330 (Mar) (use for more than ten years as temporary sleeping accommodation, which made that use lawful; but that use was then changed for about five months to longer term residential occupation and finally reverted back for the next four years to temporary sleeping accommodation; held that there had been a breach of planning control).

31 For these purposes, 'dwelling house' includes a flat: Greater London Council (General Powers) Act 1984 s 5(3).

32 For these purposes, a dwelling house becomes subject to a time-sharing scheme when any person is granted a right entitling him to occupy the dwelling house or any part of it for a specified week or other period in every year during which the right subsists: *ibid* s 5(2).

33 *Ibid* s 5(1).

34 Is a change to use for a purposes mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1 para 9: see PARA 489 post at head (9) in the text.

35 *Ibid* reg 31.

36 *Stewart v First Secretary of State* [2004] EWHC 2262 (Admin) at [94], [2004] All ER (D) 495 (Jul) per Jackson J.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(i) In general/223. Operations or uses not involving development.

223. Operations or uses not involving development.

Subject to exceptions in the case of certain internal operations¹, the following operations or uses of land² are not taken³ to involve development⁴ of land:

- 913 (1) the carrying out for the maintenance, improvement or other alteration⁵ of any building⁶ of works which:
 - 87 124. (a) affect only the interior of the building; or
 - 125. (b) do not materially affect the external appearance⁷ of the building,
 - 88 914 and are not works for making good war damage⁸ or works begun after 5 December 1968 for the alteration of a building by providing additional space in it underground⁹;
 - 915 (2) the carrying out on land within the boundaries of a road by a highway authority¹⁰ of any works required for the maintenance or improvement of the road but, in the case of any such works which are not exclusively for the maintenance of the road, not including any works which may have significant adverse effects on the environment;
 - 916 (3) the carrying out by a local authority¹¹ or statutory undertakers¹² of any works for the purpose of inspecting, repairing or renewing any sewers, mains, pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose;
 - 917 (4) the use of any buildings or other land within the curtilage¹³ of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such¹⁴;
 - 918 (5) the use of any land for the purposes of agriculture¹⁵ or forestry, including afforestation, and the use for any of those purposes of any building occupied together with land so used;
 - 919 (6) in the case of buildings or other land which are used for a purpose of any class¹⁶ specified in an order made by the Secretary of State¹⁷ or, in relation to Wales, by the National Assembly for Wales¹⁸, the use of the buildings or other land or, subject to the provisions of the order, of any part of the buildings or the other land, for any other purpose of the same class;

920 (7) the demolition of any description of building specified in a direction given by the Secretary of State or by the Assembly to local planning authorities¹⁹ generally or to a particular local planning authority²⁰.

1 See note 9 *infra*.

2 For the meaning of 'use' see PARA 221 note 4 *ante*; and for the meaning of 'land' see PARA 2 note 10 *ante*.

3 *le* for the purposes of the Town and Country Planning Act 1990.

4 For the meaning of 'development' see PARA 217 *ante*.

5 The distinction between 'improvement or other alteration' and rebuilding is a matter of fact and degree: *Street v Essex County Council* (1965) 183 Estates Gazette 537, DC. See also *Larkin v Basildon District Council and the Secretary of State for the Environment* [1980] JPL 407, DC; *Hewlett v Secretary of State for the Environment and Brentwood District Council* [1983] JPL 105; *affd* [1985] JPL 404, CA. As to general permission for alterations etc to dwelling houses see PARA 265 *et seq post*.

6 For the meaning of 'building' see PARA 2 note 10 *ante*.

7 The words 'which do not materially affect the external appearance' cannot be used to enlarge the definition of development; what is done by way of alteration must be something which can be classified as an operation: *Coleshill and District Investment Co Ltd v Minister of Housing and Local Government* [1969] 2 All ER 525 at 535, [1969] 1 WLR 746 at 762, HL, per Lord Upjohn and at 537 and 764 per Lord Wilberforce. See also *Kensington and Chelsea Royal London Borough Council v CG Hotels Ltd* (1980) 41 P & CR 40, DC (installation of floodlights). Stone cladding to the front elevation of a dwelling house may involve development (*City of Bradford Metropolitan District Council v Secretary of State for the Environment* (1977) 76 LGR 454) but may be permitted development (see PARAS 265-266 *post*). For a similar approach in relation to the painting of a building see *Windsor & Maidenhead Royal Borough Council v Secretary of State for the Environment* [1988] JPL 410.

8 Except in so far as the context otherwise requires, 'war damage' has the meaning given in the War Damage Act 1943: Town and Country Planning Act 1990 s 336(1). As to permission to restore war damage see PARA 238 note 15 *post*.

9 The Secretary of State or, in relation to Wales, the National Assembly for Wales may in a development order specify any circumstances or description of circumstances in which *ibid* s 55(2) (as amended) (see heads (1)-(7) in the text) does not apply to operations mentioned in s 55(2)(a) (see head (1) in the text) which have the effect of increasing the gross floor space of the building by such amount or percentage amount as is so specified: s 55(2A) (added by the Planning and Compulsory Purchase Act 2004 s 49(1)). The development order may make different provision for different purposes: Town and Country Planning Act 1990 s 55(2B) (as so added). As to the Secretary of State see PARA 19 *ante*; as to the transfer of functions under s 55 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*. For the meaning of 'development order' see PARA 252 *post*.

A development order made for the purposes of the Town and Country Planning Act 1990 s 55(2A) (as so added) does not affect any operations begun before it is made: Planning and Compulsory Purchase Act 2004 s 49(4). If: (1) the Town and Country Planning Act 1990 s 55(2) (as amended) is disapplied in respect of any operations by virtue of a development order under s 55(2A) (as so added); (2) at the date the development order comes into force a certificate under s 192 (as substituted) (certificate of lawfulness of proposed use or development: see PARA 587 *post*) is in force in respect of the operations; and (3) before that date no such operations have been begun, then the certificate under 192 (as substituted) is of no effect: Planning and Compulsory Purchase Act 2004 s 49(2), (3).

Section 49 was enacted in response to concerns that the development of mezzanine floors in large retail stores significantly increased the available floorspace without, in many cases, being subject to planning controls: see HL Debates vol 659 col 917-920 (25 March 2004).

10 As to highway authorities see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 49 *et seq*. Until the prospective amendment made by the Planning and Compulsory Purchase Act 2004 cited in note 20 *infra* is brought into force, head (2) in the text refers to a 'local highway authority' rather than to a 'highway authority'. For the meaning of 'local highway authority' see PARA 39 note 21 *ante*.

11 For the meaning of 'local authority' see PARA 3 note 3 *ante*.

12 For the meaning of 'statutory undertakers' see PARA 1009 *post*.

13 For the meaning of 'curtilage' see *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2001] QB 59, 80 P & CR 516, CA (the curtilage of a substantial listed building is likely to extend to what are or have been, in the terms of ownership and function, ancillary buildings); *Morris v Wrexham County Borough Council* [2001] EWHC 697 (Admin), [2001] All ER (D) 02 (Oct) (in determining whether one listed building is within the curtilage of another, the test is whether the two buildings are sufficiently close and accessible to one another and whether, in terms of function, one is ancillary to the other; in applying that test, the primary focus is the state of affairs existing at the time of listing); *Lowe v First Secretary of State* [2003] 2 P & CR 331, [2003] All ER (D) 64 (Feb) (curtilage may include stables, outbuildings and gardens, walled or not provided that they are part of a single inclosure, but does not include all parkland, including the driveway, of an estate; ownership of the land is not determinative of the question (a decision on the meaning of 'curtilage' for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 1 Class A (see PARA 265 post)). Some operations within the curtilage of a dwelling house are permitted development: see PARA 265 et seq post. As to listed buildings see PARA 1091 et seq post.

Earlier decisions such as *Edwick v Sunbury-on-Thames UDC* (1959) 11 P & CR 261, DC, *Methuen-Campbell v Walters* [1979] QB 525, [1979] 1 All ER 606, CA and *Dyer v Dorset County Council* [1989] QB 346, [1988] 3 WLR 213, CA, interpreted 'curtilage' more restrictively as a small area forming part and parcel with the house or building which it contains or to which it is attached; but cf *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* supra at 66-67 and at 522 per Robert Walker LJ. One building and its curtilage may fall within the curtilage of another building: *A-G (ex rel Sutcliffe) v Calderdale Borough Council* (1982) 46 P & CR 399, CA (considered in *Debenhams plc v Westminster City Council* [1987] AC 396, [1987] 1 All ER 51, HL). The extension of the garden of a dwelling house by the incorporation of land previously used for agriculture may involve a material change of use: *Sampson's Executors v Nottinghamshire County Council* [1949] 2 KB 439 at 447, [1949] 1 All ER 1051 at 1055, DC, per Lord Goddard CJ.

14 See *Collins v Secretary of State for the Environment* [1989] EGCS 15; *Wallington v Secretary of State for Wales* [1991] 1 PLR 87, CA (keeping 44 dogs as a hobby not 'incidental to the enjoyment of the dwelling house as such'; what is reasonably incidental should be decided objectively). Cf, however, *South Oxfordshire District Council v Secretary of State for the Environment, Transport and the Regions* [2000] 2 All ER 667 at 672-673 per George Bartlett QC (sitting as a deputy judge of the High Court) (helicopter use as a personal means of transport properly considered as incidental to the enjoyment of a dwelling house as such).

15 For the meaning of 'agriculture' see PARA 16 note 6 ante. As to the factors to be taken into account when determining whether land is being used for the purposes of agriculture see *Millington v Secretary of State for the Environment, Transport and the Regions* [1999] 3 PLR 118, [1999] All ER (D) 675, CA. Ministerial decisions have held that (1) the rearing of alpacas falls within the definition of 'agriculture' but a proposed use for alpaca trekking and dog training would not be ancillary or incidental to agricultural use but would involve a separate primary use for leisure or recreational purposes (*Christchurch Borough Council* [2003] JPL 652); (2) the breeding of rats etc to provide food for snakes and reptiles does not fall within the terms of 'agriculture' (*North Cornwall District Council* [2003] JPL 655).

16 As to use classes see PARA 224 et seq post.

17 As to the Secretary of State see PARA 19 ante.

18 As to the transfer of functions under the Town and Country Planning Act 1990 s 55 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. In the exercise of the power conferred by head (7) in the text, the Assembly has made the Town and Country Planning (Use Classes) (Amendment) (Wales) Order 2002, SI 2002/1875.

19 As to local planning authorities see PARA 28 et seq ante.

20 Town and Country Planning Act 1990 s 55(2) (amended by the Planning and Compensation Act 1991 s 13(2); and by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 35(1); prospectively amended by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 2, Sch 9, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). See also note 10 supra. As to the exercise by the Secretary of State, prior to the transfer of functions in Wales to the Assembly, of the power conferred by head (7) in the text, see the following Town and Country Planning (Use Classes) (Amendment) Orders, ie SI 1991/1567, SI 1992/610, SI 1992/657, SI 1994/724 and SI 1995/297, amending the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, which has effect as if so made by virtue of the Planning (Consequential Provisions) Act 1990 s 2; and PARA 224 et seq post; as to the exercise of that power subsequently to such transfer see the Town and Country Planning (Use Classes) (Amendment) Order 2005, SI 2005/84.

UPDATE

223 Operations or uses not involving development

NOTE 20--Day now appointed: SI 2006/1281. SI 1987/764 further amended: SI 2006/220 (England), SI 2006/1386 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/224. In general.

(ii) Use Classes

224. In general.

Where a building¹ or other land is used² for a purpose of any specified Class³, the use⁴ of that building or that other land for any other purpose of the same Class is not taken⁵ to involve development⁶ of the land⁷. A use which is included in, and ordinarily incidental⁸ to, any use in a specified Class is not excluded from the use to which it is incidental merely because it is specified as a separate use⁹.

Where land on a single site¹⁰ or on adjacent sites used as parts of a single undertaking is used for purposes consisting of or including purposes falling within Classes B1 and B2¹¹, those Classes may be treated as a single Class in considering the use of that land¹² so long as the area used for a purpose falling within Class B2¹³ is not substantially increased as a result¹⁴.

No specified Class¹⁵ includes, however, use:

- 921 (1) as a theatre;
- 922 (2) as an amusement arcade or centre, or a funfair;
- 923 (3) as a launderette;
- 924 (4) for the sale of fuel for motor vehicles;
- 925 (5) for the sale or display for sale of motor vehicles;
- 926 (6) for a taxi business or business for the hire of motor vehicles;
- 927 (7) as a scrapyards, or a yard for the storage or distribution of minerals¹⁶ or the breaking of motor vehicles;
- 928 (8) for any work formerly registrable under the Alkali etc Works Regulation Act 1906 (now repealed)¹⁷;
- 929 (9) as a hostel;
- 930 (10) as a waste disposal installation for the incineration, chemical treatment¹⁸ or landfill of waste of a specified description¹⁹;
- 931 (11) in England, as a retail warehouse club being a retail club where goods are sold, or displayed for sale, only to persons who are members of that club;
- 932 (12) in England, as a night-club²⁰.

Furthermore, where a building or other land is situated in Wales, class B8 (storage or distribution)²¹ does not include use of that building or land for the storage of, or as a distribution centre for, radioactive material²² or radioactive waste²³.

The right to change from one use to another within the same use Class may be excluded by an express condition of a planning permission²⁴.

1 For these purposes, references to a building include references to land occupied with the building and used for the same purposes: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3(2). For the meanings of 'building' and 'land' see PARA 2 note 10 ante.

2 Where a use of land is de minimis, it should be disregarded for the purposes of the Town and Country Planning (Use Classes) Order 1987, SI 1987/764 (as amended): *Kwik Save Discount Group Ltd v Secretary of State for Wales* (1980) 42 P & CR 166, CA.

3 Ie for a purpose of any Class specified in the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3, Schedule (as amended): see PARA 225 et seq post.

4 For the meaning of 'use' see PARA 221 note 4 ante.

5 Ie subject to the provisions of the Town and Country Planning (Use Classes) Order 1987, SI 1987/764 (as amended): see the text and notes 6-24 infra; and PARA 225 et seq post.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3(1). Once it has been determined that two uses fall within the same Class, a change from one to the other cannot be held to be development by reason of intensification or for any other reason: *Brooks and Burton Ltd v Secretary of State for the Environment* [1978] 1 All ER 733, [1977] 1 WLR 1294, CA; *Carpet Decor (Guildford) Ltd v Secretary of State for the Environment* (1981) 261 Estates Gazette 56. Certain changes of use are deemed not to be development, but a change of use from one Class to another, or a change from a use outside any of the use Classes to a use within a use Class, is not necessarily development: *Rann v Secretary of State for the Environment and Thanet District Council* [1980] JPL 109. See also *Young v Secretary of State for the Environment* [1983] 2 AC 662, [1983] 2 All ER 1105, HL (change from light industrial building to general industrial building).

8 See eg *Vickers-Armstrong Ltd v Central Land Board* (1957) 9 P & CR 33, CA (offices incidental to use of general industrial building); *Hussain v Secretary of State for the Environment* (1971) 23 P & CR 330, DC (ritual slaughter of chickens not ordinarily incidental to use as a retail shop); *Forkhurst Ltd v Secretary of State for the Environment and Brentwood District Council* [1982] JPL 448 (smelting aluminium ordinarily incidental to use of land for car and vehicle breaking); *Harrods Ltd v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 412, [2002] JPL 1258, [2002] All ER (D) 73 (Mar) (helipad for the transportation of the owner of a shop not ordinarily incidental to the retail use of that shop).

9 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3(3). A group of buildings may be considered as a whole: *Vickers-Armstrong Ltd v Central Land Board* (1957) 9 P & CR 33, CA.

10 For these purposes, 'site' means the whole area of land within a single unit of occupation: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 2.

11 Ie ibid Schedule, Classes B1, B2 (as amended): see PARAS 228-229 post.

12 Ie for the purposes of the Town and Country Planning (Use Classes) Order 1987, SI 1987/764 (as amended).

13 Ie ibid Schedule, Class B2 (as amended): see PARA 229 post.

14 Ibid arts 2, 3(4) (amended by SI 1995/297).

15 Ie any Class specified in the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule (as amended).

16 For the meaning of 'minerals' see PARA 16 note 2 ante.

17 As to work formerly registrable under the Alkali etc Works Regulation Act 1906 (repealed) see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302.

18 Ie as defined in EC Council Directive 75/442 (OJ L194, 25.07.75, p 39), Annex IIA (as added) under heading D9: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 33.

19 Ie waste to which EC Council Directive 91/689 (OJ L337, 31.12.91, p 20) applies: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 33.

20 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3(6) (amended by SI 1991/1567; SI 1992/610; SI 1994/724; SI 1999/293; and, in relation to England only, by SI 2005/84). Not all uses fall within a specified use Class: see *Tessier v Secretary of State for the Environment* (1975) 31 P & CR 161, DC

(sculptor's workshop); *Kuxhays and Wenban v Secretary of State for the Environment and Lewes District Council* [1986] JPL 675, CA (egg packing plant); *Wolff v Enfield London Borough Council* (1987) 55 P & CR 78, CA (former Polytechnic non-teaching service unit).

21 le the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class B8: see PARA 230 post.

22 For these purposes, 'radioactive material' and 'radioactive waste' have the meanings assigned to those terms in the Radioactive Substances Act 1993: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3(8) (art 3(7), (8) added, in relation to Wales, by SI 2002/1875).

23 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3(7) (as added: see note 22 supra).

24 *City of London Corpn v Secretary of State for the Environment* (1971) 71 LGR 28; *Carpet Decor (Guildford) Ltd v Secretary of State for the Environment* (1981) 261 Estates Gazette 56; *Camden London Borough Council v Secretary of State for the Environment* [1989] 2 PLR 79.

For general guidance on use Classes see ODPM Circular 03/2005 *Changes of Use of Buildings and Land--the Town and Country Planning (Use Classes) Order 1987*; and as to the status of such guidance see PARA 9 ante.

UPDATE

224 In general

TEXT AND NOTE 20--Also, head (13) in England, as a casino: SI 1987/764 arts 2, 3(6) (art 3(6) amended by SI 2006/220).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/225. Class A1: shops.

225. Class A1: shops.

Class A1 comprises¹ use for all or any of the following purposes:

- 933 (1) for the retail sale of goods² other than hot food;
- 934 (2) as a post office;
- 935 (3) for the sale of tickets or as a travel agency;
- 936 (4) for the sale of sandwiches or other cold food for consumption off the premises;
- 937 (5) for hairdressing;
- 938 (6) for the direction of funerals;
- 939 (7) for the display of goods for sale;
- 940 (8) for the hiring out of domestic or personal goods or articles;
- 941 (9) for the washing or cleaning of clothes or fabrics on the premises;
- 942 (10) for the reception of goods to be washed, cleaned or repaired; and
- 943 (11) in England, as an internet café, where the primary purpose of the premises is to provide facilities for enabling members of the public to access the internet,

where the sale, display or service is to visiting members of the public³.

1 le for the purpose of determining whether a use involves development: see PARA 224 ante.

2 'The retail sale of goods' does not include showing films in coin-operated cubicles; nor would that constitute a use incidental to a retail use (*Lydcare Ltd v Secretary of State for the Environment* (1984) 49 P & CR 186, CA) but includes the supply of pharmaceutical goods on prescription (*R v Maldon District Council, ex p Pattani* (1998) 47 BMLR 54, [1999] PLCR 1, CA). Use of premises as a warehouse club selling goods in bulk to members who pay an annual subscription and are either in business or within a specified employment group does not fall within Class A1: *R v Thurrock Borough Council, ex p Tesco Stores Ltd* (1994) 92 LGR 321, [1994] JPL 328; and see PARA 224 ante at head (11) in the text.

3 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (amended by SI 1991/1567; and, in relation to England, by SI 2005/84). As to the interpretation of Class A1 (as amended) see *Cawley v Secretary of State for the Environment and Vale Royal District Council* (1990) 60 P & CR 492, [1990] 2 PLR 90. As to general guidance on use Classes see also PARA 224 note 24 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/226. Class A2: financial and professional services.

226. Class A2: financial and professional services.

Class A2 comprises¹ use for the provision of:

- 944 (1) financial services; or
- 945 (2) professional services, other than health or medical services; or
- 946 (3) any other services, including use as a betting office, which it is appropriate to provide in a shopping area,

where the services are provided principally to visiting members of the public².

1 le for the purpose of determining whether a use involves development: see PARA 224 ante.

2 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A2. A solicitor's office can fall within Class A2 if the professional services are provided principally 'over the counter' to members of the public who come in off the street, even if the practice is also operated on an appointments system: *Kalra v Secretary of State for the Environment* (1995) 72 P & CR 423, [1995] NPC 164, CA. Bureaux de change also fall within Class A2: *Palisade Investments Ltd v Secretary of State for the Environment* (1994) 69 P & CR 638, [1994] 3 PLR 49, CA. As to general guidance on use Classes see also PARA 224 note 24 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/227. Classes A3 to A5: food and drink.

227. Classes A3 to A5: food and drink.

In England only:

- 947 (1) Class A3 comprises¹ use for the sale of food and drink for consumption on the premises (that is, restaurants and cafés)²;
- 948 (2) Class A4 comprises use as a public house, wine-bar or other drinking establishment³; and
- 949 (3) Class A5 comprises use for the sale of hot food for consumption off the premises⁴.

In Wales, however, Class A3 comprises⁵ use:

- 950 (a) for the sale of food and drink for consumption on the premises; or
- 951 (b) for the sale of hot food for consumption off the premises⁶.

1 le for the purpose of determining whether a use involves development: see PARA 224 ante.

2 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A3 (Classes A3-A5 substituted in relation to England by SI 2005/84).

3 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class A4 (as substituted: see note 2 supra).

4 Ibid Schedule, Class A5 (as substituted: see note 2 supra). As to general guidance on use Classes see also PARA 224 note 24 ante.

5 See note 1 supra.

6 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class A3 (as originally enacted).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/228. Class B1: business.

228. Class B1: business.

Class B1 comprises¹ use for all or any of the following purposes:

- 952 (1) as an office other than a use within Class A2²;
- 953 (2) for research and development of products or processes; or
- 954 (3) for any industrial process³,

being a use which can be carried out in any residential area without detriment to the amenity of that area by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit⁴.

1 le for the purpose of determining whether a use involves development: see PARA 224 ante.

2 le the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A2: see PARA 226 ante.

3 For these purposes, 'industrial process' means a process for or incidental to any of the following purposes: (1) the making of any article or part of any article, including a ship or vessel, or a film, video or sound recording; (2) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (3) the getting, dressing or treatment of minerals, in the course of any trade or business other than agriculture, and other than a use carried on in or adjacent to a mine or quarry: *ibid* art 2. For the meaning of 'minerals' see PARA 16 note 2 ante. The making of a profit or commercial activity is not an essential feature of a process carried on in the course of trade or business: *Rael-Brook Ltd v Minister of Housing and Local Government* [1967] 2 QB 65, [1967] 1 All ER 262, DC (use by a local authority of a building as a cooking centre for school meals).

4 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class B1. The test is whether the use would or might be detrimental to the amenity of any residential area in which the process is carried on: *WT Lamb Properties Ltd v Secretary of State for the Environment and Crawley District Council* [1983] JPL 303.

The mere fact that a person carries on an operation which interferes with the amenities does not establish that the machinery cannot be operated without detriment to the amenities: *Alan Markovits Ltd v Hove Borough Council* (1958) 9 P & CR 292. As to general guidance on use Classes see also PARA 224 note 24 ante.

UPDATE

228 Class B1: business

NOTE 3--There is no need for the industrial process and the other activity to take place on the same planning unit: *R (on the application of Winchester City Council) v Secretary of State for Communities and Local Government* [2007] EWHC 2303 (Admin), [2008] 1 P & CR 261.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/229. Class B2: general industrial.

229. Class B2: general industrial.

Class B2 comprises¹ use for the carrying on of an industrial process² other than one falling within³ Class B1⁴. A recycling facility may fall within Class B2⁵.

1 Ie for the purpose of determining whether a use involves development: see PARA 224 ante.

2 For the meaning of 'industrial process' see PARA 228 note 3 ante.

3 Ie other than one falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class B1: see PARA 228 ante.

4 Ibid Schedule, Class B2 (amended by SI 1995/297).

5 See *Bennett Fergusson Coal Ltd v First Secretary of State* [2003] EWHC 1858 (Admin), [2004] 1 P & CR 469, [2003] All ER (D) 263 (Jul) where, however, it was held that an existing use involving the delivery in bulk of mined coal and other solid fuels to a site, the storage and/or screening and sorting of those materials, and then the subsequent distribution of the same either for domestic or for industrial purposes, did not fall within Class B2 but was in a class of its own; thus a change of use of part of the site to a recycling facility would be a change of use. As to general guidance on use Classes see also PARA 224 note 24 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/230. Class B8: storage or distribution.

230. Class B8: storage or distribution.

Class B8 comprises¹ use for storage or as a distribution centre² but does not, where a building or other land is situated in Wales, include use of that building or land for the storage of, or as a distribution centre for, radioactive material or radioactive waste³.

1 Ie for the purpose of determining whether a use involves development: see PARA 224 ante.

2 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class B8. For cases decided under the Town and Country Planning (Use Classes) Order 1972, SI 1972/1385, Schedule, Class X (revoked) ('use as a wholesale warehouse or repository for any purpose') which may be of assistance in considering the Town and Country Planning (Use Classes) Order 1987 Schedule, Class B8 see *Decorative and Caravan Paints Ltd v Minister of Housing and Local Government* (1970) 214 Estates Gazette 1355, DC (furniture sales); *LTSS Print and Supply Services Ltd v Hackney London Borough Council* [1976] QB 663, [1976] 1 All ER 311, CA (meaning of 'warehouse'); *Monomart (Warehouses) Ltd v Secretary of State for the Environment* (1977) 34 P & CR 305, DC (builders' merchants' warehouse); *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL (meaning of 'repository'). As to general guidance on use Classes see also PARA 224 note 24 ante.

3 See the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3(7), (8) (as added in relation to Wales); and PARA 224 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/231. Class C1: hotels.

231. Class C1: hotels.

Class C1 comprises¹ use as a hotel or as a boarding or guest house where, in each case, no significant element of care² is provided³.

1 Ie for the purpose of determining whether a use involves development: see PARA 224 ante.

2 For these purposes, 'care' means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 2.

3 Ibid arts 2, 3, Schedule, Class C1 (substituted by SI 1994/724). Use as a hotel was distinguished from use as bed-sitting rooms in *Mayflower Cambridge Ltd v Secretary of State for the Environment* (1975) 30 P & CR 28, DC. See also *Winmill v Secretary of State for the Environment and Royal Borough of Kingston-upon-Thames* [1982] JPL 445 (change of use from bed-sitting rooms and flats to guest house); *Breachberry v Secretary of State for the Environment and Shepway District Council* [1985] JPL 180 (change of use from hotel in multiple occupation to use as hotel for temporary accommodation). As to general guidance on use Classes see also PARA 224 note 24 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/232. Class C2: residential institutions.

232. Class C2: residential institutions.

Class C2 comprises¹ use:

- 955 (1) for the provision of residential accommodation and care² to people in need of care, other than a use within Class C3³;
- 956 (2) as a hospital or nursing home;
- 957 (3) as a residential school, college or training centre⁴.

1 Ie for the purpose of determining whether a use involves development: see PARA 224 ante.

2 For the meaning of 'care' see PARA 231 note 2 ante. For these purposes, 'care' also includes the personal care of children and medical care and treatment: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 2.

3 *le* *ibid* arts 2, 3, Schedule, Class C3: see PARA 233 post.

4 *Ibid* Schedule, Class C2. As to general guidance on use Classes see also PARA 224 note 24 ante.

UPDATE

232 Class C2: residential institutions

NOTES--As to secure residential institutions see PARA 232A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/232A. Class C2A: secure residential institution.

232A. Class C2A: secure residential institution.

In relation to Wales, Class C2A comprises use for the provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short-term holding centre, secure hospital, secure local authority accommodation or use as military barracks¹.

¹ Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class 2A (added by SI 2006/1386).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/233. Class C3: dwelling houses.

233. Class C3: dwelling houses.

Class C3 comprises¹ use as a dwelling house, whether or not as a sole or main residence:

- 958 (1) by a single person or by people living together as a family; or
- 959 (2) by not more than six residents living together as a single household², including a household where care³ is provided for residents⁴.

1 *le* for the purpose of determining whether a use involves development: see PARA 224 ante.

2 The fact that no more than six people are living together makes it more likely that they are living together as a single household; furthermore, although the precise nature of the relationship between the residents is clearly a material consideration, it is not necessarily determinative of the matter: *R (on the application of Hossack) v Kettering Borough Council* [2002] EWCA Civ 886, [2003] 2 P & CR 444, [2002] All ER (D) 186 (Jun) (for further proceedings see *R (on the application of Hossack) v Kettering Borough Council (No 2)* [2003] EWHC 1929 (Admin), [2003] All ER (D) 556 (Jul)). The concept of 'living together as a household' means a proper functioning household; the presence of resident children, or other persons unable to care for themselves, and non-resident carers does not suffice: *North Devon District Council v Secretary of State for Transport, Local*

Government and the Regions [2003] EWHC 157 (Admin), [2003] All ER (D) 306 (Jan), sub nom *North Devon District Council v First Secretary of State* [2004] 1 P & CR 625, not following *R v Bromley London Borough Council, ex p Sinclair* [1991] 3 PLR 60. Cf, however, *R (on the application of Crawley Borough Council) v Secretary of State for Transport and the Regions* [2004] EWHC 160 (Admin), [2004] All ER (D) 215 (Jan) (the residents could be said to be a household, notwithstanding their disabilities and the fact that they required 24-hour care; carers do not necessarily have to be resident).

3 For the meaning of 'care' see PARA 231 note 2 ante.

4 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class C3. In the case of a building used for a purpose within Schedule, Class C3, the use as a separate dwelling house of any part of the building or of any land occupied with and used for the same purposes as the building is not, by virtue of the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, (as amended), to be taken as not amounting to development: art 4. As to general guidance on use Classes see also PARA 224 note 24 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/234. Class D1: non-residential institutions.

234. Class D1: non-residential institutions.

Class D1 comprises¹ any use not including a residential use:

- 960 (1) for the provision of any medical or health services except the use of premises attached to the residence of the consultant or practitioner;
- 961 (2) as a crèche, day nursery or day centre²;
- 962 (3) for the provision of education;
- 963 (4) for the display of works of art, otherwise than for sale or hire;
- 964 (5) as a museum;
- 965 (6) as a public library or public reading room;
- 966 (7) as a public hall or exhibition hall;
- 967 (8) for, or in connection with, public worship or religious instruction³.

1 Ie for the purpose of determining whether a use involves development: see PARA 224 ante.

2 For these purposes, 'day centre' means premises which are visited during the day for social or recreational purposes or for the purposes of rehabilitation or occupational training, at which care is also provided: Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 2. For the meaning of 'care' see PARA 231 note 2 ante.

3 Ibid arts 2, 3, Schedule, Class D1. As to general guidance on use Classes see also PARA 224 note 24 ante.

UPDATE

234 Class D1: non-residential institutions

TEXT AND NOTES--In relation to Wales, also head (9) as a law court: SI 1987/764 Schedule, Class D1 (amended by SI 2006/1386).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(2) WHAT CONSTITUTES DEVELOPMENT/(ii) Use Classes/235. Class D2: assembly and leisure.

235. Class D2: assembly and leisure.

Class D2 comprises¹ use as:

- 968 (1) a cinema;
- 969 (2) a concert hall²;
- 970 (3) a bingo hall or casino;
- 971 (4) a dance hall;
- 972 (5) a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations, not involving motorised vehicles or firearms³.

1 le for the purpose of determining whether a use involves development: see PARA 224 ante.

2 In order to constitute 'use as a concert hall' under head (2) in the text, a building must possess the necessary physical characteristics associated with such halls: *Rugby Football Union v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 1169, [2003] JPL 96, [2002] All ER (D) 268 (Jul).

3 Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class D2. As to general guidance on use Classes see also PARA 224 note 24 ante. A proposed change from use as a riding centre where the buildings were mainly used for the stabling of horses to use as a health and fitness centre was held to be a material change of use since the existing use did not fall within Class D2: see *Belmont Riding Centre v First Secretary of State* [2003] EWHC 1895 (Admin), [2003] All ER (D) 51 (Aug).

UPDATE

235 Class D2: assembly and leisure

TEXT AND NOTE 3--In relation to England, in head (3) reference to casino omitted: SI 1987/764 Schedule, Class D2 (amended by SI 2006/220). As to the change of use of a building from a casino to use for assembly and leisure, see PARA 295A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/A. IN GENERAL/236. General requirement of permission.

(3) METHODS OF CONTROL

(i) Control by Requirement of Permission

A. IN GENERAL

236. General requirement of permission.

Subject to certain exceptions¹, planning permission² is required for the carrying out of any development³ of land⁴.

Planning permission may be granted:

- 973 (1) by a development order⁵ or local development order⁶;

- 974 (2) by the local planning authority⁷, or in specified cases⁸, by the Secretary of State⁹ (or, in relation to Wales, by the National Assembly for Wales¹⁰) on application to the authority in accordance with a development order;
- 975 (3) on the adoption or approval of a simplified planning zone scheme¹¹ or alterations to such a scheme¹²; or
- 976 (4) on the designation of an enterprise zone or the approval¹³ of a modified scheme¹⁴.

Heads (3) and (4) above do not, however, permit planning permission for certain types of development to be granted without consideration of its environmental impact¹⁵.

Planning permission may also be deemed¹⁶ to be granted¹⁷.

1 Ie subject to the Town and Country Planning Act 1990 s 57(2)-(7) (as amended): see PARA 237 post.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 Town and Country Planning Act 1990 s 57(1). Section 57(1) has effect subject to s 57(7), Sch 4 (special provision about use of land on 1 July 1948: see PARA 237 post): s 57(7). For the meaning of 'land' see PARA 2 note 10 ante. The former Minister of Housing and Local Government determined that the Town and Country Planning Act 1947 (repealed) did not apply, and planning permission was not required, in relation to an area beyond low-water mark unless it was within the administrative boundaries of a local planning authority: Selected Appeals VIII/23. See also *Argyll and Bute District Council v Secretary of State for Scotland* 1976 SC 248, Ct of Sess.

If no permission is required, the fact that an application for permission was made and permission granted will not estop the applicant from taking the point later that no permission was required: *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL; followed in *R v Somerset County Council, ex p Morris & Perry (Gurney Slade Quarry) Ltd* (1999) 79 P & CR 238, [1999] All ER (D) 909.

As to enforcement of planning control see PARA 551 et seq post; as to a housing action trust's power to submit to the Secretary of State or to the National Assembly for Wales proposals for the development of land within its designated area see the Housing Act 1988 s 66 (as amended); and HOUSING vol 22 (2006 Reissue) PARA 331; and as to the restrictions on establishing petroleum-filling stations in Greater London see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 847.

5 For the meaning of 'development order' see PARA 252 post.

6 As to local development orders see PARA 419 et seq post.

7 As to local planning authorities see PARA 28 et seq ante.

8 Ie in the cases provided by the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see eg para 483 post.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Town and Country Planning Act 1990 s 58 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 For the meaning of 'simplified planning zone scheme' see PARA 428 post.

12 Ie in accordance with the Town and Country Planning Act 1990 s 82 (see PARA 426 post) or s 86 (see PARA 443 post).

13 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended) in accordance with the Town and Country Planning Act 1990 s 88 (as amended): see PARA 1502 post. As to the designation of enterprise zones see PARA 1491 et seq post; and as to the modification of such schemes see PARA 1499 post.

14 Ibid s 58(1) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(c), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). The Town and Country Planning Act 1990 s 58 (as so

amended) is without prejudice to any other provisions of the Town and Country Planning Act 1990 providing for the granting of planning permission: s 58(3).

15 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, regs 23, 24; and PARA 1502 post.

16 See under the Town and Country Planning Act 1990 s 90 (as amended) (development with government authorisation): see PARA 238 post.

17 Ibid s 58(2). As to other circumstances in which planning permission is deemed to be granted see PARA 238 post.

UPDATE

236 General requirement of permission

TEXT AND NOTES--As to the power to impose a community infrastructure levy in relation to the development of land see the Planning Act 2008 Pt 11 (ss 205-225); and PARA 236A.

NOTE 14--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

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236A. Community Infrastructure Levy.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/A. IN GENERAL/1. Application of the levy

1. Application of the levy

The Secretary of State¹ may with the consent of the Treasury make regulations² providing for the imposition of a charge to be known as community infrastructure levy ('CIL')³. In making the regulations the Secretary of State must aim to ensure that the overall purpose of CIL is to ensure that costs incurred in providing infrastructure to support the development⁴ of an area can be funded, wholly or partly, by owners or developers of land⁵. CIL regulations must require the authority that charges CIL⁶ to apply it, or cause it to be applied, to funding infrastructure⁷; and for these purposes 'infrastructure' includes: (1) roads and other transport facilities; (2) flood defences; (3) schools and other educational facilities; (4) medical facilities; (5) sporting and recreational facilities; (6) open spaces; and (7) affordable housing⁸. The regulations may specify: (a) works, installations and other facilities that are to be, or not to be, funded by CIL⁹; (b) criteria for determining the areas in relation to which infrastructure may be funded by CIL in respect of land¹⁰; and (c) what is to be, or not to be, treated as funding¹¹; and may: (i) require charging authorities to prepare and publish a list of projects that are to be, or may be, wholly or partly funded by CIL¹²; (ii) include provision about the procedure to be followed in preparing a list, which may include provision for consultation, for the appointment of an independent

person or a combination¹³; (iii) include provision about the circumstances in which a charging authority may and may not apply CIL to projects not included on the list¹⁴. In making provision about funding the regulations may, in particular: (a) permit CIL to be used to reimburse expenditure already incurred¹⁵; (b) permit CIL to be reserved for expenditure that may be incurred on future projects¹⁶; (c) permit CIL to be applied, either generally or subject to limits set by or determined in accordance with the regulations, to administrative expenses in connection with infrastructure or in connection with CIL¹⁷; (d) include provision for the giving of loans, guarantees or indemnities¹⁸; (e) make provision about the application of CIL where the projects to which it was to be applied no longer require funding¹⁹. The regulations may: (aa) require a charging authority²⁰ to account separately, and in accordance with the regulations, for CIL received or due²¹; (bb) require a charging authority to monitor the use made and to be made of CIL in its area²²; (cc) require a charging authority to report on actual or expected charging, collection and application of CIL²³; (dd) permit a charging authority to cause money to be applied in respect of things done outside its area²⁴; (ee) permit a charging authority or other body to spend money²⁵; (ff) permit a charging authority to pass money to another body²⁶. CIL regulations may also contain provision enabling an authority to prohibit development pending assumption of liability for CIL²⁷ or pending payment of CIL²⁸.

1 As to the Secretary of State see PARA 19.

2 Such regulations are known as 'CIL regulations': see the Planning Act 2008 s 205(4).

3 Planning Act 2008 s 205(1). CIL regulations: (1) may make provision that applies generally or only to specified cases, circumstances or areas; (2) may make different provision for different cases, circumstances or areas; (3) may provide, or allow a charging schedule to provide, for exceptions; (4) may confer, or allow a charging schedule to confer, a discretionary power on the Secretary of State, a local authority or another specified person; (5) may apply an enactment, with or without modifications; and (6) may include provision of a kind permitted by s 232(3)(b) (incidental, consequential, supplementary, transitional or transitory provision or savings): s 222(1). They must be made by statutory instrument and must not be made unless a draft has been laid before and approved by resolution of the House of Commons: s 222(2).

4 As to the meaning of 'development' for these purposes see the Planning Act 2008 s 32; and PARA 217 (definition applied by s 235(1)).

5 Planning Act 2008 s 205(2).

6 As to charging authorities see PARA 236A.2.

7 Planning Act 2008 s 216(1).

8 Planning Act 2008 s 216(2). The reference in the TEXT to 'affordable housing' is to social housing within the meaning of the Housing and Regeneration Act 2008 Pt 2 (ss 59-278) (see HOUSING) and such other housing as CIL regulations may specify: see the Planning Act 2008 s 216(2)(g). The regulations may amend s 216(2) so as to (1) add, remove or vary an entry in the list of matters included within the meaning of 'infrastructure'; and (2) list matters excluded from the meaning of 'infrastructure': s 216(3).

9 Planning Act 2008 s 216(4)(a).

10 Planning Act 2008 s 216(4)(b).

11 Planning Act 2008 s 216(4)(c).

12 Planning Act 2008 s 216(5)(a).

13 Planning Act 2008 s 216(5)(b).

14 Planning Act 2008 s 216(5)(c).

15 Planning Act 2008 s 216(6)(a).

16 Planning Act 2008 s 216(6)(b).

17 Planning Act 2008 s 216(6)(c). In Pt 11 (ss 205-225), a reference to administrative expenses in connection with CIL includes a reference to enforcement expenses: s 218(13). As to enforcement see PARA 236A.14.

18 Planning Act 2008 s 216(6)(d).

19 Planning Act 2008 s 216(6)(e).

20 In the Planning Act 2008 s 217(7)(a)-(e) (see heads (aa)-(ee) in the TEXT), a reference to a charging authority includes a reference to a body to which a charging authority passes money in reliance on s 217(7)(f) (see head (ff) in the TEXT): s 217(7)(f).

21 Planning Act 2008 s 216(7)(a).

22 Planning Act 2008 s 216(7)(b).

23 Planning Act 2008 s 216(7)(c).

24 Planning Act 2008 s 216(7)(d).

25 Planning Act 2008 s 216(7)(e).

26 Planning Act 2008 s 216(7)(f).

27 As to liability for CIL see PARA 236A.5.

28 See the Planning Act 2008 s 218(4)(d); and PARA 236A.14.

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2. The charge and the charging authorities

A charging authority may charge community infrastructure levy ('CIL')¹ in respect of development² of land in its area³. A local planning authority⁴ is the charging authority for its area⁵; but the Mayor of London⁶ is a charging authority for Greater London⁷ in addition to the local planning authorities⁸, the Broads Authority⁹ is the only charging authority for the Broads¹⁰ and the Council of the Isles of Scilly is the only charging authority for the Isles of Scilly¹¹. CIL regulations¹² may, however, provide for any of the following to be the charging authority for an area, or in the case of Greater London one of the charging authorities, in place of the local planning authority, the Broads Authority or the Council of the Isles of Scilly¹³: (1) a county council; (2) a county borough council; (3) a district council; (4) a metropolitan district council; and (5) a London borough council¹⁴. If a joint committee that includes a charging authority is established for the purposes of Part 2 of the Planning and Compulsory Purchase Act 2004, CIL regulations may provide that the joint committee is to exercise specified functions, in respect of the area specified in the agreement establishing that committee, on behalf of the charging authority¹⁵. The Secretary of State¹⁶ may give guidance to a charging authority or other public authority¹⁷ about any matter connected with CIL; and the authority must have regard to the guidance¹⁸.

1 As to CIL generally see PARA 236A.1.

2 As to the meaning of 'development' for these purposes see the Planning Act 2008 s 32; and PARA 217 (definition applied by s 235(1)).

- 3 Planning Act 2008 s 206(1).
- 4 For these purposes, 'local planning authority' has the meaning given by the Planning and Compulsory Purchase Act 2004 s 37 in relation to England and s 78 in relation to Wales: Planning Act 2008 s 206(5).
- 5 Planning Act 2008 s 206(2).
- 6 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.
- 7 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 8 Planning Act 2008 s 206(3)(a).
- 9 As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.
- 10 Planning Act 2008 s 206(3)(b). For these purposes, 'the Broads' has the meaning given by the Norfolk and Suffolk Broads Act 1988 s 2(3) (see WATER AND WATERWAYS vol 101 (2009) PARA 735): see the Planning Act 2008 s 206(3)(b).
- 11 Planning Act 2008 s 206(3)(c). As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.
- 12 As to the meaning of 'CIL regulations' see PARA 236A.1.
- 13 In place of the charging authority under the Planning Act 2008 s 206(2), (3)(b) or (c).
- 14 Planning Act 2008 s 206(4).
- 15 Planning Act 2008 s 207(1), (2). The regulations may make provision corresponding to provisions relating to joint committees in the Local Government Act 1972 Pt VI (ss 101-109: see LOCAL GOVERNMENT vol 69 (2009) PARA 370 et seq) in respect of the discharge of the specified functions: Planning Act 2008 s 207(3).
- 16 As to the Secretary of State see PARA 19.
- 17 In including an examiner appointed under the Planning Act 2008 s 212 (see PARA 236A.8): s 221.
- 18 Planning Act 2008 s 221.

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3. Procedures to be followed in connection with community infrastructure levy

CIL regulations¹ may include provision about procedures to be followed in connection with community infrastructure levy ('CIL')². In particular, the regulations may make provision about: (1) procedures to be followed by a charging authority³ proposing to begin charging CIL⁴; (2) procedures to be followed by a charging authority in relation to charging CIL⁵; (3) procedures to be followed by a charging authority proposing to stop charging CIL⁶; (4) consultation⁷; (5) the publication⁸ or other treatment of reports⁹; (6) timing and methods of publication¹⁰; (7) making documents available for inspection¹¹; (8) providing copies of documents, with or without charge¹²; (9) the form and content of documents¹³; (10) giving notice¹⁴; (11) serving notices or other documents¹⁵; (12) examinations to be held in public in the course of setting or revising rates or other criteria or of preparing lists¹⁶; (13) the terms and conditions of appointment of independent persons¹⁷; (14) remuneration and expenses of independent persons, which may be required to be paid by the Secretary of State¹⁸ or by a charging authority¹⁹; (15) other costs in connection with examinations²⁰; (16) reimbursement of expenditure incurred by the Secretary of State, including provision for enforcement²¹; (17) apportionment of costs²²; (18) combining

procedures in connection with CIL with procedures for another purpose of a charging authority, including a purpose of that authority in another capacity²³; (19) procedures to be followed in connection with actual or potential liability for CIL²⁴. CIL regulations may also make provision about the procedure to be followed in respect of an exemption from CIL or a reduction of CIL²⁵; in particular, the regulations may include provision: (a) about the procedure for determining whether any conditions are satisfied²⁶; (b) requiring a charging authority or other person to notify specified persons of any exemption or reduction²⁷; (c) requiring a charging authority or other person to keep a record of any exemption or reduction²⁸.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 Planning Act 2008 s 220(1). As to CIL see generally PARA 236A.1. A provision of Pt 11 (ss 201-225) conferring express power to make procedural provision in a specified context includes, in particular, power to make provision about the matters specified in s 220(2): s 220(4).

3 As to charging authorities see PARA 236A.2.

4 Planning Act 2008 s 220(2)(a).

5 Planning Act 2008 s 220(2)(b).

6 Planning Act 2008 s 220(2)(c).

7 Planning Act 2008 s 220(2)(d).

8 A power in the Planning Act 2008 Pt 11 to make provision about publishing something includes a power to make provision about making it available for inspection: s 220(5).

9 Planning Act 2008 s 220(2)(e).

10 Planning Act 2008 s 220(2)(f).

11 Planning Act 2008 s 220(2)(g).

12 Planning Act 2008 s 220(2)(h).

13 Planning Act 2008 s 220(2)(i).

14 Planning Act 2008 s 220(2)(j). Sections 229-231 (service of notices and other documents) do not apply to Pt 11, but CIL regulations may make similar provision: s 220(6).

15 Planning Act 2008 s 220(2)(k).

16 Planning Act 2008 s 220(2)(l).

17 Planning Act 2008 s 220(2)(m).

18 As to the Secretary of State see PARA 19.

19 Planning Act 2008 s 220(2)(n).

20 Planning Act 2008 s 220(2)(o).

21 Planning Act 2008 s 220(2)(p). As to enforcement of CIL see s 218; and PARA 236A.14.

22 Planning Act 2008 s 220(2)(q).

23 Planning Act 2008 s 220(2)(r).

24 Planning Act 2008 s 220(2)(s).

25 Planning Act 2008 s 220(3). As to exemptions for charities see s 210; and PARA 236A.6.

26 Planning Act 2008 s 220(3)(a).

27 Planning Act 2008 s 220(3)(b).

28 Planning Act 2008 s 220(2)(c).

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4. Relationship with other powers

CIL regulations¹ may include provision about how planning obligations under the Town and Country Planning Act 1990² and agreements as to the execution of works under the Highways Act 1980³ are to be used, or are not to be used⁴. CIL regulations may also include provision about the exercise of any other power relating to planning or development⁵. The Secretary of State⁶ may give guidance to a charging or other authority⁷ about how a power relating to planning or development is to be exercised; and authorities must have regard to the guidance⁸. Provision may be made, and guidance may be given, however, under the above provisions⁹ only if the Secretary of State thinks it necessary or expedient¹⁰ for: (1) complementing the main purpose of CIL regulations¹¹; (2) enhancing the effectiveness, or increasing the use, of CIL regulations¹²; (3) preventing agreements, undertakings or other transactions from being used to undermine or circumvent CIL regulations¹³; (4) preventing agreements, undertakings or other transactions from being used to achieve a purpose that the Secretary of State thinks would better be achieved through the application of CIL regulations¹⁴; or (5) preventing or restricting the imposition of burdens, the making of agreements or the giving of undertakings, in addition to CIL¹⁵. CIL regulations may provide that a power to give guidance or directions may not be exercised: (a) in relation to matters specified in the regulations¹⁶; (b) in cases or circumstances specified in the regulations¹⁷; (c) for a purpose specified in the regulations¹⁸; or (d) to an extent specified in the regulations¹⁹.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 Ie planning obligations under the Town and Country Planning Act 1990 s 106.

3 Ie agreements under the Highways Act 1980 s 278: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 73.

4 Planning Act 2008 s 223(1).

5 Planning Act 2008 s 223(2). As to the meaning of 'development' see s 32; and PARA 217 (definition applied by s 235(1)).

6 As to the Secretary of State see PARA 19.

7 As to charging authorities see PARA 236A.2.

8 Planning Act 2008 s 223(3).

9 Ie provision under the Planning Act 2008 s 223(1)-(2) and guidance under s 223(3).

10 Planning Act 2008 s 223(4).

11 Planning Act 2008 s 223(4)(a).

12 Planning Act 2008 s 223(4)(b).

13 Planning Act 2008 s 223(4)(c).

- 14 Planning Act 2008 s 223(4)(d).
- 15 Planning Act 2008 s 223(4)(e).
- 16 Planning Act 2008 s 223(5)(a).
- 17 Planning Act 2008 s 223(5)(b).
- 18 Planning Act 2008 s 223(5)(c).
- 19 Planning Act 2008 s 223(5)(d).

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5. Liability for community infrastructure levy

Where liability to community infrastructure levy ('CIL')¹ would arise² in respect of proposed development³ a person may assume liability to pay the levy⁴. An assumption of liability may be made before development commences⁵, and must be made in accordance with any provision of CIL regulations about the procedure for assuming liability⁶. A person who assumes liability for CIL before the commencement of development becomes liable when development is commenced in reliance on planning permission⁷. CIL regulations must make provision for an owner⁸ or developer⁹ of land to be liable for CIL where development is commenced in reliance on planning permission if: (1) nobody has assumed liability in accordance with the regulations; or (2) other specified circumstances arise, such as the insolvency or withdrawal of a person who has assumed liability¹⁰. CIL regulations may make provision about: (a) joint liability, with or without several liability¹¹; (b) liability of partnerships¹²; (c) assumption of partial liability¹³; (d) apportionment of liability, which may include provision for referral to a specified person or body for determination¹⁴ and include provision for appeals¹⁵; (e) withdrawal of assumption of liability¹⁶; (f) cancellation of assumption of liability by a charging authority, in which case head (1) above applies¹⁷; (g) transfer of liability, whether before or after development commences and whether or not liability has been assumed¹⁸. The amount of any liability for CIL is to be calculated by reference to the time when planning permission first permits the development¹⁹ as a result of which the levy becomes payable²⁰. CIL regulations may, however, make provision for liability for CIL to arise where development which requires planning permission is commenced without it²¹. CIL regulations may provide for liability to CIL to arise in respect of a development where the development was exempt from CIL, or subject to a reduced rate of CIL charge²², and the description or purpose of the development changes²³.

1 As to CIL generally see PARA 236A.1.

2 In accordance with provision made by a charging authority under and by virtue of the Planning Act 2008 s 206 (see PARA 236A.2) and CIL regulations: s 208(1). As to the meaning of 'CIL regulations' see PARA 236A.1.

3 For the purposes of the Planning Act 2008 s 208, 'development' means (1) anything done by way of or for the purpose of the creation of a new building; or (2) anything done to or in respect of an existing building: s 209(1). CIL regulations may provide for (a) works or changes in use of a specified kind not to be treated as development; (b) the creation of, or anything done to or in respect of, a structure of a specified kind to be treated as development: s 209(2). As to the meaning of 'development' generally see s 32; and PARA 217 (definitions applied by s 235(1)).

4 Planning Act 2008 s 208(1).

- 5 Planning Act 2008 s 208(2)(a). CIL regulations must include provision for determining when development is treated as commencing: s 209(3). Regulations under s 209(3) may, in particular, provide for development to be treated as commencing when some specified activity or event is undertaken or occurs, where the activity or event (1) is not development within the meaning of s 209(1); but (2) has a specified kind of connection with a development within the meaning of s 209(1): s 209(4).
- 6 Planning Act 2008 s 208(2)(b).
- 7 Planning Act 2008 s 208(3). CIL regulations must define planning permission (which may include planning permission within the meaning of the Town and Country Planning Act 1990 and any other kind of permission or consent, however called, and whether general or specific): Planning Act 2008 s 209(5).
- 8 For these purposes, 'owner' of land means a person who owns an interest in the land: Planning Act 2008 s 209(7)(a). CIL regulations may make provision for a person to be or not to be treated as an owner of land in specified circumstances: s 209(8).
- 9 For these purposes, 'developer' means a person who is wholly or partly responsible for carrying out a development: Planning Act 2008 s 209(7)(b). CIL regulations may make provision for a person to be or not to be treated as a developer of land in specified circumstances: s 209(8).
- 10 Planning Act 2008 s 208(4).
- 11 Planning Act 2008 s 208(5)(a).
- 12 Planning Act 2008 s 208(5)(b).
- 13 Planning Act 2008 s 208(5)(c). Section 208(4)(a) applies where liability has not been wholly assumed): s 208(5)(c).
- 14 Planning Act 2008 s 208(5)(d)(i).
- 15 Planning Act 2008 s 208(5)(d)(ii).
- 16 Planning Act 2008 s 208(5)(e).
- 17 Planning Act 2008 s 208(5)(f).
- 18 Planning Act 2008 s 208(5)(g).
- 19 CIL regulations must include provision for determining the time at which planning permission is treated as first permitting development; and the regulations may, in particular, make provision (1) about outline planning permission; (2) for permission to be treated as having been given at a particular time in the case of general consents: Planning Act 2008 s 209(6).
- 20 Planning Act 2008 s 208(6). This is subject to s 208(7): s 208(7).
- 21 Planning Act 2008 s 208(7).
- 22 As to exemptions and reductions for charities see PARA 236A.6.
- 23 Planning Act 2008 s 208(8).

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6. Exemptions and reductions for charities

CIL regulations¹ must provide for an exemption from liability to pay community infrastructure levy ('CIL')² in respect of a development³ where: (1) the person who would otherwise be liable

to pay CIL in respect of the development is a relevant charity⁴ in England and Wales; and (2) the building or structure in respect of which CIL liability would otherwise arise is to be used wholly or mainly for a charitable purpose⁵ of the charity⁶. CIL regulations may: (a) provide for an exemption from liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose⁷; (b) require charging authorities⁸ to make arrangements for an exemption from, or reduction in, liability to pay CIL where the person who would otherwise be liable to pay CIL in respect of the development is an institution established for a charitable purpose⁹. Regulations under heads (1) and (2) or heads (a) and (b) above may, however, provide that an exemption or reduction does not apply if specified conditions are satisfied¹⁰.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 As to CIL see generally PARA 236A.1.

3 As to the meaning of 'development' see the Planning Act 2008 ss 32, 235(1); and PARA 217. See also, however, PARA 236A.5.

4 For the purposes of the Planning Act 2008 s 210(1), a relevant charity in England and Wales is an institution which (1) is registered in the register of charities kept by the Charity Commission under the Charities Act 1993 s 3; or (2) is a charity within the meaning of the Charities Act 2006 s 1(1) but is not required to be registered in the register kept under the Charities Act 1993 s 3: Planning Act 2008 s 210(4).

5 lie within the meaning of the Charities Act 2006 s 2.

6 Planning Act 2008 s 210(1).

7 Planning Act 2008 s 210(2)(a). In s 210(2), a charitable purpose is a purpose falling within the Charities Act 2006 s 2(2); but CIL regulations may provide for an institution of a specified kind to be, or not to be, treated as an institution established for a charitable purpose: Planning Act 2008 s 210(5).

8 As to charging authorities see PARA 236A.2.

9 Planning Act 2008 s 210(2)(b).

10 Planning Act 2008 s 210(3).

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7. Amount of the charge and preparation of charging schedule

A charging authority¹ which proposes to charge community infrastructure levy ('CIL')² must issue a document (a 'charging schedule') setting rates, or other criteria, by reference to which the amount of CIL chargeable in respect of development³ in its area is to be determined⁴. A charging authority may consult, or take other steps, in connection with the preparation of a charging schedule, subject to CIL regulations⁵. In setting rates or other criteria, a charging authority must have regard, to the extent and in the manner specified by CIL regulations, to: (1) actual and expected costs of infrastructure⁶; (2) matters specified by CIL regulations relating to the economic viability of development, which may include, in particular, actual or potential economic effects of planning permission or of the imposition of CIL; (3) other actual and expected sources of funding for infrastructure⁷. CIL regulations may make other provision about setting rates or other criteria⁸ and may, in particular, permit or require charging

authorities in setting rates or other criteria: (a) to have regard, to the extent and in the manner specified by the regulations, to actual or expected administrative expenses in connection with CIL⁹; (b) to have regard, to the extent and in the manner specified by the regulations, to values used or documents produced for other statutory purposes¹⁰; (c) to integrate the process, to the extent and in the manner specified by the regulations, with processes undertaken for other statutory purposes¹¹; (d) to produce charging schedules having effect in relation to specified periods, subject to revision¹². The regulations may permit or require charging schedules to adopt specified methods of calculation¹³. In particular, they may: (i) permit or require charging schedules to operate by reference to descriptions or purposes of development¹⁴; (ii) permit or require charging schedules to operate by reference to any measurement of the amount or nature of development, whether by reference to measurements of floor space, to numbers or intended uses of buildings¹⁵, to numbers or intended uses of units within buildings, to allocation of space within buildings or units, to values or expected values or in any other way¹⁶; (iii) permit or require charging schedules to operate by reference to the nature or existing use of the place where development is undertaken¹⁷; (iv) permit or require charging schedules to operate by reference to an index used for determining a rate of inflation¹⁸; (v) permit or require charging schedules to operate by reference to values used or documents produced for other statutory purposes¹⁹; (vi) provide, or permit or require provision, for differential rates, which may include provision for supplementary charges, a nil rate, increased rates or reductions²⁰. The regulations may require a charging authority to provide in specified circumstances an estimate of the amount of CIL chargeable in respect of development of land²¹.

1 As to charging authorities see PARA 236A.2.

2 As to CIL see generally PARA 236A.1.

3 As to the meaning of 'development' see the Planning Act 2008 ss 32, 235(1); and PARA 217.

4 Planning Act 2008 s 211(1).

5 Planning Act 2008 s 211(7). As to the meaning of 'CIL regulations' see PARA 236A.1.

6 I.e. whether by reference to lists prepared by virtue of the Planning Act 2008 s 216(5)(a) (see PARA 236A.1) or otherwise): s 211(2)(a).

8 Planning Act 2008 s 211(2)(a)-(c).

9 Planning Act 2008 s 211(3).

10 Planning Act 2008 s 211(4)(a).

11 Planning Act 2008 s 211(4)(b).

12 Planning Act 2008 s 211(4)(c).

13 Planning Act 2008 s 211(4)(d).

14 Planning Act 2008 s 211(5).

15 Planning Act 2008 s 211(6)(a).

16 Planning Act 2008 s 211(6)(b).

17 Planning Act 2008 s 211(6)(c).

18 Planning Act 2008 s 211(6)(d).

19 Planning Act 2008 s 211(6)(e).

20 Planning Act 2008 s 211(6)(f).

21 Planning Act 2008 s 211(8).

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8. Examination of charging schedule

Before approving a charging schedule¹ a charging authority² must appoint a person ('the examiner') to examine a draft³. The charging authority must appoint someone who, in the opinion of the authority, is independent of the charging authority and has appropriate qualifications and experience⁴; and it may, with the agreement of the examiner, appoint persons to assist the examiner⁵. The draft submitted to the examiner must be accompanied by a declaration approved in the specified manner⁶: (1) that the charging authority has complied with the statutory requirements⁷; (2) that the charging authority has used appropriate available evidence to inform the draft charging schedule; and (3) dealing with any other matter prescribed by CIL regulations⁸. CIL regulations must require a charging authority to allow anyone who makes representations about a draft charging schedule to be heard by the examiner; and the regulations may make provision about timing and procedure⁹. The examiner must consider the matters listed in heads (1) to (3) above and recommend that the draft charging schedule be approved, rejected or approved with specified modifications¹⁰. He must give reasons for the recommendations¹¹ and the charging authority must publish the recommendations and reasons¹². CIL regulations may make provision for examiners to reconsider their decisions with a view to correcting errors, before or after the approval of a charging schedule¹³. The charging authority may withdraw a draft¹⁴.

1 As to the meaning of 'charging schedule' see PARA 236A.7; and as to approval of a charging schedule see PARA 236A.9.

2 As to charging authorities see PARA 236A.2.

3 Planning Act 2008 s 212(1).

4 Planning Act 2008 s 212(2).

5 Planning Act 2008 s 212(3).

6 A charging authority other than the Mayor of London must approve the declaration at a meeting of the authority, and by a majority of votes of members present: Planning Act 2008 s 212(5). The Mayor of London must approve the declaration personally: s 212(6). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

7 I.e. the requirements of the Planning Act 2008 Pt 11 (ss 205-225) (see PARAS 236A.1 et seq, 236A.9 et seq) and of CIL regulations, including the requirements to have regard to the matters listed in the Planning Act 2008 s 211(2) and (4) (see PARA 236A.7): s 212(4)(a). As to the meaning of 'CIL regulations' see PARA 236A.1.

8 Planning Act 2008 s 212(4).

9 Planning Act 2008 s 212(9).

10 Planning Act 2008 s 212(7)(a).

11 Planning Act 2008 s 212(7)(b).

12 Planning Act 2008 s 212(8).

13 Planning Act 2008 s 212(10).

14 Planning Act 2008 s 212(11).

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9. Approval of charging schedule

A charging authority¹ may approve a charging schedule² only if the examiner³ has recommended approval, and subject to any modifications recommended by the examiner⁴. CIL regulations⁵ may make provision for the correction of errors in a charging schedule after approval⁶. A charging schedule approved under the above provisions may not take effect before it is published by the charging authority⁷. CIL regulations may make provision about publication of a charging schedule after approval⁸.

1 As to charging authorities see PARA 236A.2.

2 As to the meaning of 'charging schedule' see PARA 236A.7.

3 Ie the examiner under the Planning Act 2008 s 212: see PARA 236A.8.

4 Planning Act 2008 s 213(1). A charging authority other than the Mayor of London must approve a charging schedule at a meeting of the authority, and by a majority of votes of members present: s 213(2). The Mayor of London must approve a charging schedule personally: s 213(3). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

5 As to the meaning of 'CIL regulations' see PARA 236A.1.

6 Planning Act 2008 s 213(4).

7 Planning Act 2008 s 214(1).

8 Planning Act 2008 s 214(2).

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10. Revision of charging schedule

A charging authority¹ may revise a charging schedule². The relevant statutory provisions³ apply to the revision of a charging schedule as they apply to the preparation of a charging schedule⁴.

1 As to charging authorities see PARA 236A.2.

2 Planning Act 2008 s 211(9). As to the meaning of 'charging schedule' see PARA 236A.7.

3 Ie the Planning Act 2008 s 211 (see PARA 236A.7), s 212 (see PARA 236A.8), ss 213, 214(1), (2) (see PARA 236A.9).

4 Planning Act 2008 s 211(10).

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11. Determination that charging schedule is to cease to have effect

A charging authority¹ may determine that a charging schedule² is to cease to have effect³. CIL regulations⁴ may provide that a charging authority may only make such a determination in circumstances specified by the regulations⁵.

1 As to charging authorities see PARA 236A.2.

2 As to the meaning of 'charging schedule' see PARA 236A.7.

3 Planning Act 2008 s 214(3). A charging authority other than the Mayor of London must make such a determination at a meeting of the authority, and by a majority of votes of members present: s 214(5). The Mayor of London must make such a determination personally: s 214(6). As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

4 As to the meaning of 'CIL regulations' see PARA 236A.1.

5 Planning Act 2008 s 214(4).

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12. Appeals

CIL regulations¹ must provide for a right of appeal on a question of fact in relation to the application of methods for calculating community infrastructure levy ('CIL')² to a person appointed by the Commissioners for Her Majesty's Revenue and Customs³. The regulations must require that the person so appointed is either a valuation officer⁴ or a district valuer⁵. Regulations⁶ may, in particular, make provision about: (1) the period within which the right of appeal may be exercised⁷; (2) the procedure on an appeal⁸; and (3) the payment of fees, and award of costs, in relation to an appeal⁹. In any proceedings for judicial review of a decision on an appeal, the defendant must be the Commissioners for Her Majesty's Revenue and Customs and not the person appointed as mentioned above¹⁰.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 As to CIL see generally PARA 236A.1.

3 Planning Act 2008 s 215(1).

4 I.e a valuation officer appointed under the Local Government Finance Act 1988 s 61 (see RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 6); Planning Act 2008 s 215(2)(a).

5 Planning Act 2008 s 215(2). The reference in the text to a district valuer is to a district valuer within the meaning of the Housing Act 1985 s 622 (see HOUSING vol 22 (2006 Reissue) PARA 704): Planning Act 2008 s 215(2)(b).

6 The regulations under the Planning Act 2008 s 215 (see the TEXT AND NOTES 1-5, 7-9) or under s 208(5)(d)(ii) (see PARA 236A.5): s 215(3).

7 Planning Act 2008 s 215(3)(a).

8 Planning Act 2008 s 215(3)(b).

9 Planning Act 2008 s 215(3)(c).

10 Planning Act 2008 s 215(4).

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13. Collection of community infrastructure levy

CIL regulations¹ must include provision about the collection of community infrastructure levy ('CIL')². The regulations may make provision for payment: (1) on account³; (2) by instalments⁴, and may make provision about repayment, with or without interest, in cases of overpayment⁵. The regulations may: (a) make provision about payment in forms other than money, such as making land available, carrying out works or providing services⁶; (b) permit or require a charging authority⁷ or other public authority to collect CIL charged by another authority⁸. Regulations under these provisions may replicate or apply, with or without modifications, any enactment relating to the collection of a tax⁹. They may also make provision about the source of payments in respect of Crown interests¹⁰.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 Planning Act 2008 s 217(1). As to CIL see generally PARA 236A.1.

3 Planning Act 2008 s 217(2)(a).

4 Planning Act 2008 s 217(2)(a).

5 Planning Act 2008 s 217(3).

6 Planning Act 2008 s 217(4).

7 As to charging authorities see PARA 236A.2.

8 Planning Act 2008 s 217(5). Section 216(7)(a), (c) (see PARA 236A.1) applies to a collecting authority in respect of collection as to a charging authority: s 217(5).

9 Planning Act 2008 s 217(6).

10 Planning Act 2008 s 217(7).

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PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/A. IN GENERAL/14. Regulations about enforcement of community infrastructure levy

14. Regulations about enforcement of community infrastructure levy

CIL regulations¹ must include provision about enforcement of community infrastructure levy ('CIL')². The regulations must make provision about the consequences of late payment and failure to pay³ and may make provision about the consequences of failure to assume liability⁴, to give a notice or to comply with another procedure under CIL regulations in connection with CIL⁵. In particular, the regulations may include provision: (1) for the payment of interest⁶; (2) for the imposition of a penalty or surcharge⁷; (3) for the suspension or cancellation of a decision relating to planning permission⁸; (4) enabling an authority to prohibit development⁹ pending assumption of liability for CIL or pending payment of CIL¹⁰; (5) conferring a power of entry onto land¹¹; (6) requiring the provision of information¹²; (7) creating a criminal offence, including, in particular, offences relating to evasion or attempted evasion or to the provision of false or misleading information or failure to provide information, and offences relating to the prevention or investigation of other offences created by the regulations¹³; (8) conferring power to prosecute an offence¹⁴; (9) for enforcement of sums owed, whether by action on a debt, by distraint against goods or in any other way¹⁵; (10) conferring jurisdiction on a court to grant injunctive or other relief to enforce a provision¹⁶ of the regulations¹⁷; (11) for enforcement in the case of death or insolvency of a person liable for CIL¹⁸. CIL regulations may also include provision, whether or not in the context of late payment or failure to pay, about registration or notification of actual or potential liability to CIL¹⁹; and the regulations may include provision: (a) for the creation of local land charges²⁰; (b) for the registration of local land charges²¹; (c) for enforcement of local land charges, including, in particular, for enforcement against successive owners, and by way of sale or other disposal with consent of a court²²; (d) for making entries in statutory registers²³; (e) for the cancellation of charges and entries²⁴. Regulations under these provisions may replicate or apply, with or without modifications, any enactment relating to the enforcement of a tax²⁵ and may provide for appeals²⁶. They may also provide that any interest, penalty or surcharge payable by virtue of the regulations is to be treated²⁷ as if it were CIL²⁸.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 Planning Act 2008 s 218(1). As to CIL see PARA 236A.1.

3 Planning Act 2008 s 218(2).

4 As to the assumption of liability see PARA 236A.5.

5 Planning Act 2008 s 218(3).

6 Planning Act 2008 s 218(4)(a).

7 Planning Act 2008 s 218(4)(b). The regulations providing for a surcharge or penalty must ensure that no surcharge or penalty in respect of an amount of CIL exceeds the higher of (1) 30% of that amount; and (2) £20,000 (s 218(8)); but the regulations may provide for more than one surcharge or penalty to be imposed in relation to a CIL charge (s 218(9)). See also s 218(7).

8 Planning Act 2008 s 218(4)(c).

9 As to the meaning of 'development' see the Planning Act 2008 ss 32, 235(1); and PARA 217.

10 Planning Act 2008 s 218(4)(d).

11 Planning Act 2008 s 218(4)(e). The regulations may not authorise entry to a private dwelling without a warrant issued by a justice of the peace: s 218(10).

12 Planning Act 2008 s 218(4)(f).

- 13 Planning Act 2008 s 218(4)(g). Regulations under s 218 creating a criminal offence may not provide for (1) a maximum fine exceeding £20,000 on summary conviction; (2) a maximum term of imprisonment exceeding six months on summary conviction; or (3) a maximum term of imprisonment exceeding two years on conviction on indictment: s 218(11). The Secretary of State may by order amend s 218(11) to reflect commencement of the Criminal Justice Act 2003 s 283 (power to alter maximum penalties): Planning Act 2008 s 218(12). As to the Secretary of State see PARA 19.
- 14 Planning Act 2008 s 218(4)(h).
- 15 Planning Act 2008 s 218(4)(i).
- 16 ie including a provision included in reliance on the Planning Act 2008 s 218: s 218(4)(j).
- 17 Planning Act 2008 s 218(4)(j).
- 18 Planning Act 2008 s 218(4)(k).
- 19 Planning Act 2008 s 218(5).
- 20 Planning Act 2008 s 218(5)(a).
- 21 Planning Act 2008 s 218(5)(b).
- 22 Planning Act 2008 s 218(5)(c).
- 23 Planning Act 2008 s 218(5)(d).
- 24 Planning Act 2008 s 218(e).
- 25 Planning Act 2008 s 218(6)(a).
- 26 Planning Act 2008 s 218(6)(b).
- 27 ie for the purposes of the Planning Act 2008 ss 216-220: see PARAS 236A.1, 236A.3, 236A.13, 236A.15.
- 28 Planning Act 2008 s 218(7).

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15. Compensation with regard to enforcement action

CIL regulations¹ may require a charging authority² or other public authority to pay compensation in respect of loss or damage suffered as a result of enforcement action³. The regulations must not, however, require payment of compensation to a person who has failed to satisfy a liability to pay community infrastructure levy ('CIL')⁴ or in other circumstances specified by the regulations⁵. Regulations under these provisions may make provision about: (1) the time and manner in which a claim for compensation is to be made⁶; and (2) the sums, or the method of determining the sums, payable by way of compensation⁷. CIL regulations may permit or require a charging authority to apply CIL, either generally or subject to limits set by or determined in accordance with the regulations, for expenditure incurred under these provisions⁸. A dispute about compensation may be referred to and determined by the Upper Tribunal⁹.

1 As to the meaning of 'CIL regulations' see PARA 236A.1.

2 As to charging authorities see PARA 236A.2.

3 Planning Act 2008 s 219(1). For these purposes, 'enforcement action' means action taken under regulations under s 218 (see PARA 236A.14), including (1) the suspension or cancellation of a decision relating to planning permission; and (2) the prohibition of development pending assumption of liability for community infrastructure levy ('CIL') or pending payment of CIL: s 219(2). As to the meaning of 'development' see the Planning Act 2008 ss 32, 235(1); and PARA 217. As to the assumption of liability for CIL see PARA 236A.5.

4 As to CIL see PARA 236A.1 et seq; and as to liability to pay CIL see PARA 236A.5.

5 Planning Act 2008 s 219(3).

6 Planning Act 2008 s 219(4)(a).

7 Planning Act 2008 s 219(4)(b).

8 Planning Act 2008 s 219(5).

9 Planning Act 2008 s 219(6) (s 210(6), (7) amended by SI 2009/1307). In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 4 apply subject to any necessary modifications and to the provisions of CIL regulations: Planning Act 2008 s 219(7) (as so amended).

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237. Development not requiring planning permission.

Planning permission¹ is not required:

- 977 (1) where planning permission to develop² land³ has been granted for a limited period⁴, for the resumption, at the end of that period, of its use⁵ for the purpose for which it was normally used⁶ before the permission was granted⁷;
- 978 (2) where by a development order⁸ or local development order⁹ planning permission to develop land has been granted subject to limitations¹⁰, for the use of that land which, apart from its use in accordance with that permission, is its normal use¹¹;
- 979 (3) where an enforcement notice¹² has been issued in respect of any development of land, for the use of the land for the purpose for which it could lawfully¹³ have been used if that development had not been carried out¹⁴;
- 980 (4) where on 1 July 1948 land was being temporarily¹⁵ used for a purpose other than the purpose for which it was normally used, for the resumption of the use of the land for the latter purpose before 6 December 1968¹⁶;
- 981 (5) where on 1 July 1948 land was normally used for one purpose and was also used on occasions, whether at regular intervals or not, for another purpose, in respect of the use of the land for that other purpose on similar occasions on or after 6 December 1948 if the land has been used for that other purpose on at least one similar occasion since 1 July 1948 and before the beginning of 1968¹⁷;
- 982 (6) where land was unoccupied on 1 July 1948, but had before that date been occupied¹⁸ at some time on or after 7 January 1937, in respect of any use of the land begun before 6 December 1968 for the purpose for which the land was last used before 1 July 1948¹⁹.

- 1 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 2 For the meaning of 'develop' see PARA 217 ante.
- 3 For the meaning of 'land' see PARA 2 note 10 ante.
- 4 For the meaning of 'planning permission granted for a limited period' see PARA 522 note 10 post.
- 5 For the meaning of 'use' see PARA 221 note 4 ante.
- 6 In determining for these purposes and for the purposes of the Town and Country Planning Act 1990 s 57(3) (as amended) (see head (2) in the text) what is or was the normal use of land, no account is to be taken of any use begun in contravention of Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, PARA 238 et seq post) or of previous planning control: s 57(5). A use of land is taken to have been begun in contravention of previous planning control if it was begun in contravention of the Town and Country Planning Act 1947 Pt III (ss 12-36) (repealed), the Town and Country Planning Act 1962 Pt III (ss 12-44) (repealed) or the Town and Country Planning Act 1971 Pt III (ss 22-53) (repealed): Town and Country Planning Act 1990 ss 57(6), 336(1). See also *Smith v Secretary of State for the Environment* (1982) 47 P & CR 194.
- 7 Town and Country Planning Act 1990 s 57(2).
- 8 For the meaning of 'development order' see PARA 252 post.
- 9 As to local development orders see PARA 419 et seq post.
- 10 For the meaning of 'limitations' for these purposes see *Cynon Valley Borough Council v Secretary of State for Wales and Oi Mee Lam* (1986) 53 P & CR 68, CA.
- 11 Town and Country Planning Act 1990 s 57(3) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(b), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). See also note 6 supra.
- 12 For the meaning of 'enforcement notice' see PARA 561 post.
- 13 In accordance with the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended). As to the circumstances in which uses and operations are lawful see *ibid* s 191(2) (as substituted); and PARA 586 note 4 post.
- 14 *Ibid* s 57(4). See *Sefton Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions* [2002] EWHC 1369 (Admin), [2002] All ER (D) 197 (Jun).
- 15 See *Kingdon v Minister of Housing and Local Government* [1968] 1 QB 257, [1967] 3 All ER 614, DC (land used for agriculture for more than 20 years; previous use as a golf course not in existence on 1 July 1948).
- 16 Town and Country Planning Act 1990 s 57(7), Sch 4 para 1. See eg *Postill v East Riding County Council* [1956] 2 QB 386, [1956] 2 All ER 685, DC (use for 11 days in a year).
Notwithstanding anything in the Town and Country Planning Act 1990 Sch 4 paras 1-3, the use of land as a caravan site is not treated, by virtue of Sch 4 paras 1-3, as a use for which planning permission is not required, unless the land was so used on one occasion at least during the period of two years ending with 9 March 1960: Sch 4 para 4. For these purposes, except in so far as the context otherwise requires, 'caravan site' has the meaning given in the Caravan Sites and Control of Development Act 1960 s 1(4) (see PARA 1032 note 4 post): Town and Country Planning Act 1990 s 336(1).
- 17 *Ibid* Sch 4 para 2. See also note 16 supra.
- 18 The former Minister of Housing and Local Government held that the corresponding provision in the Town and Country Planning Act 1947 (repealed) did not apply unless the use of the land had been so abandoned or so destroyed as to make it impossible to say that there was any use: Selected Appeals XI/23 (land unoccupied as a result of undertaking given to council). Cf note 19 infra.
- 19 Town and Country Planning Act 1990 Sch 4 para 3. See also note 16 supra. It seems that in such a case there is no development (*Fyson v Buckinghamshire County Council* [1958] 2 All ER 286n at 288n, [1958] 1 WLR 634, DC, per Donovan J), at least where no use in contravention of previous planning control intervened. Resumption of the use of the land which was unlawful is not permitted by this provision: *Glamorgan County Council v Carter* [1962] 3 All ER 866, [1963] 1 WLR 1, DC. Where the last use lasted only for short periods in each year, permission is not required to use the land for the same purpose for longer periods, at least where there is no other use: *Washington UDC v Gray* (1958) 10 P & CR 264, DC.

UPDATE

237 Development not requiring planning permission

NOTE 11--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/A. IN GENERAL/238. Deemed planning permission.

238. Deemed planning permission.

Where the authorisation of a government department¹ is required by virtue of an enactment in respect of development to be carried out by a local authority² or National Park authority³ or by statutory undertakers⁴ who are not a local authority or National Park authority, that department may, on granting that authorisation, direct that planning permission⁵ for that development shall be deemed to be granted, subject to such conditions, if any, as may be specified in the direction⁶.

On granting a consent under the Electricity Act 1989⁷ in respect of any operation or change of use⁸ that constitutes development, the Secretary of State⁹ may direct that planning permission for that development and any ancillary development¹⁰ shall be deemed to be granted, subject to such conditions, if any, as may be specified in the direction¹¹.

On making an order under the Transport and Works Act 1992¹² which includes provision for development, the Secretary of State or, where the order has effect solely in relation to Wales, the National Assembly for Wales¹³ may direct that planning permission for that development shall be deemed to be granted, subject to such conditions, if any, as may be specified in the direction¹⁴.

Permission is also deemed to be granted¹⁵:

- 983 (1) where the display of advertisements in accordance with regulations for the control of advertisements involves development¹⁶;
- 984 (2) for the carrying out of specified development in connection with the construction of the Channel Tunnel¹⁷ and the Channel Tunnel Rail Link¹⁸ or the Cardiff Bay Barrage¹⁹;
- 985 (3) where certain requirements of an enforcement notice have been complied with²⁰.

1 For these purposes, development is authorised by a government department if (1) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment; (2) a compulsory purchase order is confirmed by the department authorising the purchase of land for the purpose of the development; (3) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose; (4) authority is given by the department (a) for the borrowing of money for the purpose of the development; or (b) for the application for that purpose of any money not otherwise so applicable; or (5) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants; and references to the authorisation of a government department are to be construed accordingly: Town and Country Planning Act 1990 s 90(4). For the meaning of 'government department' see PARA 3 note 5 ante; for the meaning of 'development' see PARA 217 ante; for the meaning of 'enactment' see PARA 2 note 11 ante; and for the meaning of 'land' see PARA 2 note 10 ante. In Wales, the functions of Ministers of the Crown under s 90(1) (as amended) other than the Secretary of State for Wales are not transferred to the National Assembly for

Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

2 For the meaning of 'local authority' see PARA 3 note 3 ante.

3 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 For the meaning of 'statutory undertakers' see PARA 1009 post.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 Town and Country Planning Act 1990 s 90(1) (amended by the Environment Act 1995 s 78, Sch 10 para 32(4)). The provisions of the Town and Country Planning Act 1990 except Pt XII (ss 284-292) (as amended) (see PARA 43 et seq ante, PARA 648 post) apply in relation to any planning permission deemed to be granted by virtue of a direction under s 90 (as amended) as if it had been granted by the Secretary of State or the National Assembly for Wales on an application referred to him or to it under s 77 (as amended) (see PARA 483 post): s 90(3) (amended by the Planning and Compensation Act 1991 s 31, Sch 6 paras 8, 12; modified by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

7 Ie under the Electricity Act 1989 s 36 (as amended) or s 37: see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARAS 1249-1252.

8 For the meaning of 'use' see PARA 221 note 4 ante.

9 In Wales this function is not transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

10 For these purposes, 'ancillary development', in relation to development consisting of the extension of a generating station, does not include any development which is not directly related to the generation of electricity by that station; and 'extension' and 'generating station' have the same meanings as in the Electricity Act 1989 Pt I (ss 3A-64) (as amended): Town and Country Planning Act 1990 s 90(5).

11 Ibid s 90(2). As to development by water and sewerage undertakers see the Water Industry Act 1991 s 190; the Water Resources Act 1991 s 183 (as amended) (savings for planning controls etc); and **WATER AND WATERWAYS** vol 101 (2009) PARA 487.

12 Ie under the Transport and Works Act 1992 s 1 or s 3: see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 302 et seq.

13 As to the exercise of planning functions by the National Assembly for Wales see PARA 20 ante.

14 Town and Country Planning Act 1990 s 90(2A) (added by the Transport and Works Act 1992 s 16(1)).

15 Without prejudice to the generality of the Planning (Consequential Provisions) Act 1990 ss 3-5, Sch 3 paras 1, 2, notwithstanding the repeal by that Act of the Town and Country Planning Act 1971 s 292(1), Sch 24 (as amended), the provisions of Sch 24 (as amended) continue to have effect, in so far as they are not specifically reproduced in the Planning (Consequential Provisions) Act 1990 Sch 3 and remain capable of having effect, with any reference in those provisions to any provision of the repealed enactments which is reproduced in the consolidating Acts being taken, so far as the context otherwise permits, as including a reference to the corresponding provision of those Acts: Planning (Consequential Provisions) Act 1990 Sch 3 para 3. For the meaning of 'the repealed enactments' and 'the consolidating Acts' see PARA 2 note 5 ante. See the Town and Country Planning Act 1971 Sch 24 para 15 (works for making good war damage), Sch 24 para 90 (permissions granted between 21 July 1943 and 1 July 1948 under an interim development order) and Sch 24 para 91 (works for the erection or alteration of a building begun but not completed before 1 July 1948).

16 See PARA 773 post.

17 See the Channel Tunnel Act 1987 s 9 (as amended).

18 See the Channel Tunnel Rail Link Act 1996 s 9; para 18 ante; and **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 324. This provision is, however, disapplied by the Channel Tunnel Rail Link (Assessment of Environmental Effects) Regulations 1999, SI 1999/107, reg 3, in certain circumstances where an assessment of the environmental impact of the works may be required: see PARA 18 ante. As to the assessment of environmental impact generally see PARA 487 et seq post.

19 See the Cardiff Bay Barrage Act 1993 s 24; and PARA 18 ante.

20 See PARAS 565, 567 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/B. CROWN LAND/239. In general.

B. CROWN LAND

239. In general.

At the date at which this title states the law, and notwithstanding any interest of the Crown in Crown land¹, any restrictions or powers imposed or conferred by the statutory provisions relating to control of development² apply and are exercisable³ in relation to Crown land to the extent of any interest⁴ in it for the time being held otherwise than by or on behalf of the Crown⁵.

As from a day to be appointed⁶, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004⁷. Subject to express provision made by Part XIII of the Town and Country Planning Act 1990⁸, the normal requirements for planning permission are to bind the Crown⁹.

1 For the meaning of 'Crown land' see PARA 11 note 1 ante.

2 Ie imposed or conferred by the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 244 et seq post.

3 Ie subject to ibid s 296(1)(a) (as substituted; prospectively repealed): see PARA 11 ante at head (a) in the text.

4 A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for the purposes of ibid s 296(1)(c) (as amended; prospectively repealed) so far as applicable to Pt III (ss 55-106B) (as amended) as having an interest in land: s 293(4).

5 See ibid s 296(1)(c) (as amended; prospectively repealed); and PARA 11 ante at head (c) in the text. Although, at the date at which this title states the law, the Crown does not in any event require planning permission for development (see *Ministry of Agriculture, Fisheries and Food v Jenkins* [1963] 2 QB 317, [1963] 2 All ER 147, CA; *Lord Advocate v Dumbarton District Council* [1990] 2 AC 580, [1990] 1 All ER 1, HL), government departments in general consult with local planning authorities before carrying out development which would otherwise require planning permission.

6 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

7 See the Planning and Compulsory Purchase Act 2004 ss 84(1), 120, Sch 9. At the date at which this title states the law, those repeals were not in force.

8 Ie made by the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended): see PARAS 11, 14 et seq ante, PARAS 455, 555, 899-901, 922 post.

9 See ibid s 292A (as prospectively added); and PARA 14 ante.

UPDATE

239 In general

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(i) Control by Requirement of Permission/B. CROWN LAND/240. Requirement of planning permission for continuation of use instituted by the Crown.

240. Requirement of planning permission for continuation of use instituted by the Crown.

At the date at which this title states the law, a local planning authority¹ in whose area any Crown land² is situated may agree with the appropriate authority³ that the following provisions⁴ are to apply to such use of land by the Crown⁵ as is specified in the agreement, being a use resulting from a material change made or proposed to be made by the Crown in the use of the land⁶.

Where an agreement is so made in respect of any Crown land, then, if at any time the land ceases to be used by the Crown for the purposes specified in the agreement, the Town and Country Planning Act 1990 has effect in relation to any subsequent private use⁷ of the land as if:

- 986 (1) the specified use by the Crown had required planning permission⁸; and
- 987 (2) that use had been authorised by planning permission granted subject to a condition⁹ requiring its discontinuance at that time¹⁰.

As from a day to be appointed¹¹, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹², subject to transitional arrangements¹³. Subject to express provision made by Part XIII of the Town and Country Planning Act 1990¹⁴, the normal requirements for planning permission are to bind the Crown¹⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'Crown land' see PARA 11 note 1 ante.

3 For the meaning of 'the appropriate authority' see PARA 11 note 20 ante.

4 I.e. the Town and Country Planning Act 1990 s 301(2): see the text and notes 7-10 infra.

5 For these purposes, references to the use of land by the Crown include references to its use on behalf of the Crown: *ibid* s 301(5). For the meaning of 'use' see PARA 221 note 4 ante.

6 *Ibid* s 301(1). An agreement so made by a local planning authority is a local land charge; and for the purposes of the Local Land Charges Act 1975 (see LAND CHARGES), the local planning authority by which such an agreement is made is treated as the originating authority as respects the charge constituted by the agreement: Town and Country Planning Act 1990 s 301(4).

7 For these purposes, 'private use' means use otherwise than by or on behalf of the Crown: *ibid* s 301(5).

8 For the meaning of 'planning permission' see PARA 43 note 6 ante.

9 Such a condition is not enforceable against any person who had a private interest in the land at the time when the agreement was made unless the local planning authority by which the agreement was made has notified him of the making of the agreement and of the effect of the Town and Country Planning Act 1990 s 301(2): s 301(3). For the meaning of 'private interest' see PARA 11 note 19 ante.

10 *Ibid* s 301(2).

11 It is as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

12 See the Planning and Compulsory Purchase Act 2004 ss 79(4), 120, Sch 3 para 27(1), Sch 9. At the date at which this title states the law, those repeals were not in force.

13 The repeal of the Town and Country Planning Act 1990 s 301 does not affect its operation in relation to an agreement made as mentioned in s 301(1) before the commencement of the Planning and Compulsory Purchase Act 2004 Sch 3 para 27: Sch 3 para 27(2).

14 It is made by the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended): see PARAS 11, 14 et seq ante, PARAS 455, 555, 899-901, 922 post.

15 See *ibid* s 292A (as prospectively added); and PARA 14 ante.

UPDATE

240 Requirement of planning permission for continuation of use instituted by the Crown

TEXT AND NOTES 11, 12--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(ii) Control by Agreement/A. PLANNING CONTRIBUTION/241. Introduction.

(ii) Control by Agreement

A. PLANNING CONTRIBUTION

241. Introduction.

Under the Planning and Compulsory Purchase Act 2004, new provision is made for the procedures under which developers may make a planning contribution¹. Once the relevant regulations are in place, the existing provisions of the Town and Country Planning Act 1990 regarding planning obligations² are to be repealed³. Negotiated planning obligations will not, however, disappear as provision may be made for them in regulations to be made under the 2004 Act⁴.

1 See the Planning and Compulsory Purchase Act 2004 ss 46-48; and PARAS 242-243 post.

2 It is the Town and Country Planning Act 1990 ss 106-106B (as substituted and prospectively repealed): see PARAS 244-249 post.

3 See the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 para 5, Sch 9. At the date at which this title states the law, these repeals were not in force.

4 See PARA 242 post; and see HL Debates vol 659 col 179 (16 March 2004) (Lord Rooker). In the Barker Review Report (*Delivering stability--securing our future housing needs* (HM Treasury, 2004)) Ch 3, the reforms made by the Planning and Compulsory Purchase Act 2004 are described as 'second best, leaving open the possibility of prolonged and costly section 106 negotiations for large developments' and alternative proposals are put forward coupled with a proposed new planning gain supplement described in Ch 4 (see recommendation 24). For the government response to these proposals see HL Debates vol 659 cols 912-915 (25 March 2004).

UPDATE

241 Introduction

NOTE 4--The Commissioners for Her Majesty's Revenue and Customs, the Secretary of State and a Northern Ireland Department may incur expenditure for the purpose of, or in connection with, preparing for the imposition of a tax on the increase in the value of land resulting from the grant of permission for development: Planning-gain Supplement (Preparations) Act 2007 s 1(1), (2). Expenditure by virtue of the Commissioners or the Secretary of State must be paid out of money provided by Parliament: s 1(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(ii) Control by Agreement/A. PLANNING CONTRIBUTION/242. Power to make regulations.

242. Power to make regulations.

Partly as from a day to be appointed¹, the Secretary of State² may, by regulations³, make provision for the making of a planning contribution in relation to the development⁴ or use⁵ of land⁶ in the area of a local planning authority⁷ in England⁸. The National Assembly for Wales⁹ may, as from a day to be appointed¹⁰, make the like provision in relation to land in Wales¹¹. The contribution may be made:

- 988 (1) by the prescribed means¹²;
- 989 (2) by compliance with the relevant requirements¹³; or
- 990 (3) by a combination of such means and compliance¹⁴.

The regulations may require the local planning authority to include in a development plan document¹⁵ in relation to England, or a local development plan¹⁶ in relation to Wales¹⁷, or in such other document as is prescribed¹⁸:

- 991 (a) a statement of the developments or uses or descriptions of development or use in relation to which the authority will consider accepting a planning contribution;
- 992 (b) a statement of the matters relating to development or use in relation to which it will not consider accepting a contribution by the prescribed means;
- 993 (c) the purposes to which receipts from payments made in respect of contributions are, in whole or in part, to be put;
- 994 (d) the criteria by reference to which the value of a contribution made by the prescribed means is to be determined¹⁹.

The regulations may make provision as to circumstances in which:

- 995 (i) except in the case of a contribution to which head (b) above applies, the person making the contribution ('the contributor') must state the form in which he will make the contribution;
- 996 (ii) the contribution may not be made by compliance with the relevant requirements if it is made by the prescribed means;
- 997 (iii) the contribution may not be made by the prescribed means if it is made by compliance with the relevant requirements;

998 (iv) a contribution must not be made²⁰.

They may also:

- 999 (A) require the local planning authority to apply receipts from planning contributions made by the prescribed means only to purposes mentioned in head (c) above²¹;
- 1000 (B) make provision for setting out in writing the terms of the planning contribution²²;
- 1001 (C) make provision in relation to the modification or discharge of a planning contribution²³;
- 1002 (D) make different provision in relation to the areas of different local planning authorities or different descriptions of local planning authority²⁴;
- 1003 (E) exclude their application, in whole or in part, in relation to the area of one or more local planning authorities or descriptions of local planning authority²⁵.

1 Ie partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, ss 46-48 (see the text and notes 2-25 infra; and PARA 243 post) had been brought into force for the purpose of making, or making provision by means of, subordinate legislation (see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 ante) but no regulations had been made thereunder.

2 As to the Secretary of State see PARA 19 ante.

3 As to the making of regulations generally see PARA 5 ante.

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'use' see PARA 221 note 4 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 As to local planning authorities see PARA 28 et seq ante.

8 Planning and Compulsory Purchase Act 2004 s 46(1).

9 As to the Assembly see PARA 20 ante.

10 See note 1 supra.

11 Planning and Compulsory Purchase Act 2004 s 48(a).

12 The prescribed means are: (1) the payment of a sum the amount and terms of payment of which are determined in accordance with criteria published by the local planning authority for the purposes of *ibid* s 46(3) (d) (see head (d) in the text); (2) the provision of a benefit in kind the value of which is so determined; or (3) a combination of such payment and provision: s 46(5). Maximum and minimum amounts may be prescribed in relation to a payment falling within s 46(5)(a) (see head (1) supra): s 47(1), (2). For the meaning of 'prescribed' see PARA 5 ante.

13 The relevant requirements are such requirements relating to the development or use as are (1) prescribed for these purposes; and (2) included as part of the terms of the contribution; and may include a requirement to make a payment of a sum: *ibid* s 46(6).

14 *Ibid* s 46(2).

15 For these purposes, 'development plan document' must be construed in accordance with *ibid* s 37(3) (see PARA 96 note 4 ante): s 46(7).

16 Ie within the meaning of *ibid* s 62: see PARA 135 ante.

17 *Ibid* s 48(b).

18 If a document is prescribed for these purposes the regulations may prescribe (1) the procedure for its preparation and the time at which it must be published; (2) the circumstances in which and the procedure by which the Secretary of State or the Assembly may take steps in relation to the preparation of the document: *ibid* ss 47(5), 48.

19 *Ibid* s 46(3). Provision may be made to enable periodic adjustment of the criteria mentioned in s 46(3)(d) (see head (d) in the text): s 47(3).

20 *Ibid* s 46(4).

21 *Ibid* s 47(7)(a).

22 *Ibid* s 47(7)(b).

23 *Ibid* s 47(7)(c).

24 *Ibid* s 47(8)(a).

25 *Ibid* s 47(8)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(ii) Control by Agreement/A. PLANNING CONTRIBUTION/243. Information in relation to, and enforcement of, planning contribution.

243. Information in relation to, and enforcement of, planning contribution.

Partly as from a day to be appointed¹, the following provisions apply for the purposes of regulations² made in relation to planning contribution³.

The local planning authority⁴ may be required to publish an annual report containing such information in relation to the planning contribution as is prescribed⁵.

Provision may be made for the enforcement by the local planning authority of the terms of a planning contribution including provision:

- 1004 (1) for a person obstructing the taking of such steps as are prescribed to be guilty of an offence punishable by a fine not exceeding level 3 on the standard scale⁶;
- 1005 (2) for a person deriving title to the land⁷ from the contributor⁸ to be bound by the terms of the contribution;
- 1006 (3) for a condition to be attached to any planning permission⁹ relating to the land requiring the contribution to be made before any development¹⁰ is started;
- 1007 (4) for the enforcement of a planning contribution in respect of land which is¹¹ Crown land¹².

1 *Ie* partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, ss 46-48 (see the text and notes 2-12 *infra*; and PARA 242 *ante*) had been brought into force for the purpose of making, or making provision by means of, subordinate legislation (see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 *ante*) but no regulations had been made thereunder.

2 *Ie* regulations made under the Planning and Compulsory Purchase Act 2004 s 46: see PARA 242 *ante*.

3 *Ibid* s 47(1).

4 As to local planning authorities see PARA 28 *et seq ante*.

- 5 Planning and Compulsory Purchase Act 2004 s 47(4). For the meaning of 'prescribed' see PARA 5 ante.
- 6 For the meaning of 'the standard scale' see PARA 53 note 10 ante.
- 7 For the meaning of 'land' see PARA 2 note 10 ante (definition applied by virtue of the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).
- 8 For the meaning of 'the contributor' see PARA 242 ante.
- 9 For the meaning of 'planning permission' see PARA 43 note 6 ante (definition as applied: see note 7 supra).
- 10 For the meaning of 'development' see PARA 217 ante (definition as applied: see note 7 supra).
- 11 le within the meaning of the Town and Country Planning Act 1990 s 293(1) (as prospectively amended): see PARA 14 ante.
- 12 Planning and Compulsory Purchase Act 2004 s 47(6).

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B. PLANNING OBLIGATIONS

(A) IN GENERAL

244. Planning obligations.

Any person interested in land¹ in the area of a local planning authority² may, by agreement or otherwise, enter into an obligation ('a planning obligation') enforceable to the extent provided³:

- 1008 (1) restricting the development⁴ or use⁵ of the land in any specified⁶ way;
- 1009 (2) requiring specified operations or activities to be carried out in, on, under or over the land;
- 1010 (3) requiring the land to be used in any specified way; or
- 1011 (4) requiring a sum or sums to be paid to the authority on a specified date or dates or periodically⁷.

A planning obligation may:

- 1012 (a) be unconditional or subject to limitations;
- 1013 (b) impose any restriction or requirement mentioned in heads (1) to (3) above either indefinitely or for such period or periods as may be specified; and
- 1014 (c) if it requires a sum or sums to be paid, require the payment of a specified amount or an amount determined in accordance with the instrument by which the obligation is entered into and, if it requires the payment of periodical sums, require them to be paid indefinitely or for a specified period⁸.

A planning obligation may not be entered into except by an instrument executed as a deed which:

- 1015 (i) states that the obligation is a planning obligation for these purposes;

- 1016 (ii) identifies the land in which the person entering into the obligation is interested;
- 1017 (iii) identifies the person entering into the obligation and states what his interest in the land is; and
- 1018 (iv) identifies the local planning authority by which the obligation is enforceable⁹.

A copy of any such instrument must be given to the authority so identified¹⁰.

Regulations may provide for the charging on the land of:

- 1019 (A) any sum or sums required to be paid under a planning obligation; and
- 1020 (B) any expenses recoverable by a local planning authority¹¹.

A planning obligation is a local land charge¹².

Where a developer offers to enter into a planning obligation which has more than a minimal connection with the proposed development, that may be a material consideration to which the local planning authority is entitled to have regard in deciding whether or not to grant planning permission¹³ in accordance with its established policy¹⁴. The use of a decision not to take enforcement action, combined with a planning obligation as a means of permitting a development to proceed, is not unlawful but cannot avoid the requirement to provide an environmental impact assessment if such an assessment is required; however there is no need to carry out a new consultation process and assessment on such a decision, if one has already been carried out¹⁵.

The statutory provisions set out above are prospectively repealed by the Planning and Compulsory Purchase Act 2004¹⁶ but it is anticipated that similar arrangements are to be put in place in the regulations about planning contribution to be made under the 2004 Act¹⁷.

1 For these purposes, 'land' has the same meaning as in the Local Land Charges Act 1975 (see LAND CHARGES vol 26 (2004 Reissue) PARA 672 note 2): Town and Country Planning Act 1990 s 106(13) (s 106 substituted by the Planning and Compensation Act 1991 s 12(1)). 'Person interested in land' includes any person who has an enforceable interest as against the owner to use the land: *Pennine Raceway Ltd v Kirklees Metropolitan Borough Council* [1983] QB 382, [1982] 3 All ER 628, CA (contractual licence). As to a licensee of Crown land see PARA 239 note 4 ante.

2 As to local planning authorities see PARA 28 et seq ante. See also note 9 infra.

3 ie enforceable to the extent mentioned in the Town and Country Planning Act 1990 s 106(3) (as substituted): see PARA 245 post.

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'use' see PARA 221 note 4 ante.

6 For these purposes, 'specified' means specified in the instrument by which the planning obligation is entered into: Town and Country Planning Act 1990 s 106(13) (as substituted: see note 1 supra). The question whether any such agreement is within the statutory powers depends solely on whether it is entered into for the purpose of restricting or regulating the development or use of the land: *JA Pye (Oxford) Ltd v South Gloucestershire District Council* [2001] EWCA Civ 450, (2001) 81 P & CR 448, [2001] All ER (D) 343 (Mar) (decided under previous legislation).

7 Town and Country Planning Act 1990 s 106(1) (as substituted: see note 1 supra). See *R v South Northamptonshire District Council, ex p Crest Homes plc* (1994) 93 LGR 205, [1994] 3 PLR 47, CA (council entitled to ask developer for costs where residential development made additional infrastructure necessary). As to unilateral undertakings see *South Oxfordshire District Council v Secretary of State for the Environment* (1994) 68 P & CR 551, [1994] 1 PLR 72 (unilateral undertaking to dispose of golf course and use income so generated for the repair of listed buildings over a 20-year period in accordance with a yearly schedule to be submitted to the local council was capable of constituting a planning obligation); *R (on the application of Davey)*

v Aylesbury Vale District Council [2005] EWHC 359 (Admin), [2005] All ER (D) 192 (Mar) (unilateral undertakings making provision for a travel plan regarding the application site and prohibiting the taking off or landing of helicopters there obviated any need to impose conditions to that effect when granting planning permission). The deposit of a sum of money with the authority under a planning obligation creates a form of trust: see *Patel v Brent London Borough Council* [2005] EWCA Civ 644, [2005] 31 EG 82, [2005] All ER (D) 384 (May). The existence of a planning obligation may give rise to a legitimate expectation that planning permission will be granted for development; but where the permission granted is an outline permission, there can be no legitimate expectation that the statutory time limit for approval of reserved matters will be extended or that the authority will view the proposed development in a favourable light in perpetuity: see *Kebbell Development Ltd v First Secretary of State* [2003] EWCA Civ 1855, [2003] All ER (D) 116 (Dec). For criticism of the system of requiring developers to pay an upfront contribution under the Town and Country Planning Act 1990 s 106 (as substituted) see the Barker Review Report (*Delivering stability--securing our future housing needs* (HM Treasury, 2004)) Ch 3 para 3.32; for a fuller discussion of the Town and Country Planning Act 1990 s 106 (as substituted) see PARA 3.42 et seq; and for proposed reforms see recommendation 24.

Policy guidance issued to local authorities in England by the Secretary of State sets out the following broad principles with regard to planning obligations:

- 126 (1) the Secretary of State's policy requires planning obligations to be sought only where they meet all the following tests, ie that a planning obligation must be: (a) relevant to planning; (b) necessary to make the proposed development acceptable in planning terms; (c) directly related to the proposed development; (d) fairly and reasonably related in scale and kind to the proposed development; (e) reasonable in all other respects (*ODPM Circular 05/2005 Planning Obligations* Annex B para B5);
- 127 (2) the use of planning obligations must be governed by the fundamental principle that planning permission may not be bought or sold; it is therefore not legitimate for unacceptable development to be permitted because of benefits or inducements offered by a developer which are not necessary to make the development acceptable in planning terms (Annex B para B6);
- 128 (3) similarly, planning obligations should never be used purely as a means of securing for the local community a share in the profits of development, ie as a means of securing a 'betterment levy' (Annex B para B7).

In Wales, national policy guidance is based on Welsh Office Circular 13/97 *Planning Obligations*: see *Planning Policy Wales* (National Assembly for Wales, 2002) PARAS 4.7.1-4.7.5.

As to planning conditions see PARAS 522-523 et seq post; and as to the status of policy guidance in England and Wales see PARA 9 ante.

As to agreements regulating the development of land before 25 October 1991 see the Town and Country Planning Act 1990 s 106 (as originally enacted); the Local Government (Miscellaneous Provisions) Act 1982 s 33 (as originally enacted). The amendment of s 33 by the Planning and Compensation Act 1991 s 32, Sch 7 para 6 has confined its scope to non-planning contexts. See also the Town and Country Planning Act 1971 s 52 (repealed). As to agreements under previous legislation see the Town and Country Planning Act 1971 s 292(1), Sch 24 para 88 (repealed). Without prejudice to the generality of the Planning (Consequential Provisions) Act 1990 ss 3-5, Sch 3 paras 1, 2, notwithstanding the repeal by that Act of the Town and Country Planning Act 1971 s 292(1), Sch 24 (as amended), the provisions of Sch 24 (as amended) continue to have effect, in so far as they are not specifically reproduced in the Planning (Consequential Provisions) Act 1990 Sch 3 (as amended) and remain capable of having effect, with any reference in those provisions to any provisions of the repealed enactments which is reproduced in the consolidating Acts being taken, so far as the context otherwise permits, as including a reference to the corresponding provision of those Acts: Planning (Consequential Provisions) Act 1990 Sch 3 para 3. For the meaning of 'the repealed enactments' and 'the consolidating Acts' see PARA 2 note 5 ante.

8 Town and Country Planning Act 1990 s 106(2) (as substituted: see note 1 supra).

9 Ibid s 106(9) (as substituted: see note 1 supra). As to the formalities of execution of a deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq. Any rule of law which required a seal for the valid execution of an instrument as a deed by an individual has, except in relation to a corporation sole, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (10); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 7. Where a planning obligation lays down conditions under which one party could be compelled to dispose of his land, the requirements of the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended) (see SALE OF LAND vol 42 (Reissue) PARA 29 et seq) have to be complied with: see *Jelson Ltd v Derby County Council* [1999] 39 EG 149, [1999] All ER (D) 601 cited in PARA 245 note 6 post.

In construing a planning obligation, the normal rules as to the exclusion of evidence about prior negotiations and the subjective intentions of the parties apply, and such evidence relating to a separate agreement between the parties which has not been concluded is similarly inadmissible: see *Stroude v Beazer Homes Ltd* [2005]

EWCA Civ 265, (2005) Times, 28 April, [2005] All ER (D) 298 (Mar). As to the construction of an indemnity clause in a planning obligation see *Wiltshire County Council v Crest Estates Ltd* [2005] EWCA Civ 1059, [2005] All ER (D) 29 (Aug).

In relation to land in England or Wales in the area of a joint planning board, a person entering into a planning obligation under the Town and Country Planning Act 1990 s 106 (as substituted) may identify the council of the county in England or the county or county borough in Wales in which the land is situated as the authority by which the obligation is enforceable: s 1(5)(c),(6), Sch 1 para 20(3), Sch 1A para 11 (s 1(6), Sch 1A para 11 added by the Local Government (Wales) Act 1994 s 18, Sch 4; the Town and Country Planning Act 1990 s 1(5)(c), (6) amended by the Environment Act 1995 s 120(3), Sch 24; the Town and Country Planning Act 1990 Sch 1 para 20(3) substituted by the Planning and Compensation Act 1991 Sch 7 paras 8, 53(9)). The Town and Country Planning Act 1990 Sch 1 para 20(3) (as so substituted) does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'joint planning board' see PARA 30 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to councils of counties see PARA 28 ante.

10 Ibid s 106(10) (as substituted: see note 1 supra).

11 Ibid s 106(12) (as substituted: see note 1 supra). At the date at which this title states the law, no such regulations had been made. As to the making of regulations generally see PARA 3 ante.

12 Ibid s 106(11) (as substituted: see note 1 supra). For the purposes of the Local Land Charges Act 1975 (see LAND CHARGES), the authority by which the obligation is enforceable is treated as the originating authority as respects such a charge: Town and Country Planning Act 1990 s 106(11) (as so substituted). Agreements under previous legislation (see note 7 supra) were, by contrast, imposed on the land in question as restrictive covenants.

13 See eg *R (on the application of Lincoln Co-operative Society Ltd) v South Holland District Council* [2000] All ER (D) 1812. Procedural fairness requires that third parties who have a legitimate financial or other interest in the outcome of negotiations between a local planning authority and a developer should be consulted: see *R (on the application of Lichfield Securities Ltd) v Lichfield District Council* [2001] EWCA Civ 304, (2001) 81 P & CR 213, [2001] 3 PLR 33, CA.

14 See *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636 at 647, [1995] 1 WLR 759 at 770, HL, per Lord Keith of Kinkel; *R (on the application of Lichfield Securities Ltd) v Lichfield District Council* [2001] EWCA Civ 304 at [13], (2001) 81 P & CR 213, [2001] 3 PLR 33 per Sedley LJ.

15 See *R (on the application of Prokopp) v London Underground Ltd* [2003] EWCA Civ 961, [2004] 1 P & CR 479, [2003] All ER (D) 112 (Jul). As to environmental impact assessments see PARA 487 et seq post.

16 See the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9; and PARA 241 ante. At the date at which this title states the law, those repeals were not in force.

17 See PARAS 241-242 ante.

UPDATE

244 Planning obligations

NOTE 7--Local Government (Miscellaneous Provisions) Act 1982 s 33 further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para 38; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 56.

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245. Enforceability of planning obligations.

A planning obligation¹ is enforceable² by the authority identified³ as the authority by which the obligation is enforceable against the person entering into the obligation⁴ and against any person deriving title from that person⁵. The instrument by which a planning obligation is entered into may, however, provide that a person shall not be bound by the obligation in respect of any period during which he no longer has an interest in the land⁶.

A restriction or requirement imposed under a planning obligation is enforceable by injunction⁷. If, however, there is a breach of a requirement in a planning obligation to carry out any operations in, on, under or over the land to which the obligation relates, the authority by which the obligation is enforceable may⁸:

- 1021 (1) enter the land and carry out the operations; and
- 1022 (2) recover from the person or persons against whom the obligation is enforceable any expenses reasonably incurred by it in doing so⁹.

Before an authority so exercises its power of entry under head (1) above, it must give not less than 21 days' notice of its intention to do so to any person against whom the planning obligation is enforceable¹⁰.

Any person who wilfully obstructs a person acting in the exercise of a power of entry under head (1) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹¹.

The provisions set out above are prospectively repealed by the Planning and Compulsory Purchase Act 2004¹² but it is anticipated that similar arrangements are to be put in place in the regulations about planning contribution to be made under the 2004 Act¹³.

1 For the meaning of 'planning obligation' see PARA 244 ante.

2 Ie subject to the Town and Country Planning Act 1990 s 106(4) (as substituted): see the text and notes 5-6 infra.

3 Ie identified in accordance with ibid s 106(9)(d) (as substituted): see PARA 244 ante at head (iv) in the text.

4 Ibid s 106(3)(a) (s 106 substituted by the Planning and Compensation Act 1991 s 12(1)).

5 Town and Country Planning Act 1990 s 106(3)(b) (as substituted: see note 4 supra). For these purposes, references (1) to a person from whom title is derived by another person include references to any predecessor in title of that person; (2) to a person deriving title from another person include references to any successor in title of that other person; (3) to deriving title are references to deriving title either directly or indirectly: s 336(8).

6 Ibid s 106(4) (as substituted: see note 4 supra). For the meaning of 'land' for these purposes see PARA 244 note 1 ante. Where a planning obligation lays down conditions under which one party could be compelled to dispose of his land, the requirements of the Law of Property (Miscellaneous Provisions) Act 1989 s 2 (as amended) (see SALE OF LAND vol 42 (Reissue) PARA 29 et seq) have to be complied with, including the requirement for the purchaser's signature: *Jelson Ltd v Derby County Council* [1999] 39 EG 149, [1999] All ER (D) 601.

7 Town and Country Planning Act 1990 s 106(5) (as substituted: see note 4 supra). In relation to land which for the time being is Crown land, a planning obligation may not be enforced by injunction without the consent of the appropriate authority: s 296(2)(aa)(i) (s 296(2)(aa) added by the Planning and Compensation Act 1991 s 12(2)). For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante; for the meaning of 'the appropriate authority' see PARA 11 note 20 ante; as to the enforceability of Crown planning obligations see PARA 251 post; and as to the prospective repeal of the Town and Country Planning Act 1990 s 296 (as amended) see PARA 11 note 9 ante.

7 Ie without prejudice to ibid s 106(5) (as substituted): see the text and note 7 supra.

9 Ibid s 106(6) (as substituted: see note 4 supra). In relation to land which for the time being is Crown land, the power so conferred to enter land may not be exercised without the consent of the appropriate authority: s 296(2)(aa)(ii) (as added and prospectively repealed: see note 7 supra).

10 Ibid s 106(7) (as substituted: see note 4 supra).

11 Ibid s 106(8) (as substituted: see note 4 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 55 ante.

12 See the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9; and PARA 241 ante. At the date at which this title states the law, those repeals were not in force.

13 See PARAS 241-242 ante.

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(B) MODIFICATION AND DISCHARGE

246. In general.

A planning obligation¹ may not be modified or discharged except:

- 1023 (1) by agreement between the authority by which the obligation is enforceable and the person or persons against whom the obligation is enforceable; or
- 1024 (2) in accordance with the following provisions and with the statutory provisions² providing for appeals³;

and an agreement falling within head (1) above may not be entered into except by an instrument executed as a deed⁴.

A person against whom a planning obligation is enforceable may, at any time after the expiry of the relevant period⁵, apply to the local planning authority⁶ by which the obligation is enforceable for the obligation:

- 1025 (a) to have effect subject to such modifications as may be specified in the application; or
- 1026 (b) to be discharged⁷.

Any such application for the modification of a planning obligation may not specify a modification imposing an obligation on any other person against whom the obligation is enforceable⁸.

The provisions set out above are prospectively repealed by the Planning and Compulsory Purchase Act 2004⁹ but it is anticipated that similar arrangements are to be put in place in the regulations about planning contribution to be made under the 2004 Act¹⁰.

1 For the meaning of 'planning obligation' see PARA 244 ante.

2 Ie the Town and Country Planning Act 1990 s 106B (as substituted): see PARA 616 post.

3 Ibid s 106A(1) (s 106A substituted by the Planning and Compensation Act 1991 s 12(1)). The Law of Property Act 1925 s 84 (as amended) (power to discharge or modify restrictive covenants affecting land: see EQUITY vol 16(2) (Reissue) PARA 630 et seq) does not apply to a planning obligation: Town and Country Planning Act 1990 s 106A(10) (as so substituted). This is in contrast to the position regarding agreements under previous

legislation (ie agreements under the Town and Country Planning Act 1947 s 25 (repealed) or the Town and Country Planning Act 1962 s 37 (repealed), 'section 52 agreements' under the Town and Country Planning Act 1971 s 52 (repealed) or 'section 106 agreements' under the Town and Country Planning Act 1990 s 106 (as originally enacted)); the burden of such an agreement runs with the land as a restrictive covenant (see eg s 106(3) (as originally enacted)) and where extant can only be discharged or modified on application to the Lands Tribunal under the Law of Property Act 1925 s 84 (as amended).

It is not open to developers to seek the discharge of a planning obligation otherwise than under the Town and Country Planning Act 1990 s 106A (as substituted) under the guise of a claim that the authority has repudiated the agreement: see *Patel v Brent London Borough Council* [2005] EWCA Civ 664, [2005] 31 EG 82, [2005] All ER (D) 384 (May).

4 Town and Country Planning Act 1990 s 106A(2) (as substituted: see note 3 supra). As to the formalities of the execution of a deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq. Any rule of law which required a seal for the valid execution of an instrument as a deed by an individual has, except in relation to a corporation sole, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (10); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 7.

5 For these purposes, 'the relevant period' means (1) such period as may be prescribed; or (2) if no period is prescribed, the period of five years beginning with the date on which the obligation is entered into: Town and Country Planning Act 1990 s 106A(4) (as substituted: see note 3 supra). For the meaning of 'prescribed' see PARA 16 note 5 ante. As to the power to make regulations for these purposes see note 7 infra. At the date at which this title states the law, no regulations had been made prescribing a period for these purposes.

6 As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 s 106A(3) (as substituted: see note 3 supra). Regulations may make provision with respect to: (1) the form and content of applications for modification or discharge; (2) the publication of notices of such applications; and (3) the procedures for considering any representations made with respect to such applications: s 106A(9)(a)-(c) (as so substituted). As to the exercise of this power see the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832; and PARA 247 et seq post. As to the making of regulations generally see PARA 3 ante.

8 Town and Country Planning Act 1990 s 106A(5) (as substituted: see note 3 supra).

9 See the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9; and PARA 241 ante. At the date at which this title states the law, that repeal was not in force.

10 See PARAS 241-242 ante.

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247. Method of application.

An application for the modification or discharge of a planning obligation¹ must be made on a form provided by the local planning authority², which must require the following information:

- 1027 (1) the name and address of the applicant;
- 1028 (2) the address or location of the land³ to which the application relates and the nature of the applicant's interest in that land;
- 1029 (3) sufficient information to enable the authority to identify the planning obligation which the applicant wishes to have modified or discharged;
- 1030 (4) the applicant's reasons for applying for the modification or discharge of that obligation; and
- 1031 (5) such other information as the authority considers necessary to enable it to determine the application⁴.

The application must include the information required by the application form, a map identifying the land to which the obligation relates and such other information as the applicant considers relevant to the determination of the application⁵.

1 le an application under the Town and Country Planning Act 1990 s 106A (as substituted) (see PARA 246 ante) made in respect of the modification or discharge of a planning obligation entered into under s 106 (as substituted) (see PARA 244 ante) or s 299A (as added and prospectively repealed) (see PARA 251 post): Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 2. As to the modification or discharge of agreements under previous legislation (eg 'section 52 agreements' under the Town and Country Planning Act 1971 s 52 (repealed) or 'section 106 agreements' under the Town and Country Planning Act 1990 s 106 (as originally enacted)) see PARA 246 note 3 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'land' for these purposes see PARA 244 note 1 ante; and for the meaning of 'land' generally see PARA 2 note 10 ante.

4 Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 3(1).

5 Ibid reg 3(2).

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248. Notices of and publicity for applications.

An applicant for the modification or discharge of a planning obligation¹ must give notice in the prescribed form² of the application to any person other than the applicant against whom, on the day 21 days before the date of the application, the planning obligation is enforceable and whose name and address is known to the applicant³. In order to comply with this requirement, the applicant must take reasonable steps to ascertain the name and address of every such person⁴. Where the names and addresses of all such persons are not known to the applicant after he has taken reasonable steps to ascertain that information, he must, during the 21 day period immediately preceding the application, publish notice of the application in a local newspaper circulating in the locality of the land⁵ to which the application relates⁶.

The notice required to be so served or published must invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is served or published, as the case may be⁷.

An application for the modification or discharge of a planning obligation must be accompanied by a certificate in the appropriate form⁸ certifying that the above requirements have been satisfied⁹.

When a local planning authority¹⁰ receives an application for the modification or discharge of a planning obligation it must publicise the application by:

- 1032 (1) posting notice of the application on or near the land to which the planning obligation relates for not less than 21 days; or
- 1033 (2) serving notice of the application on the owners¹¹ and occupiers of land adjoining that land; or

1034 (3) publishing notice of the application in a local newspaper circulating in the locality in which that land is situated¹².

The notice posted, served, or published in accordance with heads (1) to (3) above must be in the prescribed form¹³ and must invite representations on the application to be made to the local planning authority within 21 days of the date on which the notice is posted or served, or within 14 days of the date on which the notice is published, as the case may be¹⁴. The local planning authority must make a copy of the application and the relevant part of the instrument by which the planning obligation was entered into available for inspection during the period so allowed for making representations¹⁵.

1 le an application such as is described in PARA 247 note 1 ante. As to the modification or discharge of agreements under previous legislation (eg 'section 52 agreements' under the Town and Country Planning Act 1971 s 52 (repealed) or 'section 106 agreements' under the Town and Country Planning Act 1990 s 106 (as originally enacted)) see PARA 246 note 3 ante.

2 For the prescribed form of notice see the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 4(4), Schedule Pt I.

3 Ibid reg 4(1).

4 Ibid reg 4(2).

5 For the meaning of 'land' for these purposes see PARA 244 note 1 ante; and for the meaning of 'land' generally see PARA 2 note 10 ante.

6 Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 4(3).

7 Ibid reg 4(4).

8 For the form of certificate see ibid reg 4(5), Schedule Pt 2.

9 Ibid reg 4(5).

10 As to local planning authorities see PARA 28 et seq ante.

11 For the purposes of head (2) in the text, 'owner' in relation to any land means any person who is the estate owner in respect of the fee simple or who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 5(4).

12 Ibid reg 5(1).

13 For the prescribed form of notice see ibid reg 5(2), Schedule Pt 3.

14 Ibid reg 5(2).

15 Ibid reg 5(3).

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249. Determination of application.

A local planning authority¹ must not determine an application for the modification or discharge of a planning obligation² before the expiry of the period or periods provided³ for making representations⁴. Where an application is made to an authority for a planning obligation to have effect subject to such modifications as may be specified in the application or for the obligation to be discharged, the authority may determine:

- 1035 (1) that the planning obligation shall continue to have effect without modification;
- 1036 (2) if the obligation no longer serves a useful purpose, that it shall be discharged; or
- 1037 (3) if the obligation continues to serve a useful purpose, but would serve that purpose equally well if it had effect subject to the modifications specified in the application, that it shall have effect subject to those modifications⁵.

The authority must give written notice of its determination to the applicant within the period of eight weeks from the date on which the application is received or, except where the applicant has already given notice of appeal to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷, within such extended period as may be agreed upon in writing by the applicant and the authority⁸. When a local planning authority determines that a planning obligation shall continue to have effect without modification, the notice of that decision must state, clearly and precisely, the authority's full reasons for its decision and must include a statement to the effect that the applicant may appeal to the Secretary of State or to the Assembly against the decision within six months of the date of the notice or within such longer period as the Secretary of State or the Assembly may, at any time, allow⁹.

Where an authority determines that a planning obligation shall have effect subject to modifications specified in the application, the obligation as modified is enforceable as if it had been entered into on the date on which the notice of the determination was given to the applicant¹⁰.

The provisions set out above are prospectively repealed by the Planning and Compulsory Purchase Act 2004¹¹ but it is anticipated that similar arrangements are to be put in place in the regulations to be made under the 2004 Act¹².

1 As to local planning authorities see PARA 28 et seq ante.

2 Ie an application such as is described in PARA 247 note 1 ante. As to the modification or discharge of agreements under previous legislation (eg 'section 52 agreements' under the Town and Country Planning Act 1971 s 52 (repealed) or 'section 106 agreements' under the Town and Country Planning Act 1990 s 106 (as originally enacted)) see PARA 246 note 3 ante.

3 Ie provided in accordance with the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, regs 4(4), 5(2): see PARA 248 ante.

4 Ibid reg 6(1).

5 Town and Country Planning Act 1990 s 106A(6) (s 106A substituted by the Planning and Compensation Act 1991 s 12(1)). As to the test under the Town and Country Planning Act 1990 s 106A(6) (as so substituted) see *R (on the application of The Garden and Leisure Group Ltd) v North Somerset Council* [2003] EWHC 1605 (Admin), [2004] 1 P & CR 635, [2003] All ER (D) 84 (Jul). As to appeals where a local planning authority determines that a planning obligation shall continue to have effect without modification see PARA 616 post.

Regulations may make provision with respect to the notices to be given to applicants of determinations under the Town and Country Planning Act 1990 s 106A(6) (as so substituted): s 106A(9)(d) (as so substituted). As to the exercise of this power see the text and notes 6-9 infra.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 106A (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 106A(7) (as substituted: see note 5 supra); Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 6(2). As to appeals where a local planning authority fails so to give notice see PARA 616 post.

9 Ibid reg 6(3). The local planning authority has a discretion as to whether to allow modification of the agreement, but must exercise that discretion to further planning purposes, rather than for any other reason: see *R (on the application of Batchelor Enterprises Ltd) v North Dorset District Council* [2003] EWHC 3006 (Admin), [2003] All ER (D) 448 (Nov).

10 Town and Country Planning Act 1990 s 106A(8) (as substituted: see note 5 supra). As to the enforcement of planning obligations see PARA 245 ante.

11 See the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9; and PARA 241 ante. At the date at which this title states the law, those repeals were not in force.

12 See PARAS 241-242 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(ii) Control by Agreement/C. CROWN LAND/250. Agreements relating to Crown land; arrangements before amendment by the 2004 Act.

C. CROWN LAND

250. Agreements relating to Crown land; arrangements before amendment by the 2004 Act.

At the date at which this title states the law, the appropriate authority¹ and the local planning authority² for the area in which any Crown land³ is situated may make agreements for securing the use⁴ of the land, so far as may be prescribed by any such agreement, in conformity with the provisions of the development plan⁵ applicable to it⁶.

Any such agreement may contain such consequential provisions, including provisions of a financial character, as may appear to be necessary or expedient having regard to the purposes of the agreement⁷; but an agreement so made by a government department⁸ does not have effect unless it is approved by the Treasury⁹.

In considering whether to make or approve such an agreement relating to:

- 1038 (1) land belonging to a government department; or
- 1039 (2) land held in trust for Her Majesty for the purposes of a government department,

the department and the Treasury must have regard to the purposes for which the land is held by or for the department¹⁰.

As from a day to be appointed¹¹, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹². Prospective provision is made for applications for planning permission by the Crown¹³. These are to be subject to transitional arrangements¹⁴.

1 For the meaning of 'the appropriate authority' see PARA 11 note 20 ante.

- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 For the meaning of 'Crown land' see PARA 11 note 1 ante.
- 4 For the meaning of 'use' see PARA 221 note 4 ante.
- 5 For the meaning of 'development plan' see the Planning and Compulsory Purchase Act 2004 s 38; and PARA 91 ante.
- 6 Town and Country Planning Act 1990 s 297(1).
- 7 Ibid s 297(2).
- 8 For the meaning of 'government department' see PARA 3 note 5 ante.
- 9 Town and Country Planning Act 1990 s 297(3). This requirement for Treasury approval is retained in Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).
- 10 Town and Country Planning Act 1990 s 297(4). As to compensation where the approval of a local planning authority for development of land in which there is a Duchy interest is required in accordance with an agreement under s 297, and is refused or granted subject to conditions, see s 298(3) (as amended); and PARA 922 post.
- 11 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.
- 12 See ibid ss 79(4), 120, Sch 3 para 23, Sch 9. At the date at which this title states the law, those repeals were not in force.
- 13 See the Town and Country Planning Act 1990 s 298A (as prospectively added); and PARA 455 post.
- 14 See the Planning and Compulsory Purchase Act 2004 s 89, Sch 4 Pt 1 (paras 1-6); and PARA 457 post.

UPDATE

250 Agreements relating to Crown land; arrangements before amendment by the 2004 Act

TEXT AND NOTES 11, 12--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(3) METHODS OF CONTROL/(ii) Control by Agreement/C. CROWN LAND/251. Crown planning obligations; arrangements before amendment by the 2004 Act.

251. Crown planning obligations; arrangements before amendment by the 2004 Act.

At the date at which this title states the law, the appropriate authority¹ in relation to any Crown interest² or Duchy interest³ in land⁴ in the area of a local planning authority⁵ may enter into a planning obligation⁶ enforceable to the specified⁷ extent⁸.

A planning obligation may not, however, be so entered into except by an instrument executed as a deed which:

- 1040 (1) states that the obligation is a planning obligation for these purposes;
- 1041 (2) identifies the land in relation to which the obligation is entered into;

- 1042 (3) identifies the appropriate authority which is entering into the obligation and states what the Crown or Duchy interest in the land is; and
 1043 (4) identifies the local planning authority by which the obligation is enforceable⁹.

A planning obligation so entered into is enforceable:

- 1044 (a) against any person with a private interest¹⁰ deriving from the Crown or Duchy interest stated in accordance with head (3) above;
 1045 (b) by the authority identified in accordance with head (4) above¹¹.

The consent of the appropriate authority must be obtained to:

- 1046 (i) the enforcement by injunction of a planning obligation against a person in respect of land which is Crown land; and
 1047 (ii) the exercise, in relation to Crown land, of the power¹² to enter land¹³.

As from a day to be appointed¹⁴, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹⁵. Further, the existing statutory provisions with regard to planning obligations generally¹⁶ are prospectively repealed and replaced with new powers to make regulations about planning contribution under the Planning and Compulsory Purchase Act 2004¹⁷.

1 For the meaning of 'the appropriate authority' see PARA 11 note 20 ante.

2 For the meaning of 'Crown interest' see PARA 11 note 1 ante.

3 For the meaning of 'Duchy interest' see PARA 11 note 1 ante.

4 For the meaning of 'land' for these purposes see PARA 244 note 1 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Ie an obligation falling within any of the Town and Country Planning Act 1990 s 106(1)(a)-(d) (as substituted): see PARA 244 ante at heads (1)-(4) in the text.

7 Ie enforceable to the extent specified in ibid s 299A(3) (as added): see the text and notes 10-11 infra.

8 Ibid s 299A(1) (s 299A added by the Planning and Compensation Act 1991 s 12(3)). Subject to the Town and Country Planning Act 1990 s 299A(5) (as so added) (see the text and notes 12-13 infra), s 106(2), (4)-(8), (10)-(13) (as substituted) (see PARAS 244-245 ante), s 106A (as substituted) (see PARA 246 ante) and s 106B (as substituted) (see PARA 616 post) apply to a planning obligation entered into under s 299A (as added) as they apply to a planning obligation entered into under s 106 (as substituted): s 299A(4) (as so added). See also the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, which apply to applications under the Town and Country Planning Act 1990 s 106A (as substituted) and appeals under s 106B (as substituted) made in respect of the modification or discharge of planning obligations entered into under s 106 (as substituted) or s 299A (as so added) (Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 2); and PARAS 247-249 ante, PARAS 616-617 post.

9 Town and Country Planning Act 1990 s 299A(2) (as added: see note 8 supra). As to the formalities of execution of a deed see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 27 et seq. Any rule of law which required a seal for the valid execution of an instrument as a deed by an individual has, except in relation to a corporation sole, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (10); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARA 7.

In relation to land in England or Wales in the area of a joint planning board, a person entering into a planning obligation under the Town and Country Planning Act 1990 s 299A (as so added) may identify the council of the county in England or the county or county borough in Wales in which the land is situated as the authority by which the obligation is enforceable: s 1(5)(c), (6), Sch 1 para 20(3), Sch 1A para 11 (s 1(6), Sch 1A para 11

added by the Local Government (Wales) Act 1994 s 18, Sch 4; the Town and Country Planning Act 1990 s 1(5) (c), (6) amended by the Environment Act 1995 s 120(3), Sch 24; the Town and Country Planning Act 1990 Sch 1 para 20(3) substituted by the Planning and Compensation Act 1991 Sch 7 paras 8, 53(9)). The Town and Country Planning Act 1990 Sch 1 para 20(3) (as so substituted) does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'joint planning board' see PARA 30 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to councils of counties see PARA 28 ante.

10 For the meaning of 'private interest' see PARA 11 note 19 ante.

11 Town and Country Planning Act 1990 s 299A(3) (as added: see note 8 supra).

12 Ie the power to enter land conferred by ibid s 106(6) (as substituted and as applied by s 299A(4) (as added: see note 8 supra)): see PARA 244 ante.

13 Ibid s 299A(5) (added: see note 8 supra).

14 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

15 See ibid ss 79(4), 120, Sch 3 para 25, Sch 9. At the date at which this title states the law, those repeals were not in force.

16 Ie the Town and Country Planning Act 1990 ss 106-106B (as substituted): see PARAS 244-249 ante.

17 See PARA 241 et seq ante.

UPDATE

251 Crown planning obligations; arrangements before amendment by the 2004 Act

TEXT AND NOTES 14, 15--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/A. IN GENERAL/252. Power to make development order.

(4) PERMISSION GRANTED BY DEVELOPMENT ORDER

(i) General and Special Development Orders

A. IN GENERAL

252. Power to make development order.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by order (a 'development order') provide for the granting of planning permission³.

A development order may either:

- 1048 (1) itself grant planning permission for development⁴ specified in the order or for development of any class specified⁵; or
- 1049 (2) in respect of development for which planning permission is not granted by the order itself, provide for the granting of planning permission by the local planning authority⁶, or in specified cases⁷ by the Secretary of State or the

Assembly, on application to the authority in accordance with the provisions of the order⁸.

A development order may be made either:

- 1050 (a) as a general order⁹ applicable, except so far as the order otherwise provides, to all land¹⁰; or
- 1051 (b) as a special order¹¹ applicable only to such land or descriptions of land as may be specified in the order¹².

For the purposes of enabling development to be carried out in accordance with planning permission, or otherwise for the purpose of promoting proper development in accordance with the development plan¹³, a development order may direct that any pre-1947 Act enactment¹⁴, or any regulations, orders or byelaws made at any time under any such enactment:

- 1052 (i) shall not apply to any development specified in the order; or
- 1053 (ii) shall apply to it subject to such modifications as may be so specified¹⁵.

A general development order may make different provision with respect to different descriptions of land¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 ss 59, 61 (see the text and notes 3-16 infra), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Town and Country Planning Act 1990 s 59(1). For the meaning of 'planning permission' see PARA 43 note 6 ante. The power to make development orders is exercisable by statutory instrument subject, in the case of an order made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: Town and Country Planning Act 1990 s 333(4), (5)(b); and see PARA 20 the text and notes 5-9 ante. Without prejudice to s 333(5), where a development order makes provision for excluding or modifying any enactment contained in a public general Act (other than any of the enactments specified in Sch 17 (as amended) (provisions relating to highways)) the order does not have effect until that provision is approved by a resolution of each House of Parliament: see s 333(6); and PARA 3 ante. Without prejudice to the Interpretation Act 1978 s 14 (implied power to amend), the power conferred by the Town and Country Planning Act 1990 s 59 to make an order includes power to vary or revoke any such order by a subsequent order: see s 333(7); and PARA 3 ante. As to the exercise of this power of revocation see eg the Town and Country Planning (Atomic Energy Establishments Special Development) (Revocation) Order 1996, SI 1996/3194.

4 For the meaning of 'development' see PARA 217 ante.

5 Town and Country Planning Act 1990 s 59(2)(a). An example is *East Barnet UDC v British Transport Commission* [1962] 2 QB 484 at 497, [1961] 3 All ER 878 at 889, DC.

6 As to local planning authorities see PARA 28 et seq ante.

7 Ie in the cases provided by the Town and Country Planning Act 1990 ss 60-106B (as amended): see PARA 254 et seq post.

8 Ibid s 59(2)(b).

9 Prior to the transfer of functions in Wales to the Assembly, the Secretary of State made (1) the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (now as amended) which came into force on 3 June 1995 (art 1(1)) and which applies to all land in England and Wales, except that (a) where land is the subject of a special development order, whether made before or after 3 June 1995, the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) applies to that land only to such extent and subject to such modifications as may be specified in the special development order (art 2(1)); and (b) nothing in that general development order applies to any permission which is deemed to be

granted under the Town and Country Planning Act 1990 s 222 (planning permission not needed for advertisements complying with regulations: see PARA 773 post) (Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 2(2)); (2) the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (now as amended) which also came into force on 3 June 1995 (art 1(1)) and which applies to the same extent as the general development order referred to in head (1) supra (see art 2). As to the exercise of this power by the Assembly see eg the Town and Country Planning (General Development Procedure) (Amendment) (Wales) Order 2002, SI 2002/1877, amending the general development order referred to in head (2) supra. The orders referred to in heads (1)-(2) supra have both been extensively amended; the amending instruments are cited in the notes to the relevant paragraphs of this title below.

10 Town and Country Planning Act 1990 s 59(3)(a). For the meaning of 'land' see PARA 2 note 10 ante.

11 At the date at which this title states the law, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665 (as amended) has effect as if so made: see PARA 1360 et seq post. See also eg the Town and Country Planning (Telecommunications Networks) (Railway Operational Land) Special Development Order 1982, SI 1982/817 (as amended). As to special development orders relating to urban development corporations see PARA 1462 post. As to the exercise of the power to revoke a special development order see note 3 supra.

12 Town and Country Planning Act 1990 s 59(3)(b).

13 For the meaning of 'development plan' see the Planning and Compulsory Purchase Act 2004 s 38; and PARA 91 ante.

14 For these purposes, 'pre-1947 Act enactment' means (1) any enactment passed before 6 August 1947 (ie the date of the passing of the Town and Country Planning Act 1947 (repealed)); and (2) any enactment contained in the Highways Act 1980 (see generally HIGHWAYS, STREETS AND BRIDGES) which (a) is an enactment derived from the Highways Act 1959 (repealed); and (b) re-enacts, with or without modifications, any such enactment as is mentioned in head (1) supra: Town and Country Planning Act 1990 s 61(3).

15 Ibid s 61(2).

16 Ibid s 61(1).

UPDATE

252 Power to make development order

NOTE 5--The Secretary of State must carry out a review of the effect in England of development orders made by virtue of the 1990 Act s 59(2)(a): Climate Change and Sustainable Energy Act 2006 s 10(1). The purpose of the review is to enable the Secretary of State to form a view as to what provision (or further provision) such development orders should make to facilitate development in England consisting of the installation, within the curtilage of a dwellinghouse, of equipment, apparatus or appliances for microgeneration (see FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 618 et seq): 2006 Act s 10(2). As soon as reasonably practicable after he has carried out the review, the Secretary of State must lay before Parliament a report of the review, including his view and the reasons for it: s 10(3). The report must also set out what provision (or further provision), if any, the Secretary of State proposes to make in development orders by virtue of the 1990 Act s 59(2)(a) in consequence of the review: 2006 Act s 10(4). Where the Secretary of State proposes to make provision (or further provision) in development orders in consequence of the review, he must (1) exercise his powers under the 1990 Act s 59 so as to provide that development orders made by virtue of that section make such provision in consequence of the review as he considers appropriate; and (2) exercise those powers as soon as reasonably practicable after laying the report before Parliament: 2006 Act s 10(5). 'Dwellinghouse' does not include a building containing one or more flats, or a flat contained within such a building; and 'flat' means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally: s 10(6).

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253. Restrictions and consultation requirements which may be included in development order.

The Secretary of State¹ or, in relation to Wales and where a local planning authority² is not the local highway authority³, the National Assembly for Wales⁴ may include in a development order⁵ such provisions as he or it thinks fit enabling a local highway authority to impose restrictions on the grant by the local planning authority of planning permission⁶ for the following descriptions of development⁷ relating to land⁸ in the area of the local highway authority:

- 1054 (1) the formation, laying out or alteration of any means of access⁹ to a classified road¹⁰ or to a proposed road the route of which has been adopted by resolution of the local highway authority and notified as such to the local planning authority;
- 1055 (2) any other operations or use¹¹ of land which appear to the local highway authority to be likely to result in a material increase in the volume of traffic entering or leaving such a classified or proposed road, to prejudice the improvement or construction of such a road or to result in a material change in the character of traffic entering, leaving or using such a road¹².

The Secretary of State or the Assembly may include in a development order provision enabling a local highway authority to impose restrictions on the grant by an urban development corporation which is the local planning authority of planning permission for such descriptions of development as may be specified in the order¹³.

A development order relating to England may also include provision:

- 1056 (a) requiring a county planning authority¹⁴ which is determining any application for planning permission or for a certificate of lawfulness of existing or proposed use or development¹⁵ and relating to a county matter¹⁶, or an application for approval of a matter reserved under an outline planning permission¹⁷ and so relating, to give the district planning authority¹⁸ for the area in which the land to which the application relates is situated an opportunity to make recommendations to the county planning authority as to the manner in which the application is determined, and to take into account any such recommendations¹⁹;
- 1057 (b) requiring a county or district planning authority which has received any application so mentioned or any application for such approval to notify the district or, as the case may be, county planning authority of the terms of its decision, or, where the application is referred to the Secretary of State, the date when it was so referred and, when notified to the authority, the terms of his decision²⁰.

A development order may require a local planning authority which is dealing with an application of which a parish council in England or a community council in Wales is entitled to be notified²¹:

- 1058 (i) to give the council an opportunity to make representations to the local planning authority as to the manner in which the application should be determined;
- 1059 (ii) to take into account any such representations;
- 1060 (iii) to notify the council of the terms of its decision or, where the application is referred to the Secretary of State or the Assembly²², the date when it was so referred and, when notified to the authority, the terms of his or the Assembly's decision²³.

1 As to the Secretary of State see PARA 19 ante.

2 As to local planning authorities see PARA 28 et seq ante. For these purposes, however, the reference to a local planning authority is not to be construed as including a reference to an urban development corporation which is the local planning authority by virtue of an order under the Local Government, Planning and Land Act 1980 s 149 (as amended) (see PARA 1464 post); and no provision of a development order which is included in it by virtue of the Town and Country Planning Act 1990 s 1(5)(c) (as amended), Sch 1 para 5(1) or, as the case may be, s 1(6), Sch 1A para 1(1) (as added) is to be construed as applying to such a corporation: Sch 1 para 5(2); Sch 1A para 1(2) (Sch 1A added by the Local Government (Wales) Act 1994 s 18(7), Sch 4). The Town and Country Planning Act 1990 Sch 1 para 5(1), (2) (see the text and notes 3-12 infra) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

3 For the meaning of 'local highway authority' see PARA 39 note 21 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 1A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'development order' see PARA 252 ante.

6 For the meaning of 'planning permission' see PARA 43 note 6 ante.

7 For the meaning of 'development' see PARA 217 ante.

8 For the meaning of 'land' see PARA 2 note 10 ante.

9 For the meaning of 'means of access' see PARA 219 note 1 ante.

10 Ie a road classified under the Highways Act 1980 s 12(3) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 26) or the Local Government Act 1966 s 27 (repealed).

11 For the meaning of 'use' see PARA 221 note 4 ante.

12 Town and Country Planning Act 1990 Sch 1 para 5(1); Sch 1A para 1(1) (as added: see note 2 supra).

13 Ibid Sch 1 para 5(3); Sch 1A para 1(3) (as added: see note 2 supra). Schedule 1 para 5(3) applies in Greater London: Sch 1 para 21(2).

14 As to county planning authorities see PARA 28 ante.

15 Ie any application mentioned in the Town and Country Planning Act 1990 Sch 1 para 3 (as amended): see PARA 213 ante.

16 For the meaning of 'county matter' see PARA 38 ante.

17 Ie within the meaning of the Town and Country Planning Act 1990 s 92 (as prospectively amended): see PARA 519 post.

18 As to district planning authorities see PARA 28 ante.

19 Town and Country Planning Act 1990 Sch 1 para 6(1). Schedule 1 para 6 does not, however, apply in Greater London: Sch 1 para 21(1).

20 Ibid Sch 1 para 6(2) (amended by the Environment Act 1995 s 120(3), Sch 24). See also note 19 supra.

21 In England, a local planning authority which has the function of determining applications for planning permission must, if requested to do so by the council of any parish situated in its area, notify the council of (1)

any relevant planning application; and (2) any alteration to that application accepted by the authority; and for these purposes 'a relevant planning application' means an application which relates to land in the parish and is an application for planning permission or for approval of a matter reserved under an outline planning permission within the meaning of s 92 (as amended) (see PARA 519 post): Town and Country Planning Act 1990 Sch 1 para 8(1), (2) (Sch 1 para 8 substituted by the Planning and Compensation Act 1991 s 32, Sch 7 para 53; amended by the Local Government (Wales) Act 1994 ss 20(4), 66(8), Sch 6 para 24(15), Sch 18). Any request made for these purposes must be in writing and state that the council wishes to be notified of all relevant applications or all applications of a description specified in the request: Town and Country Planning Act 1990 Sch 1 para 8(3) (as so substituted). An authority must comply with the duty to notify a council of an application by (a) sending the council a copy of the application; or (b) indicating to the council the nature of the development which is the subject of the application and identifying the land to which it relates; and any notification falling within head (b) supra must be in writing: Sch 1 para 8(4) (as so substituted). An authority must comply with its duty to notify a council of an alteration by either sending a copy of the alteration to the council or informing the council in writing of its general effect; but it need not notify a council of an alteration which in its opinion is trivial: Sch 1 para 8(5) (as so substituted).

In Wales, a local planning authority which has the function of determining applications for planning permission must, if requested to do so by the council for any community or group of communities situated in its area, notify that council of any relevant planning application and of any alteration to that application accepted by the authority; and for these purposes 'relevant planning application' means an application which (i) relates to land in the community or (as the case may be) one of the communities concerned; and (ii) is an application for planning permission or for approval of a matter reserved under an outline planning permission within the meaning of s 92 (as amended): Sch 1A para 2(1), (2) (as added: see note 2 supra). Any request made for these purposes must be in writing and must state that the community council wishes to be notified of all relevant applications or all applications of a description specified in the request: Sch 1A para 2(3) (as so added). An authority must comply with the duty to notify a community council of an application by: (A) sending the council a copy of the application; or (B) indicating to the council the nature of the development which is the subject of the application and identifying the land to which it relates; and any notification falling within head (B) supra must be in writing: Sch 1A para 1(4) (as so added). An authority must comply with its duty to notify a community council of an alteration by either sending a copy of the alteration to the council or informing the council in writing of its general effect, but it need not notify a community council of an alteration which in its opinion is trivial: Sch 1A para 1(5) (as so added).

22 As to referred applications see PARA 481 et seq post.

23 Town and Country Planning Act 1990 Sch 1 para 8(6) (as substituted: see note 21 supra); Sch 1A para 2(6) (as added: see note 2 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/A. IN GENERAL/254. Permission granted by development order.

254. Permission granted by development order.

Planning permission¹ granted by a development order² may be granted either unconditionally or subject to such conditions or limitations as may be specified in the order³.

Where planning permission is granted by a development order for the erection⁴, extension or alteration of any buildings⁵, the order may⁶ require the approval of the local planning authority⁷ to be obtained with respect to the design or external appearance of the buildings⁸.

Where planning permission is granted by a development order for development of a specified class, the order may⁹ enable the Secretary of State¹⁰ or, in relation to Wales, the National Assembly for Wales¹¹, or the local planning authority, to direct that the permission shall not apply either:

- 1061 (1) in relation to development in a particular area; or
- 1062 (2) in relation to any particular development¹².

Any provision of a development order by which permission is granted for the use¹³ of land¹⁴ for any purpose on a limited number of days in a period specified in that provision is to be taken¹⁵ to be a provision granting permission for the use of the land for any purpose subject to the limitation that the land shall not be used for any one purpose in pursuance of that provision on more than that number of days in that period¹⁶.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development order' see PARA 252 ante.

3 Town and Country Planning Act 1990 s 60(1).

4 For the meaning of 'erection' see PARA 2 note 10 ante.

5 For the meaning of 'building' see PARA 2 note 10 ante.

6 Ie without prejudice to the generality of the Town and Country Planning Act 1990 s 60(1): see the text and notes 1-3 supra.

7 As to local planning authorities see PARA 28 et seq ante.

8 Town and Country Planning Act 1990 s 60(2).

9 See note 6 supra.

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of functions under the Town and Country Planning Act 1990 s 60, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Town and Country Planning Act 1990 s 60(3). The provisions enabling the Secretary of State or the Assembly to give directions which may be included in a development order by virtue of the Town and Country Planning Act 1990 s 60 (as so modified) include provisions enabling him or it to direct that development which is both of a description mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1), Sch 2 para 2, Table col 1 (see PARA 490 post at heads (1)-(14) in the text) and of a class described in the direction is EIA development for the purposes of the 1999 Regulations: see reg 33; and PARA 488 post.

13 For the meaning of 'use' see PARA 221 note 4 ante.

14 For the meaning of 'land' see PARA 2 note 10 ante.

15 Ie without prejudice to the generality of references in the Town and Country Planning Act 1990 to limitations.

16 Ibid s 60(4).

UPDATE

254 Permission granted by development order

NOTES--As to the grant of permission for development which is likely to have a significant effect on a European site or a European offshore marine site see PARA 254A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/A. IN GENERAL/254A. General and special development orders and planning zones.

254A. General and special development orders and planning zones.

Development, permission for which was granted by general development order¹, which is likely to have a significant effect on a European site² in Great Britain or a European offshore marine site³ and which is not directly connected with or necessary to the management of the site, must not be commenced until the developer has received written notification of the local planning authority's approval⁴.

Where it is intended to carry out development in reliance on the permission granted by a general development order, application may be made in writing to the appropriate nature conservation body⁵ for its opinion whether the development is likely to have a significant effect on a European site⁶. The appropriate nature conservation body must consider whether this is likely⁷, and provide a written opinion to the applicant and local planning authority⁸. An opinion that the development is not likely to have such an effect is conclusive of that question for the purpose of reliance on the planning permission granted by a general development order⁹. If the appropriate nature conservation body considers that it has insufficient information to reach a conclusion, it must notify the applicant in writing indicating in what respects it considers the information insufficient; and the applicant may supply further information with a view to enabling the body to reach a decision on the application¹⁰.

Planning permission must not be granted in a simplified planning zone¹¹, enterprise zone¹² or by special development order¹³ made or designated after 30 October 1994 if it is likely to have a significant effect on a European site in Great Britain and is not directly connected with or necessary to the management of the site¹⁴. Planning permission must not be granted in a simplified planning zone, enterprise zone or by special development order made on or after 21 August 2007 if it is likely to have a significant effect on a European offshore marine site¹⁵.

1 As to general development orders see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 60-63; and PARA 252 et seq.

2 'European site' means: (1) a special area of conservation; (2) a site of European Community importance; (3) a site hosting a priority natural habitat or priority species; or (4) a classified area: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 2(1), 10 (as amended), implementing the requirements of EC Council Directive 43/92 (OJ L206, 22.7.92, p 7) on the conservation of natural habitats and of wild fauna and flora (as amended). See further OPEN SPACES AND COUNTRYSIDE.

3 'European offshore marine site' means a European offshore marine site within the meaning of the Offshore Marine Conservation (Natural Habitats, etc) Regulations 2007, SI 2007/1842, reg 15: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1) (definition added by SI 2007/1843).

4 Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 60(1) (amended by SI 2007/1843). As to the approval of the local planning authority see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 62 (amended by SI 2007/1843). Where development had already begun before 30 October 1994, it must not be continued until the developer has received written notification of the local planning authority's approval: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 60(2), (3). 'Local planning authority' means, in England and Wales, except as otherwise provided, any authority having any function as a local planning authority or mineral planning authority under the Town and Country Planning Act 1990: Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 2(1).

5 'Nature conservation body' means the Nature Conservancy Council for England or the Countryside Council for Wales: *ibid* regs 2(1), 4.

6 *Ibid* reg 61(1).

7 See *ibid* reg 61(2).

8 See *ibid* reg 61(3).

9 See *ibid* reg 61(5).

- 10 See *ibid* reg 61(4).
- 11 As to simplified planning zones see PARA 426 et seq.
- 12 As to enterprise zones see PARAS 447, 1491 et seq.
- 13 As to special development orders see PARA 252 et seq.
- 14 See the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, regs 64(1), (2), 65, 66 (reg 64(2) amended by SI 2007/1843). Supplementary provisions are made relating to compensation: see the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 67.
- 15 See *ibid* regs 64(3), 64A, 65A, 66A (added by SI 2007/1843).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/A. IN GENERAL/255. Development permitted by the Town and Country Planning (General Permitted Development) Order 1995.

255. Development permitted by the Town and Country Planning (General Permitted Development) Order 1995.

Subject to the provisions of the Town and Country Planning (General Permitted Development) Order 1995¹ and to certain regulations regarding the conservation of natural habitats², planning permission³ is granted⁴ by that Order for the specified classes of development⁵ described as permitted development in Schedule 2 to that Order⁶; but any permission so granted is subject to any relevant exception, limitation or condition specified in that Schedule⁷. Furthermore, nothing in the 1995 Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part III of the Town and Country Planning Act 1990⁸ otherwise than by that Order⁹.

The permission so granted does not, however, apply if:

- 1063 (1) in the case of permission granted in connection with an existing building¹⁰, the building operations involved in the construction of that building are unlawful;
- 1064 (2) in the case of permission granted in connection with an existing use¹¹, that use is unlawful¹².

Nor, subject to certain exceptions¹³, does the permission so granted:

- 1065 (a) authorise any development¹⁴ which requires or involves the formation, laying out or material widening of a means of access¹⁵ to an existing highway which is a trunk road¹⁶ or classified road¹⁷, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons¹⁸;
- 1066 (b) grant permission for the laying or construction of a notifiable pipeline¹⁹, except in the case of the laying or construction²⁰ of a notifiable pipeline by a gas transporter²¹;
- 1067 (c) except as specifically provided²², permit any development which requires or involves the demolition of a building²³.

Any development falling within the specified description of development²⁴ authorised by an Act or order subject to the grant of any consent or approval is not treated for the purposes of the 1995 Order as authorised unless and until that consent or approval is obtained, except where the Act was passed or the order was made after 1 July 1948 and it contains provision to the contrary²⁵.

Subject to certain exceptions²⁶, Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999²⁷ is not permitted by the 1995 Order unless:

- 1068 (i) the local planning authority²⁸ has adopted a screening opinion²⁹ that the development is not EIA development³⁰;
- 1069 (ii) the Secretary of State³¹ or, in relation to Wales, the National Assembly for Wales³² has made a screening direction³³ that the development is not EIA development; or
- 1070 (iii) the Secretary of State or the Assembly has given a direction³⁴ that the development is exempted from the application of the 1999 Regulations³⁵.

For these purposes, where:

- 1071 (A) the local planning authority has adopted a screening opinion³⁶ that development is EIA development and the Secretary of State or the Assembly has, in relation to that development, neither made a screening direction to the contrary³⁷ nor directed³⁸ that the development is exempted from the application of the 1999 Regulations; or
- 1072 (B) the Secretary of State or the Assembly has directed that development is EIA development,

that development is treated as development which is not permitted by the 1995 Order³⁹.

1 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): see the text and notes 1-39 infra; and PARA 258 et seq post.

2 Ie the Conservation (Natural Habitats, etc) Regulations 1994, SI 1994/2716, regs 60-63: see PARA 254A.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 As to the land to which the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) applies see PARA 252 note 9 ante. References in arts 3(5)-(13), 4-9, Schs 1, 2 (as amended) (see the text and notes 6-39 infra; and PARA 256 et seq post) to permission granted by Sch 2 (as amended) or by any Part, Class or paragraph of Sch 2 (as amended) are references to the permission granted by art 3 (as amended) in relation to development described in Sch 2 (as amended) or that provision of Sch 2 (as amended): art 3(3).

5 See *ibid* Sch 2 (as amended); and PARA 265 et seq post. See also note 4 supra.

6 *Ibid* art 3(1).

7 *Ibid* art 3(2).

8 Ie under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 419 et seq post.

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(4). See eg *Adur District Council v Secretary of State for the Environment* [2000] 1 PLR 1, CA.

10 For these purposes, unless the context otherwise requires: (1) 'building' (a) includes any structure or erection and, except in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 (as substituted and amended), Pt 25 (as amended) and Pt 33, and Pt 31 Class A, includes

any part of a building, as defined in art 1(2); and (b) does not include plant or machinery and, in Sch 2 (as amended), except in Pt 31 Class B and Pt 33, does not include any gate, fence, wall or other means of inclosure; and (2) 'existing' in relation to any building or any plant or machinery or any use, means (except in the definition of 'original' (see PARA 266 note 4 post)) existing immediately before the carrying out, in relation to that building, plant, machinery or use, of development described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): art 1(2). 'Erection', in relation to buildings as so defined, includes extension, alteration or re-erection; 'plant' includes any structure or erection in the nature of plant; and 'machinery' includes any structure or erection in the nature of machinery: art 1(2).

11 For the meaning of 'use' see PARA 221 note 4 ante. See also note 10 head (2) supra.

12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(5).

13 See notes 14, 22 infra.

14 Ie except in relation to development permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 9, Pt 11 (as amended), Pt 13 (as amended) or Pt 30: see PARAS 320, 322-323, 327, 409-411 post.

15 For the meaning of 'means of access' see PARA 219 note 1 ante.

16 For these purposes, unless the context otherwise requires, 'trunk road' means a highway or proposed highway which is a trunk road by virtue of the Highways Act 1980 s 10(1) or s 19 (as amended) (general provisions as to trunk roads, and certain special roads and other highways to become trunk roads: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703, 705) or any other enactment or any instrument made under any enactment: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

17 For these purposes, unless the context otherwise requires, 'classified road' means a highway or proposed highway which (1) is a classified road or a principal road by virtue of the Highways Act 1980 s 12(1) (general provision as to principal and classified roads); or (2) is classified by the Secretary of State in England or by the National Assembly for Wales for the purposes of any enactment by virtue of s 12(3); and 'proposed highway' has the same meaning as in s 329 (as amended) (further provisions as to interpretation): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2). As to the Highways Act 1980 s 12 see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 26; and as to the Secretary of State and the Assembly see PARAS 19-20 ante.

18 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(6).

19 For these purposes, unless the context otherwise requires, 'notifiable pipeline' means a pipeline, as defined in the Pipe-lines Act 1962 s 65 (as amended) (meaning of pipeline), which contains or is intended to contain a hazardous substance, as defined in the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 2(1) (as amended) (interpretation), except: (1) a pipeline the construction of which has been authorised under of the Pipe-lines Act 1962 s 1 (as amended) (cross-country pipelines not to be constructed without the minister's authority); or (2) a pipeline which contains or is intended to contain no hazardous substance other than (a) a flammable gas, as specified in the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, Sch 1 Pt II item 1 (classes of hazardous substances not specifically named in Pt I (as amended)) at a pressure of less than 8 bars absolute; or (b) a liquid or mixture of liquids, as specified in Sch 1 Pt II item 4: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2). As to the hazardous substances referred to see further HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 628.

20 Ie in accordance with ibid Sch 2 Pt 17 Class F (as amended): see PARA 341-343 post.

21 Ibid art 3(8) (amended by SI 1996/252; and by virtue of the Utilities Act 2000 s 76(7)).

22 Ie except as provided in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 31: see PARAS 412-414 post.

23 Ibid art 3(9). For these purposes, however, 'building' does not include part of a building: art 3(9).

24 Ie falling within ibid Sch 2 Pt 11 (as amended): see PARAS 322-323 post.

25 Ibid art 3(7).

26 Ie subject to ibid art 3(12) (as amended): see note 35 infra.

27 le within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARAS 489-490 post.

28 As to local planning authorities see PARA 28 et seq ante.

29 le under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 5: see PARA 493 post.

30 For the meaning of 'EIA development' see PARA 488 post.

31 As to the Secretary of State see PARA 19 ante.

32 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

33 le under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(7) or reg 6(4): see PARAS 492, 494 post.

34 le under ibid reg 4(4): see PARA 492 post.

35 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(10) (arts 3(10), (11) substituted by SI 1999/293). The Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(10) (as so substituted) does not apply to: (1) development which consists of the carrying out by a drainage body of improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999, SI 1999/1783 (as amended) (see WATER AND WATERWAYS vol 101 (2009) PARA 649 et seq); (2) development for which permission is granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 7, Pt 8 Class D, Pt 11 (as amended), Pt 12 Class B, Pt 17 Class F(a) (as amended), Pt 20 Class A or Class B or Pt 21 Class B (see PARAS 310-312, 318-319, 322-323, 325-326, 341-343, 372-374, 383-384 post); (3) development for which permission is granted by Pt 20 Class C or Class D, Pt 21 Class A or Pt 22 Class B (see PARAS 375-379, 381-382, 388-389 post) where the land in, on or under which the development is to be carried out is (a) in the case of Pt 20 Class C or Class D, on the same authorised site, (b) in the case of Pt 21 Class A, on the same premises or, as the case may be, the same ancillary mining land, (c) in the case of Pt 22 Class B, on the same land or, as the case may be, on land adjoining that land, as that in, on or under which development of any description permitted by the same Class has been carried out before 14 March 1999; (4) the completion of any development begun before 14 March 1999: art 3(12) (amended by SI 1999/293; SI 1999/1783).

36 See note 29 supra.

37 See note 33 supra.

38 See note 34 supra.

39 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(11) (as substituted: see note 35 supra).

UPDATE

255 Development permitted by the Town and Country Planning (General Permitted Development) Order 1995

NOTE 10--Definition of 'building' amended: SI 2008/675 (England); SI 2009/2193 (Wales).

NOTE 35--SI 1995/418 art 3(12) further amended: SI 2006/1386 (Wales).

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256. Meanings of 'article 1(5) land' and 'article 1(6) land'.

The Town and Country Planning (General Permitted Development) Order 1995¹ makes reference to 'article 1(5) land' and 'article 1(6) land'². For those purposes, 'article 1(5) land' is land within:

- 1073 (1) a National Park³;
- 1074 (2) an area of outstanding natural beauty⁴;
- 1075 (3) an area designated as a conservation area⁵;
- 1076 (4) an area specified⁶ for the statutory purposes of the enhancement and protection of the natural beauty and amenity of the countryside⁷;
- 1077 (5) the Broads⁸.

'Article 1(6) land' means land within a National Park or within the following areas:

- 1078 (a) in England, the Broads or land outside the boundaries of a National Park, which is within the specified parishes⁹;
- 1079 (b) in Wales, land outside the boundaries of a National Park which is within the specified communities¹⁰ or within the specified parts of certain communities¹¹.

1 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): see PARA 252 et seq ante, PARA 257 et seq post.

2 See eg ibid Sch 2 Pt 1 Class A (enlargement, improvement or other alteration of a dwelling house on article 1(5) land not permitted in certain circumstances); and PARA 266 post; Sch 2 Pt 6 Class A (as amended) (certain development of agricultural land not permitted if it would involve excavations or engineering operations on or over article 1(6) land which are connected with fish farming); and PARA 304 post.

3 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

4 For these purposes, 'area of outstanding natural beauty' means an area designated as such by an order made by the Countryside Agency as respect England or by the Countryside Council for Wales, as respects Wales, under the National Parks and Access to the Countryside Act 1949 s 87 (repealed) or under the Countryside and Rights of Way Act 2000 s 82 as confirmed by the Secretary of State or by the National Assembly for Wales: Town and Country Planning General Development Order 1988 art 1(2) (definition modified by SI 1999/416; and by virtue of the Countryside and Rights of Way Act 2000 s 93, Sch 15 Pt II). As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the Countryside Agency and the Countryside Council for Wales see PARA 70 ante; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.

5 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 69: see PARA 1169 post.

6 Ie by the Secretary of State and the appropriate minister or, in Wales, by the National Assembly for Wales.

7 Ie for the purposes of the Wildlife and Countryside Act 1981 s 41(3) (as amended): see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 640.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(5), Sch 1 Pt 2. As to the Broads see **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

9 See ibid art 1(6), Sch 1 Pt 3 para (a). The specified parishes are those listed in Sch 1 Pt 3 para (a), as follows:

- 129 (1) in the district of Allerdale, Blindcrake, Bothel and Threapland, Bridekirk, Brigham, Broughton, Broughton Moor, Camerton, Crosscanonby, Dean, Dearham, Gilcrux, Great Clifton, Greysouthen, Little Clifton, Loweswater, Oughterside and Allerby, Papcastle, Plumblund, Seaton, Winscales;

- 130 (2) in the borough of Copeland, Arlecdon and Frizington, Cleator Moor, Distington, Drigg and Carleton, Egremont, Gosforth, Haile, Irton with Santon, Lamplugh, Lowca, Lowside Quarter, Millom, Millom Without, Moresby, Parton, Ponsonby, St Bees, St Bridget's Beckermets, St John's Beckermets, Seascale, Weddicar;
- 131 (3) in the district of Eden, Ainstable, Asby, Bandleyside, Bolton, Brough, Brough Sowerby, Brougham, Castle Sowerby, Catterlen, Clifton, Cliburn, Crackenthorpe, Crosby Garrett, Crosby Ravensworth, Culgaith, Dacre, Dufton, Glassonby, Great Salkeld, Great Strickland, Greystoke, Hartley, Hesketh, Hillbeck, Hunsonby, Hutton, Kaber, Kings Meaburn, Kirkby Stephen, Kirby Thore, Kirkoswald, Langwathby, Lazonby, Little Strickland, Long Marton, Lowther, Mallerstang, Milburn, Morland, Mungrisdale, Murton, Musgrave, Nateby, Newbiggin, Newby, Orton, Ousby, Ravenstonedale, Shap, Skelton, Sleagill, Sockbridge and Tirril, Soulby, Stainmore, Tebay, Temple Sowerby, Thrimby, Waitby, Warcop, Wharton, Winton, Yanwath and Eamont Bridge;
- 132 (4) in the borough of High Peak, Chapel-en-le-Frith, Charlesworth, Chinley Buxworth and Brownside, Chisworth, Green Fairfield, Hartington Upper Quarter, Hayfield, King Sterndale, Tintwistle, Wormhill;
- 133 (5) in the district of South Lakeland, Aldingham, Angerton, Arncliffe, Barbon, Beetham, Blawith and Subberthwaite, Broughton West, Burton, Casterton, Docker, Egton-with-Newland, Fawcett Forest, Firbank, Grayrigg, Helsington, Heversham, Hincaster, Holme, Hutton Roof, Killington, Kirkby Ireleth, Kirkby Lonsdale, Lambrigg, Levens, Lower Allithwaite, Lower Holker, Lowick, Lupton, Mansergh, Mansriggs, Middleton, Milnthorpe, Natland, New Hutton, Old Hutton and Holmescales, Osmotherley, Pennington, Preston Patrick, Preston Richard, Scalthwaiterigg, Sedgwick, Skelsmergh, Stainton, Strickland Ketel, Strickland Roger, Urswick, Whinfell, Whitwell and Selside; and
- 134 (6) in the district of West Derbyshire, Aldwark, Birchover, Stanton.

10 Ibid art 1(6), Sch 1 Pt 3 para (b)(i) (Sch 1 Pt 3 para (b) substituted by SI 1996/528). The specified communities are those listed in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 1 Pt 3 para (b)(i) (as so substituted) as follows:

- 135 (1) in the county borough of Aberconwy and Colwyn, Caerhun, Dolgarrog;
- 136 (2) in the county of Caernarfonshire and Merionethshire, Arthog, Betws Garmon, Bontnewydd, Corris, Llanberis, Llanddeiniolen, Llandwrog, Llanfrothen, Llanllyfni, Llanwnda, Penrhyndeudraeth, Waunfawr.

11 Ibid Sch 1 Pt 3 para (b)(ii) (as substituted: see note 10 supra). The specified parts of communities are those listed in Sch 1 Pt 3 para (b)(ii) (as so substituted) as follows:

- 137 (1) in the county borough of Aberconwy and Colwyn: (a) those parts of the following communities which were on 31 March 1974 within the former rural district of Nant Conway, ie Conwy, Henryd, Llanddoged and Maenan, and Llanrwst; (b) that part of the community of Llangwm which was on 31 March 1974 within the former rural district of Penllyn;
- 138 (2) in the county of Caernarfonshire and Merionethshire: (a) those parts of the following communities which were on 31 March 1974 within the former rural district of Gwyrfa, ie Caernarfon, Clynog, Dolbenmaen, Llandygai, Llanaelhaearn, Llanrug, Pentir, Y Felinheli; (b) that part of the community of Talsarnau which was on 31 March 1974 within the former rural district of Deudraeth; (c) that part of the community of Barmouth which was on 31 March 1974 within the former rural district of Dolgellau; (d) that part of the community of Llandderfel which was on 31 March 1974 within the former rural district of Penllyn;
- 139 (3) in the county of Denbighshire, that part of the community of Llandrillo which was on 31 March 1974 within the former rural district of Penllyn.

UPDATE

256 Meanings of 'article 1(5) land' and 'article 1(6) land'

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6

(meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 8--SI 1995/418 Sch 1 Pt 2 amended: SI 2008/2362.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/A. IN GENERAL/257. Use of electronic communications.

257. Use of electronic communications.

Where an electronic communication¹ is used by a person for the purpose of fulfilling any requirement in the Town and Country Planning (General Permitted Development) Order 1995² or in any Schedule to that Order to give or send any statement, notice or other document to any other person ('the recipient'), that requirement is taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is:

- 1080 (1) capable of being accessed by the recipient;
- 1081 (2) legible in all material respects³; and
- 1082 (3) sufficiently permanent to be used for subsequent reference⁴.

Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day⁵.

A requirement in the 1995 Order or in any Schedule to that Order that any document should be in writing is fulfilled where that document meets the criteria set out in heads (1) to (3) above⁶.

References in the 1995 Order or in any Schedule to that Order to plans, drawings, notices or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form⁷.

Where a person uses electronic communications for making any application required to be made under any of Parts 6, 7, 22, 23, 24, 30 or 31 of Schedule 2 to the 1995 Order⁸, that person is taken to have agreed:

- 1083 (a) to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications;
- 1084 (b) that his address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his application; and
- 1085 (c) that his deemed agreement under this provision subsists until he gives notice in writing that he wishes to revoke the agreement⁹.

¹ For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2) (definition added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156).

² ie any requirement in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): see PARA 252 et seq ante, PARA 265 et seq post.

³ 'Legible in all material respects' means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed

form: *ibid* art 1(9) (art 1(7)-12) added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156).

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(7), (8) (as added: see note 3 *supra*).

5 *Ibid* art 1(10) (as added: see note 3 *supra*). For this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday; art 1(10) (as so added).

6 *Ibid* art 1(11) (as added: see note 3 *supra*). 'Written' and cognate expressions are to be construed accordingly: art 1(11) (as so added).

7 *Ibid* art 1(12) (as added: see note 3 *supra*).

8 *Ibid* under *ibid* art 3(1), Sch 2 Pt 6 (as amended) (see PARAS 302-309 post), Sch 2 Pt 7 (see PARAS 310-312 post), Sch 2 Pt 22 (see PARAS 385-390 post), Sch 2 Pt 23 (see PARAS 391-393 post), Sch 2 Pt 24 (as substituted and amended) (see PARAS 394-396 post), Sch 2 Pt 30 (see PARAS 409-411 post) or Sch 2 Pt 31 (see PARAS 412-414 post).

9 *Ibid* art 3(13) (added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156). Such revocation is final and takes effect on a date specified by him but not less than seven days after the date on which the notice is given: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(13) (as so added).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/258. Directions restricting permitted development ('article 4(1) directions').

B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT

258. Directions restricting permitted development ('article 4(1) directions').

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales², or the appropriate local planning authority³ is satisfied that it is expedient that development of any of the specified Classes⁴ should not be carried out unless permission is granted for it on an application, he or it may give a direction under this provision that the permission otherwise granted⁵ is not to apply to:

- 1086 (1) all or any of such development in an area specified in the direction; or
- 1087 (2) any particular such development which is specified in the direction,

and the direction must specify that it is made under this provision⁶. Such a direction does not affect the carrying out of:

- 1088 (a) development permitted by Part 11 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995⁷ authorised by an Act passed after 1 July 1948 or by an order requiring the approval of both Houses of Parliament approved after that date;
- 1089 (b) any development in an emergency; or
- 1090 (c) any development mentioned in Part 24⁸, unless the direction specifically so provides⁹.

A direction so given or having effect as if so given does not, unless the direction so provides, affect the carrying out by a statutory undertaker¹⁰ of the following descriptions of development:

- 1091 (i) the maintenance of bridges, buildings¹¹ and railway stations;
- 1092 (ii) the alteration and maintenance of railway track, and the provision and maintenance of track equipment, including signal boxes, signalling apparatus and other appliances and works required in connection with the movement of traffic by rail;
- 1093 (iii) the maintenance of docks, harbours, quays, wharves, canals and towing paths;
- 1094 (iv) the provision and maintenance of mechanical apparatus or appliances (including signalling equipment) required for the purposes of shipping or in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, quay, harbour, bank, wharf or basin;
- 1095 (v) any development required in connection with the improvement, maintenance or repair of watercourses or drainage works;
- 1096 (vi) the maintenance of buildings, runways, taxiways or aprons at an aerodrome¹²;
- 1097 (vii) the provision, alteration and maintenance of equipment, apparatus and works at an aerodrome, required in connection with the movement of traffic by air, other than buildings the construction, erection, reconstruction or alteration of which is permitted¹³ by Class A of Part 18¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, and the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, arts 5, 6 (see PARAS 259-263 post), 'appropriate local planning authority' means: (1) in relation to a conservation area in a non-metropolitan county in England, the county planning authority or the district planning authority; and (2) in relation to any other area, the local planning authority whose function it would be to determine an application for planning permission for the development to which the direction relates or is proposed to relate: art 4(6) (amended by SI 1996/528).

4 I.e. development described in any Part, Class or paragraph in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 (as amended), other than Pt 22, Class B or Pt 23, Class B (see PARAS 388-390, 392-393 post): art 4(1).

5 I.e. the permission granted by *ibid* art 3 (as amended): see PARA 255 ante.

6 *Ibid* art 4(1). Such a direction is known as an 'article 4(1) direction'. Any power conferred by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) to give a direction includes power to cancel or vary the direction by a subsequent direction: art 8. The power to make an article 4(1) direction is only to be exercised in exceptional cases: see eg *Magauran v First Secretary of State* [2005] All ER (D) 132 (Jul).

7 I.e. development permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 (as amended): see PARAS 322-323 post.

8 I.e. development mentioned in *ibid* Sch 2 Pt 24 (as substituted and amended): see PARAS 394-396 post.

9 *Ibid* art 4(3); and see *R (on the application of Orange Personal Communications Services Ltd) v Islington London Borough Council* [2005] EWHC 963 (Admin), [2005] 20 EG 261 (CS), [2005] All ER (D) 94 (May) (circumstances in which such a direction ought to be given).

10 For these purposes, unless the context otherwise requires, 'statutory undertaker' includes, in addition to any person mentioned in the Town and Country Planning Act 1990 s 262(1) (meaning of statutory undertakers: see PARA 1009 post), a universal service provider (within the meaning of the Postal Services Act 2000) in connection with the provision of a universal postal service (within the meaning of that Act), the Civil Aviation Authority, the Environment Agency, any water undertaker, any gas transporter, and any licence holder within

the meaning of the Electricity Act 1989 s 64(1) (interpretation) (ie the holder of a licence under s 6 (as substituted)): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2) (definition amended by SI 2001/1149; by the Environment Act 1995 s 120, Sch 22 para 233(1); and by virtue of the Utilities Act 2000 s 76(7)). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

11 For the meaning of 'building' see PARA 255 note 10 ante.

12 For these purposes, and unless the context otherwise requires, 'aerodrome' means an aerodrome as defined in the Air Navigation Order 2005, SI 2005/1970, art 155 (interpretation) which is: (1) licensed under that Order; (2) a government aerodrome; (3) one at which the manufacture, repair or maintenance of aircraft is carried out by a person carrying on business as a manufacturer or repairer of aircraft; (4) one used by aircraft engaged in the public transport of passengers or cargo or in aerial work; or (5) one identified to the Civil Aviation Authority before 1 March 1986 for inclusion in the UK Aerodrome Index; and, for the purposes of this definition, the terms 'aerial work', 'government aerodrome' and 'public transport' have the meanings given in arts 155, 157: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2); Interpretation Act 1979 s 17(2).

13 le permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18, Class A: see PARAS 353-354 post.

14 Ibid art 4(4).

UPDATE

258 Directions restricting permitted development ('article 4(1) directions')

TEXT AND NOTES 7-9--SI 1995/418 art 4(3) amended: SI 2006/1386 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/259. Secretary of State's or Assembly's approval for article 4(1) direction by local planning authority.

259. Secretary of State's or Assembly's approval for article 4(1) direction by local planning authority.

Subject to certain exceptions¹, a direction by a local planning authority restricting permitted development² requires the approval of the Secretary of State³ or, in relation to Wales, of the National Assembly for Wales⁴; and he or it may approve the direction with or without modifications⁵. On making such a direction or submitting such a direction to the Secretary of State for approval a county planning authority⁶ must give notice of it to any district planning authority⁷ in whose district the area to which the direction relates is situated and, except in metropolitan districts in England⁸, a district planning authority must give notice of it to the county planning authority, if any⁹.

Unless it affects the carrying out of specified development by a statutory undertaker¹⁰, the approval of the Secretary of State or of the Assembly is not required for a direction which relates to:

1098 (1) a listed building¹¹;

1099 (2) a building which is notified to the authority by the Secretary of State or the Assembly as a building of architectural or historic interest; or

1100 (3) development within the curtilage¹² of a listed building,

and does not relate to land¹³ of any other description¹⁴. Nor is such approval required for a direction relating only to development permitted by any of Parts 1 to 4¹⁵ or Part 31¹⁶ of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995, if the relevant authority considers the development would be prejudicial to the proper planning of its area or constitute a threat to the amenities of its area¹⁷; but this latter exception does not apply to a second or subsequent direction relating to the same development or to development of the same Class or any of the same Classes, in the same area or any part of that area as that to which the first direction relates or related¹⁸ and, unless disallowed or approved by the Secretary of State or the Assembly¹⁹, such a direction²⁰ expires at the end of six months from the date on which it was made²¹.

1 Ie subject to the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(3), (4): see the text and notes 10-17 infra.

2 Ie a direction under ibid art 4(1): see PARA 258 ante. As to local planning authorities see PARA 28 et seq ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(1).

6 As to county planning authorities see PARA 28 ante.

7 As to district planning authorities in England see PARA 28 ante. There are no such authorities in Wales.

8 As to metropolitan districts see PARA 28 note 6 ante.

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(2). As to the use of electronic communications see PARA 257 ante.

10 Ie as provided by ibid art 4(4): see PARA 258 ante. For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

11 For these purposes, and except where the context otherwise requires, 'listed building' has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1 (see PARA 1091 post): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

12 For the meaning of 'curtilage' see PARA 223 note 13 ante.

13 For the meaning of 'land' see PARA 2 note 10 ante.

14 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(3).

15 Ie ibid Sch 2 Pts 1-4 (as amended): see PARA 265 et seq post.

16 Ie ibid Sch 2 Pt 31: see PARAS 412-414 post.

17 Ibid art 5(4).

18 Ibid art 5(6).

19 The local planning authority must send a copy of any direction made by it to which ibid art 5(4) (see the text and note 17 supra) applies to the Secretary of State or the Assembly not later than the date on which notice of that direction is given in accordance with art 5(10) or art 5(12) (see PARA 260 post): art 5(7). The Secretary of State or the Assembly may give notice to the local planning authority that he or it has disallowed any such direction and the direction then ceases to have effect: art 5(8).

20 Ie a direction not requiring the Secretary of State's or the Assembly's approval by virtue of ibid art 5(4): see the text and note 17 supra.

21 Ibid art 5(5).

UPDATE

259 Secretary of State's or Assembly's approval for article 4(1) direction by local planning authority

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/260. Notice of article 4(1) directions.

260. Notice of article 4(1) directions.

Notice of any direction restricting permitted development¹ must be served by the appropriate local planning authority² on the owner and occupier of every part of the land³ within the area to which the direction relates as soon as practicable after the direction has been made or, where the direction is required to be approved by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵, as soon as practicable after it has been so approved; and a direction comes into force in respect of any part of the land within the area to which the direction relates on the date on which notice is so served on the occupier of that part, or, if there is no occupier, on the owner⁶.

If a direction which does not require prior approval but of which a copy has been sent to the Secretary of State or to the Assembly⁷ is approved by the Secretary of State or by the Assembly within the period of six months from the date when it was made⁸, then the authority which made the direction must⁹, as soon as practicable, serve notice of that approval on the owner and occupier of every part of the land within the area to which the direction relates; and where the Secretary of State or the Assembly has approved the direction with modifications the notice must indicate the effect of the modifications¹⁰.

The local planning authority must as soon as reasonably practicable give notice that a direction has been disallowed in the same manner as notice of the direction was given¹¹.

¹ I.e. any direction made under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(1); see PARA 258 ante.

² For the meaning of 'appropriate local planning authority' see PARA 258 note 3 ante; and as to the use of electronic communications see PARA 257 ante.

³ For the meaning of 'land' see PARA 2 note 10 ante.

⁴ As to the Secretary of State see PARA 19 ante.

⁵ As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

⁶ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(10). Where, however, in the case of a direction under art 4(1)(a) an authority considers that individual service in accordance

with art 5(10) or art 5(11) (see the text and notes 7-10 *infra*) is impracticable for the reasons set out in art 5(14) it must publish a notice of the direction, or of the approval, by local advertisement: art 5(12). A notice published pursuant to art 5(12) must contain a statement of the effect of the direction and of any modification made to it by the Secretary of State or the Assembly, and must name a place or places where a copy of the direction, and of a map defining the area to which it relates, may be seen at all reasonable hours: art 5(13). The reasons referred to in art 5(12) are that the number of owners and occupiers within the area to which the direction relates makes individual service impracticable, or that it is difficult to identify or locate one or more of them: art 5(14). Where notice of a direction has been published in accordance with art 5(12), the direction comes into force on the date on which the notice is first published: art 5(15). For these purposes, and unless the context otherwise requires, 'by local advertisement' means by publication of the notice in at least one newspaper circulating in the locality in which the area or, as the case may be, the whole or relevant part of the conservation area to which the direction relates is situated: art 1(2). As to directions in respect of conservation areas see PARA 262 *et seq post*.

- 7 Ie a direction to which *ibid* art 5(4) applies: see PARA 259 *ante*.
- 8 Ie within the period of six months referred to in *ibid* art 5(5): see PARA 259 *ante*.
- 9 Ie unless *ibid* art 5(12) (see note 6 *supra*) applies.
- 10 *Ibid* art 5(11).
- 11 *Ibid* art 5(9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/261. Power to cancel article 4(1) directions.

261. Power to cancel article 4(1) directions.

A local planning authority¹ may, by making a subsequent direction and without the approval of the Secretary of State² or, in relation to Wales, of the National Assembly for Wales³, cancel any direction made by the authority⁴ restricting permitted development⁵. The Secretary of State or the Assembly may make a direction cancelling any direction made⁶ by the local planning authority⁷.

The statutory provisions about notice⁸ apply to any direction so made⁹.

- 1 As to local planning authorities see PARA 28 *et seq ante*.
- 2 As to the Secretary of State see PARA 19 *ante*.
- 3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.
- 4 Ie any direction made under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(1): see PARA 258 *ante*.
- 5 *Ibid* art 5(16).
- 6 See note 4 *supra*.
- 7 See note 5 *supra*.
- 8 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 5(10), (12)-(15): see PARA 260 *ante*.
- 9 *Ibid* art 5(17).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/262. Directions restricting permitted development in a conservation area ('article 4(2) directions').

262. Directions restricting permitted development in a conservation area ('article 4(2) directions').

If the appropriate local planning authority¹ is satisfied that it is expedient that any particular development described below should not be carried out within the whole or any part of a conservation area² unless permission is granted for it on an application, the authority may give a direction under this provision that the permission otherwise granted by the Town and Country Planning (General Permitted Development) Order 1995³ is not to apply to all or any particular development of the Class in question within the whole or any part of the conservation area, and the direction must specify the development and conservation area or part of that area to which it relates and that it is made under this provision⁴. The development referred to is development described in the following provisions of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995:

- 1101 (1) Class A of Part 1⁵, consisting of the enlargement, improvement or other alteration of a dwelling house⁶, where any part of the enlargement, improvement or alteration would front a relevant location⁷;
- 1102 (2) Class C of Part 1⁸, where the alteration would be to a roof slope which fronts a relevant location;
- 1103 (3) Class D of Part 1⁹, where the external door in question fronts a relevant location;
- 1104 (4) Class E of Part 1¹⁰, where the building or inclosure, swimming or other pool to be provided would front a relevant location, or where the part of the building or inclosure maintained, improved or altered would front a relevant location;
- 1105 (5) Class F of Part 1¹¹, where the hard surface would front a relevant location;
- 1106 (6) Class H of Part 1¹², where the part of the building or other structure on which the satellite antenna¹³ is to be installed, altered or replaced fronts a relevant location;
- 1107 (7) Part 1¹⁴, consisting of the erection, alteration or removal of a chimney on a dwelling house or on a building within the curtilage¹⁵ of a dwelling house;
- 1108 (8) Class A of Part 2¹⁶, where the gate, fence, wall or other means of inclosure would be within the curtilage of a dwelling house and would front a relevant location;
- 1109 (9) Class C of Part 2¹⁷, consisting of the painting of the exterior of any part, which fronts a relevant location, of a dwelling house or any building or inclosure within the curtilage of a dwelling house;
- 1110 (10) Class B of Part 3¹⁸, where the gate, fence, wall or other means of inclosure is within the curtilage of a dwelling house and fronts a relevant location¹⁹.

Such a direction does not affect the carrying out of:

- 1111 (a) development permitted by Part 11²⁰ authorised by an Act passed after 1 July 1948 or by an order requiring the approval of both Houses of Parliament approved after that date;

- 1112 (b) any development in an emergency; or
- 1113 (c) any development mentioned in Part 24²¹, unless the direction specifically so provides²²;

and a direction so given or having effect as if so given does not, unless the direction so provides, affect the carrying out by a statutory undertaker²³ of the specified descriptions²⁴ of development²⁵.

On making such a direction, a county planning authority²⁶ in England must give notice of it to any district planning authority²⁷ in whose district the conservation area or part of that area to which the direction relates is situated and, except in metropolitan districts²⁸, a district planning authority must give notice of it to the county planning authority, if any²⁹.

1 For the meaning of 'appropriate local planning authority' see PARA 258 note 3 ante.

2 As to conservation areas see PARA 1169 et seq post.

3 Ie the permission granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3 (as amended): see PARA 255 ante.

4 Ibid art 4(2). Such a direction is known as an 'article 4(2) direction'. As to the power to give directions see art 8; and PARA 258 note 6 ante.

5 Ie ibid Sch 2 Pt 1, Class A: see PARAS 265-266 post.

6 For these purposes, unless the context otherwise requires, 'dwelling house' does not include a building containing one or more flats, or a flat contained within such a building; and 'flat' means a separate and self-contained set of premises constructed or adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally: ibid art 1(2). Subject to this statutory provision, whether premises are a dwelling house is a question of fact: *Scurlock v Secretary of State for Wales* (1976) 33 P & CR 202, DC; *Gravesham Borough Council v Secretary of State for the Environment* (1982) 47 P & CR 142, [1983] JPL 307 (decided under previous legislation). For the meaning of 'building' see PARA 255 note 10 ante.

7 For these purposes, and for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, arts 5, 6 (see PARAS 259-261 ante, PARA 263 post), 'relevant location' means a highway, waterway or open space: ibid art 4(6).

8 Ie ibid Sch 2 Pt 1, Class C: see PARAS 269-270 post.

9 Ie ibid Sch 2 Pt 1, Class D: see PARAS 271-272 post.

10 Ie ibid Sch 2 Pt 1, Class E: see PARAS 273-274 post.

11 Ie ibid Sch 2 Pt 1, Class F: see PARA 275 post.

12 Ie ibid Sch 2 Pt 1, Class H (as amended): see PARAS 278-279 post.

13 For these purposes, and unless the context otherwise requires, 'satellite antenna' means apparatus designed for transmitting microwave radio energy to satellites or receiving it from them, and includes any mountings or brackets attached to such apparatus; and 'microwave' means that part of the radio spectrum above 1,000 MHz: ibid art 1(2).

14 Ie ibid Sch 2 Pt 1 (as amended): see PARA 265 et seq post.

15 For the meaning of 'curtilage' see PARA 223 note 13 ante.

16 Ie ibid Sch 2 Pt 2, Class A: see PARAS 280-281 post.

17 Ie ibid Sch 2 Pt 2, Class C: see PARAS 283-284 post.

18 Ie ibid Sch 2 Pt 31, Class B: see PARA 414 post.

19 Ibid art 4(5).

- 20 le development permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 (as amended): see PARAS 322-323 post.
- 21 le development mentioned in ibid Sch 2 Pt 24 (as substituted and amended): see PARAS 394-396 post.
- 22 Ibid art 4(3).
- 23 For the meaning of 'statutory undertaker' for these purposes see PARA 258 note 10 ante.
- 24 le the development described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(4)(a)-(g): see PARA 258 ante.
- 25 Ibid art 4(4).
- 26 As to county planning authorities see PARA 28 ante.
- 27 As to district planning authorities (of which there are none in Wales) see PARA 28 ante; and as to the use of electronic communications see PARA 257 ante.
- 28 As to metropolitan districts in England see PARA 28 ante.
- 29 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 6(6).

UPDATE

262 Directions restricting permitted development in a conservation area ('article 4(2) directions')

NOTE 19--SI 1995/418 art 4(5) amended: SI 2005/2935.

TEXT AND NOTES 20-22--SI 1995/418 art 4(3) amended: SI 2006/1386 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/263. Notice and confirmation of article 4(2) directions.

263. Notice and confirmation of article 4(2) directions.

Notice of any direction made restricting particular permitted development in a conservation area¹ must, as soon as practicable after the direction has been made, be given by the appropriate local planning authority²:

- 1114 (1) by local advertisement³; and
- 1115 (2) subject to certain exceptions⁴, by serving the notice on the owner and occupier of every dwelling house⁵ within the whole or the relevant part of the conservation area to which the direction relates⁶.

The notice must:

- 1116 (a) include a description of the development and the conservation area or part of that area to which the direction relates, and a statement of the effect of the direction;
- 1117 (b) specify that the direction is made under the relevant statutory provision⁷;

- 1118 (c) name a place where a copy of the direction, and a copy of the map defining the conservation area or part of that area to which it relates, may be seen at all reasonable hours; and
- 1119 (d) specify a period of at least 21 days, stating the date on which that period begins, within which any representations concerning the direction may be made to the local planning authority⁸.

The direction comes into force in respect of any part of the land⁹ within the conservation area or part of that area to which it relates on the date on which the notice is served on the occupier of that part of the land or, if there is no occupier, on the owner¹⁰. If, however, individual service was not required¹¹, then the direction comes into force on the date on which the notice is first published in accordance with head (1) above¹².

A direction restricting particular permitted development in a conservation area¹³ expires at the end of six months from the date on which it was made unless confirmed by the appropriate local planning authority in accordance with the following provisions before the end of that six month period¹⁴. In deciding whether to confirm such a direction, the local planning authority must take into account any representations received during the period specified in the notice referred to in head (d) above¹⁵. The local planning authority may not confirm the direction until a period of at least 28 days has elapsed following the latest date on which any notice relating to the direction was served or published¹⁶.

The appropriate local planning authority must, as soon as practicable, give notice that a direction has been confirmed in the same manner as in heads (1) and (2) above¹⁷.

1 Ie any direction made under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 4(2): see PARA 262 ante.

2 For the meaning of 'appropriate local planning authority' see PARA 258 note 3 ante; and as to the use of electronic communications see PARA 257 ante.

3 For the meaning of 'by local advertisement' see PARA 260 note 6 ante.

4 The local planning authority need not serve notice on an owner or occupier in accordance with the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 6(1)(b) (see head (2) in the text) where it considers that individual service on that owner or occupier is impracticable because it is difficult to identify or locate him: art 6(4). Nor need the local planning authority serve any notice in accordance with art 6(1)(b) where it considers that the number of owners or occupiers within the conservation area or part of that area to which the direction relates makes individual service impracticable: art 6(5).

5 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 6(1).

7 Ie under *ibid* art 4(2): see PARA 262 ante.

8 *Ibid* art 6(2).

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 6(3)(a).

11 Ie if *ibid* art 6(4) or (5) applies: see note 4 *supra*.

12 *Ibid* art 6(3)(b).

13 See note 1 *supra*.

14 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 6(7).

15 *Ibid* art 6(8).

16 Ibid art 6(9).

17 Ibid art 6(10).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/B. DIRECTIONS RESTRICTING PERMITTED DEVELOPMENT/264. Directions restricting certain permitted development relating to minerals.

264. Directions restricting certain permitted development relating to minerals.

If, on receipt of a notification from any person that he proposes to carry out certain development relating to mineral exploration¹ or the removal of material from mineral-working deposits², a mineral planning authority³ is satisfied that it is expedient that the development, or any part of it, should not be carried out unless permission for it is granted on an application because:

1120 (1) the land on which the development is to be carried out is within:
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- 126. (a) a National Park⁴;
- 127. (b) an area of outstanding natural beauty⁵;
- 128. (c) a site of archaeological interest⁶;
- 129. (d) a site of special scientific interest⁷; or
- 130. (e) the Broads⁸;

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1121 (2) the development, either taken by itself or taken in conjunction with other development which is already being carried out in the area or in respect of which notification has been given⁹, would cause serious detriment to the amenity¹⁰ of the area in which it is to be carried out or would adversely affect the setting of a building shown as Grade 1 in the list of buildings of special architectural or historic interest compiled¹¹ by the Secretary of State¹² or, in relation to Wales, by the National Assembly for Wales¹³;

1122 (3) the development would constitute a serious nuisance to the inhabitants of a nearby residential building, hospital or school; or

1123 (4) the development would endanger aircraft using a nearby aerodrome¹⁴,

the authority may, within a period of 21 days beginning with the receipt of the notification, direct that the permission granted by the provisions previously discussed¹⁵ shall not apply to the development, or to such part of the development as is specified in the direction¹⁶.

A direction so made must contain a statement as to the day on which, if it is not disallowed¹⁷, it will come into force, which must be 29 days from the date on which notice of it is sent¹⁸ to the Secretary of State or to the Assembly¹⁹. As soon as is reasonably practicable a copy of such a direction must be sent by the mineral planning authority to the Secretary of State or to the Assembly and to the person who gave notice of the proposal to carry out development²⁰.

The Secretary of State or the Assembly may, at any time within a period of 28 days beginning with the date on which the direction is made, disallow the direction; and, immediately upon receipt of notice in writing from the Secretary of State or the Assembly that he or it has disallowed the direction, the mineral planning authority must give notice in writing to the

person who gave notice of the proposal that he is authorised to proceed with the development²¹.

1 Ie development within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 22, Class B: see PARAS 388-390 post.

2 Ie development within ibid Sch 2 Pt 23, Class B: see PARAS 392-393 post.

3 For the meaning of 'mineral planning authority' see PARA 29 ante.

4 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

5 For the meaning of 'area of outstanding natural beauty' see PARA 256 note 4 ante.

6 Ie and the operation to be carried out is not one described in the Areas of Archaeological Importance (Notification of Operations) (Exemption) Order 1984, SI 1984/1286, art 2, Schedule: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1052. For these purposes, 'site of archaeological interest' means land which is included in the schedule of monuments compiled by the Secretary of State or by the Assembly under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010) or is within an area of land which is designated as an area of archaeological importance under s 33 (as amended) (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1043) or which is within a site registered in any record adopted by resolution by a county council in England or by a local planning authority in Wales and known in England as the County Sites and Monuments Record and in Wales as the Sites and Monuments Record for the local planning authority area: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2) (definition amended by SI 1996/528).

7 For these purposes, 'site of special scientific interest' means land to which the Wildlife and Countryside Act 1981 s 28(1) (as substituted) (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674) applies: Town and Country Planning General Development Order 1988 art 1(2).

8 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735.

9 Ie in pursuance of the provisions of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 22, Class B or Sch 2 Pt 23, Class B.

10 As to the meaning of 'amenity' see PARA 158 note 8 ante.

11 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 post.

12 As to the Secretary of State see PARA 19 ante.

13 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the National Assembly for Wales see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

14 For the meaning of 'aerodrome' see PARA 258 note 12 ante.

15 Ie the permission granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3 (as amended): see PARA 255 ante.

16 Ibid art 7(1), (2). As to the power to give directions see art 8; and PARA 258 note 6 ante.

17 Ie under ibid art 7(5): see the text and note 21 infra.

18 Ie under ibid art 7(4): see the text and note 20 infra.

19 Ibid art 7(3).

20 Ibid art 7(4). As to the use of electronic communications see PARA 257 ante.

21 Ibid art 7(5).

UPDATE

264 Directions restricting certain permitted development relating to minerals

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/265. Class A; permitted development.

C. CLASSES OF PERMITTED DEVELOPMENT

(A) PART 1: DEVELOPMENT WITHIN THE CURTILAGE OF A DWELLING HOUSE

265. Class A; permitted development.

The enlargement¹, improvement or other alteration² of a dwelling house is permitted development³.

1 For these purposes, the erection within the curtilage of a dwelling house of any building with a cubic content greater than ten cubic metres is treated as the enlargement of the dwelling house for all purposes including calculating cubic content where (1) the dwelling house is on article 1(5) land; or (2) in any other case, any part of that building would be within five metres of any part of the dwelling house: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1 para A.3(a). 'Cubic content' means the cubic content of a structure or building measured externally: art 1(2). For the purposes of Sch 2 Pt 1, Class A, where any part of the dwelling house would be within five metres of an existing building within the same curtilage, that building is treated as forming part of the resulting building for the purpose of calculating the cubic content: Sch 2 Pt 1 para A.3(b). For the meaning of 'existing' and 'building' see PARA 255 note 10 ante; for the meaning of 'dwelling house' see PARA 262 note 6 ante; for the meaning of 'article 1(5) land' see PARA 256 ante; for the meaning of 'curtilage' see PARA 223 note 13 ante; and for the meaning of 'resulting building' see PARA 266 note 3 post.

2 'Enlargement, improvement or other alteration' can only be to a dwelling house in existence when the works are carried out; these words do not cover rebuilding: *Sainty v Minister of Housing and Local Government* (1964) 15 P & CR 432, DC. As to rebuilding by stages see *Sainty v Minister of Housing and Local Government* supra at 434 per Lord Parker LJ. See also *Larkin v Basildon District Council and the Secretary of State for the Environment* [1980] JPL 407, DC; *Hewlett v Secretary of State for the Environment* [1985] 1 EGLR 170, CA.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1, Class A. As to development not permitted by Sch 2 Pt 1, Class A see PARA 266 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and

lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/266. Development not permitted by Class A.

266. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1124 (1) the cubic content² of the resulting building³ would exceed the cubic content of the original⁴ dwelling house:
- 91 131. (a) in the case of a terrace house⁵ or in the case of a dwelling house on article 1(5) land⁶, by more than 50 cubic metres or 10%, whichever is the greater:
- 132. (b) in any other case, by more than 70 cubic metres or 15%, whichever is the greater;
- 133. (c) in any case, by more than 115 cubic metres;
- 92 1125 (2) the part of the building enlarged, improved or altered would exceed in height⁷ the highest part of the roof of the original dwelling house;
- 1126 (3) the part of the building enlarged, improved or altered would be nearer to any highway which bounds the curtilage of the dwelling house than:
- 93 134. (a) the part of the original dwelling house nearest to that highway; or
- 135. (b) any point 20 metres from that highway,
- 94 1127 whichever is the nearer to the highway;
- 1128 (4) in the case of development other than the insertion, enlargement, improvement or other alteration of a window in an existing wall of a dwelling house, the part of the building enlarged, improved or altered would be within 2 metres of the boundary of the curtilage of the dwelling house and would exceed 4 metres in height;
- 1129 (5) the total area of ground covered by buildings within the curtilage, other than the original dwelling house, would exceed 50% of the total area of the curtilage, excluding the ground area of the original dwelling house;
- 1130 (6) it would consist of or include the installation, alteration or replacement of a satellite antenna⁸;

- 1131 (7) it would consist of or include the erection of a building within the curtilage of a listed building⁹; or
 1132 (8) it would consist of or include an alteration to any part of the roof¹⁰.

In the case of a dwelling house on any article 1(5) land, development is not permitted by Class A if it would consist of or include the cladding of any part of the exterior with stone, artificial stone, timber, plastic or tiles¹¹.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class A: see PARA 265 ante.

2 For the meaning of 'cubic content' see PARA 265 note 1 ante.

3 For the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 (as amended), 'resulting building' means the dwelling house as enlarged, improved or altered, taking into account any enlargement, improvement or alteration to the original dwelling house, whether permitted by Sch 2 Pt 1 (as amended) or not: Sch 2 Pt 1 para I. As to the circumstances in which an erection within the curtilage of a dwelling house of a building is treated as the enlargement of a dwelling house see PARA 265 note 1 ante. For the meaning of 'dwelling house' see PARA 262 note 6 ante.

4 For these purposes, 'original' means, in relation to a building existing on 1 July 1948, as existing on that date and, in relation to a building built on or after 1 July 1948, as so built: *ibid* art 1(2). For the meanings of 'building' and 'existing' see PARA 255 note 10 ante.

5 For the purposes of *ibid* Sch 2 Pt 1 (as amended), 'terrace house' means a dwelling house situated in a row of three or more dwelling houses used or designed for use as single dwellings where (1) it shares a party wall with, or has a main wall adjoining the main wall of, the dwelling house on either side; or (2) if it is at the end of a row, it shares a party wall with, or has a main wall adjoining the main wall of, a dwelling house which fulfils the requirements of head (1) *supra*: Sch 2 Pt 1 para I.

6 For the meaning of 'article 1(5) land' see PARA 256 ante.

7 For these purposes, unless the context otherwise requires, any reference to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and 'ground level' means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 2(3). For the meaning of 'plant' and 'machinery' see PARA 255 note 10 ante.

8 For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

9 For the meaning of 'listed building' see PARA 259 note 11 ante, PARA 1091 post.

10 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para A.1.

11 *Ibid* Sch 2 Pt 1 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/267. Class B; permitted development.

267. Class B; permitted development.

The enlargement of a dwelling house¹ consisting of an addition or alteration to its roof² is permitted development³.

1 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

2 As to whether a parapet is an addition or alteration to a roof for these purposes see *Richmond upon Thames London Borough Council v Secretary of State for the Environment and Neale* (1991) 62 P & CR 350, [1991] 2 PLR 107 (correct approach is to proceed on the external appearance of the dwelling house; planning restrictions are to do with external appearances and not with internal practicalities or realities).

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1) Sch 2 Pt 1, Class B. As to development not permitted by Sch 2 Pt 1, Class B see PARA 268 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/268. Development not permitted by Class B.

268. Development not permitted by Class B.

Development is not permitted by Class B¹ if:

- 1133 (1) any part of the dwelling house² would as a result of the works exceed the height³ of the highest part of the existing⁴ roof;
- 1134 (2) any part of the dwelling house would, as a result of the works, extend beyond the plane of any existing roof slope which fronts any highway;
- 1135 (3) it would increase the cubic content⁵ of the dwelling house by more than 40 cubic metres, in the case of a terrace house⁶, or 50 cubic metres in any other case;
- 1136 (4) the cubic content of the resulting building⁷ would exceed the cubic content of the original⁸ dwelling house:

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- 136. (a) in the case of a terrace house by more than 50 cubic metres or 10%, whichever is the greater;
- 137. (b) in any other case, by more than 70 cubic metres or 15%, whichever is the greater; or
- 138. (c) in any case, by more than 115 cubic metres; or

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- 1137 (5) the dwelling house is on article 1(5) land⁹.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class B: see PARA 267 ante.

² For the meaning of 'dwelling house' see PARA 262 note 6 ante.

³ For the meaning of references to the height of a building see PARA 266 note 7 ante.

⁴ For the meaning of 'existing' see PARA 255 note 10 ante.

⁵ For the meaning of 'cubic content' see PARA 265 note 1 ante.

⁶ For the meaning of 'terrace house' see PARA 266 note 5 ante.

⁷ For the meaning of 'resulting building' see PARA 266 note 3 ante.

⁸ For the meaning of 'original' see PARA 266 note 4 ante.

⁹ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para B.1. For the meaning of 'article 1(5) land' see PARA 256 ante. As to the construction of head (4) in the text see *R (on the application of Watts) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 993 (Admin), [2002] All ER (D) 160 (Apr); distinguished in *R (on the application of Orange Personal Communications Services Ltd) v Islington London Borough Council* [2005] EWHC 963 (Admin), [2005] 20 EG 261 (CS), [2005] All ER (D) 94 (May).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/269. Class C; permitted development.

269. Class C; permitted development.

Any other alteration¹ to the roof of a dwelling house² is permitted development³.

1 An addition or alteration to the roof of a dwelling house which enlarges the dwelling house is permitted under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class B: see PARAS 267-268 ante.

2 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class C. As to development not permitted by Sch 2 Pt 1, Class C see PARA 270 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/270. Development not permitted by Class C.

270. Development not permitted by Class C.

Development is not permitted by Class C¹ if it would result in a material alteration to the shape of the dwelling house².

¹ See by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class C: see PARA 269 ante.

² Ibid Sch 2 Pt 1 para C.1. For the meaning of 'dwelling house' see PARA 262 note 6 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/271. Class D; permitted development.

271. Class D; permitted development.

The erection or construction of a porch outside any external door of a dwelling house¹ is permitted development².

¹ For the meaning of 'dwelling house' see PARA 262 note 6 ante.

² Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class D. As to development not permitted by Sch 2 Pt 1, Class D see PARA 272 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/272. Development not permitted by Class D.

272. Development not permitted by Class D.

Development is not permitted by Class D¹ if:

- 1138 (1) the ground area, measured externally, of the structure would exceed 3 square metres;
- 1139 (2) any part of the structure would be more than 3 metres above ground level; or
- 1140 (3) any part of the structure would be within 2 metres of any boundary of the curtilage² of the dwelling house³ with a highway⁴.

¹ See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class D: see PARA 271 ante.

² For the meaning of 'curtilage' see PARA 223 note 13 ante.

³ For the meaning of 'dwelling house' see PARA 262 note 6 ante.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para D.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of

buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/273. Class E; permitted development.

273. Class E; permitted development.

The provision within the curtilage¹ of a dwelling house² of any building³ or inclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house as such⁴, or the maintenance, improvement or other alteration of such a building or inclosure, is permitted development⁵.

1 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also note 2 infra.

2 Whether development is within the curtilage of a dwelling house is a question of fact: see *James v Secretary of State for the Environment and Chichester District Council* (1990) 61 P & CR 234, [1991] 1 PLR 58 (tennis court at some distance from house not within the curtilage). See also *Dyer v Dorset County Council* [1989] QB 346, [1988] 3 WLR 213, CA (cited in PARA 223 note 13 ante). In determining curtilage at time of development, evidence of the historical relationship between the land and the dwelling may be relevant: see *McAlpine v Secretary of State for the Environment* [1995] 1 PLR 16, (1994) 159 LG Rev 429. For the meaning of 'dwelling house' see PARA 262 note 6 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 For these purposes, 'purpose incidental to the enjoyment of the dwelling house as such' includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwelling house: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1 para E.2. The personal element of a use of a site for flying has been held to be a use ancillary to the use of the dwelling house, but a hangar and hard standing have been held to go beyond what is incidental to the enjoyment of a dwelling house: see *Holding v First Secretary of State* [2003] EWHC 3138 (Admin), [2003] All ER (D) 162 (Dec).

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1, Class E. As to development not permitted by Sch 2 Pt 1, Class E see PARA 274 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order

1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/274. Development not permitted by Class E.

274. Development not permitted by Class E.

Development is not permitted by Class E¹ if:

- 1141 (1) it relates to a dwelling² or a satellite antenna³;
- 1142 (2) any part of the building⁴ or inclosure to be constructed or provided would be nearer to any highway which bounds the curtilage⁵ than:
 - 97 139. (a) the part of the original⁶ dwelling house⁷ nearest to that highway; or
 - 140. (b) any point 20 metres from that highway,
 - 98 1143 whichever is nearer to the highway;
 - 1144 (3) where the building to be constructed or provided would have a cubic content⁸ greater than 10 cubic metres, any part of it would be within 5 metres of any part of the dwelling house;
 - 1145 (4) the height⁹ of that building or inclosure would exceed:
 - 99 141. (a) 4 metres, in the case of a building with a ridged roof; or
 - 142. (b) 3 metres, in any other case;
 - 100 1146 (5) the total area of ground covered by buildings or inclosures within the curtilage, other than the original dwelling house, would exceed 50% of the total area of the curtilage, excluding the ground area of the original dwelling house; or
 - 1147 (6) in the case of any article 1(5) land¹⁰ or land within the curtilage of a listed building¹¹, it would consist of the provision, alteration or improvement of a building with a cubic content greater than 10 cubic metres¹².

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class E: see PARA 273 ante.

² Development relates to a dwelling if it is residential in nature: see *Rambridge v Secretary of State for the Environment* (1996) 74 P & CR 126.

³ For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

⁴ For the meaning of 'building' see PARA 255 note 10 ante.

- 5 For the meaning of 'curtilage' see PARA 223 note 13 ante.
- 6 For the meaning of 'original' see PARA 266 note 4 ante.
- 7 For the meaning of 'dwelling house' see PARA 262 note 6 ante.
- 8 For the meaning of 'cubic content' see PARA 265 note 1 ante.
- 9 For the meaning of references to the height of a building see PARA 266 note 7 ante.
- 10 For the meaning of 'article 1(5) land' see PARA 256 ante.
- 11 For the meaning of 'listed building' see PARA 259 note 11 ante, PARA 1091 post.
- 12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para E.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/275. Class F; permitted development.

275. Class F; permitted development.

The provision within the curtilage¹ of a dwelling house² of a hard surface for any purpose incidental to the enjoyment of the dwelling house as such³ is permitted development⁴.

No specific provision is made with regard to development not permitted by Class F.

- 1 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.
- 2 For the meaning of 'dwelling house' see PARA 262 note 6 ante.
- 3 As to purposes incidental to the enjoyment of the dwelling house as such cf para 273 note 4 ante.
- 4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class F. See also *Holding v First Secretary of State* [2003] EWHC 3138 (Admin), [2003] All ER (D) 162 (Dec),

cited in PARA 273 note 4 ante. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/276. Class G; permitted development.

276. Class G; permitted development.

The erection or provision within the curtilage¹ of a dwelling house² of a container for the storage of oil for domestic heating is permitted development³.

1 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

2 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class G. As to development not permitted by Sch 2 Pt 1, Class G see PARA 277 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/277. Development not permitted by Class G.

277. Development not permitted by Class G.

Development is not permitted by Class G¹ if:

- 1148 (1) the capacity of the container would exceed 3,500 litres;
- 1149 (2) any part of the container would be more than 3 metres above ground level;
- or
- 1150 (3) any part of the container would be nearer to any highway which bounds the curtilage² than:
- 101
- 143. (a) the part of the original³ building⁴ nearest to that highway; or
- 144. (b) any point 20 metres from that highway,
- 102
- 1151 whichever is nearer to the highway⁵.

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class G: see PARA 276 ante.

² For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

³ For the meaning of 'original' see PARA 266 note 4 ante.

⁴ For the meaning of 'building' see PARA 255 note 10 ante.

⁵ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para G.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/278. Class H; permitted development and special conditions to which it is subject.

278. Class H; permitted development and special conditions to which it is subject.

The installation, alteration or replacement of a satellite antenna¹ on a dwelling house² or within the curtilage³ of a dwelling house is permitted development⁴. Such development is, however, so permitted subject to the following conditions:

- 1152 (1) an antenna installed on a building⁵ must, so far as practicable, be sited so as to minimise its effect on the external appearance of the building;
- 1153 (2) an antenna no longer needed for the reception or transmission of microwave⁶ radio energy must be removed as soon as reasonably practicable⁷.

1 For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

2 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

3 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class H. As to development not permitted by Sch 2 Pt 1, Class H see PARA 279 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see heads (1)-(2) in the text; and as to directions restricting permitted development see PARA 258 et seq ante.

5 For the meaning of 'building' see PARA 255 note 10 ante.

6 For the meaning of 'microwave' see PARA 262 note 13 ante.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para H.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(A) Part 1: Development within the Curtilage of a Dwelling House/279. Development not permitted by Class H.

279. Development not permitted by Class H.

Development is not permitted by Class H¹ if:

- 1154 (1) the size of the satellite antenna², excluding any projecting feed element, reinforcing rim, mountings and brackets, when measured in any dimension would exceed:
 - 103
 - 145. (a) 45 centimetres in the case of an antenna to be installed on a chimney;
 - 146. (b) 90 centimetres in the case of an antenna to be installed other than on a chimney;
- 104
- 1155 (2) the highest part of an antenna to be installed on a roof or a chimney would, when installed, exceed in height³:
 - 105
 - 147. (a) in the case of an antenna to be installed on a roof, the highest part of the roof;
 - 148. (b) in the case of an antenna to be installed on a chimney, the highest part of the chimney;
- 106
- 1156 (3) there is any other satellite antenna on the dwelling house⁴ or within its curtilage⁵;
- 1157 (4) in the case of article 1(5) land⁶, it would consist of the installation of an antenna:
 - 107
 - 149. (a) on a chimney;
 - 150. (b) on a building which exceeds 15 metres in height;
 - 151. (c) on a wall or roof slope which fronts a highway;
 - 152. (d) in the Broads⁷, on a wall or roof slope which fronts a waterway⁸.
- 108

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class H: see PARA 278 ante.

² For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

³ For the meaning of references to the height of a building see PARA 266 note 7 ante.

⁴ For the meaning of 'dwelling house' see PARA 262 note 6 ante.

⁵ For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

6 For the meaning of 'article 1(5) land' see PARA 256 ante.

7 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 1 para H.1 (amended by SI 1998/462; SI 1999/1661).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

265-279 Development within the Curtilage of a Dwelling House

SI 1995/418 Sch 2 Pt 1 substituted by SI 2008/2362, and amended by SI 2009/2193.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(B) Part 2: Minor Operations/280. Class A; permitted development.

(B) PART 2: MINOR OPERATIONS

280. Class A; permitted development.

The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of inclosure¹ is permitted development².

1 The building of a wall is not so authorised unless it has some function of inclosure; but, if a wall in fact operates as a means of inclosure, it does not necessarily lose its privilege under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 2, Class A merely because it also has some function such as retaining soil: *Prengate Properties Ltd v Secretary of State for the Environment* (1973) 25 P & CR 311, DC. See also *Ewen Developments Ltd v Secretary of State for the Environment and North Norfolk District Council* [1980] JPL 404, DC; *Lovejoy v Secretary of State for the Environment, Transport and the Regions and Caradon District Council* (1998) 78 P & CR 1, [1999] JPL 441 (the building of an embankment next to a river will not be so authorised if it does not have some function of inclosure). The presence of some inclosing function does not, however, automatically render a wall permitted development: see *R (on the application of Dennis) v Sevenoaks District Council* [2004] EWHC 2758 (Admin), [2005] JPL 791, [2004] All ER (D) 223 (Nov).

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 2, Class A. As to development not permitted by Sch 2 Pt 2, Class A see PARA 281 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

280 Class A; permitted development

NOTE 2--See *Sumption v Greenwich LBC* [2007] EWHC 2776 (Admin), [2008] 1 P & CR 336, [2007] All ER (D) 482 (Nov).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(B) Part 2: Minor Operations/281. Development not permitted by Class A.

281. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1158 (1) the height of any gate, fence, wall or means of inclosure erected or constructed adjacent to a highway used by vehicular traffic² would, after the carrying out of the development, exceed 1 metre above ground level;
- 1159 (2) the height of any other gate, fence, wall or means of inclosure erected or constructed would exceed 2 metres above ground level;
- 1160 (3) the height of any gate, fence, wall or other means of inclosure maintained, improved or altered would, as a result of the development, exceed its former height or the height referred to in head (1) or head (2) above as the height appropriate to it if erected or constructed, whichever is the greater; or
- 1161 (4) it would involve development within the curtilage³ of, or to a gate, fence, wall or other means of inclosure surrounding, a listed building⁴.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 2, Class A: see PARA 280 ante.

² The use by vehicular traffic referred to in head (1) in the text is de facto use, not use by right as a highway: see *R (on the application of Nicholson) v First Secretary of State* [2005] EWHC 378 (Admin) at [31], [2005] All ER (D) 286 (Mar) per Collins J.

³ For the meaning of 'curtilage' see PARA 223 note 13 ante.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 2 para A.1. For the meaning of 'listed building' see PARA 259 note 11 ante, PARA 1091 post.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(B) Part 2: Minor Operations/282. Class B; permitted development.

282. Class B; permitted development.

The formation, laying out and construction of a means of access¹ to a highway which is not a trunk road² or a classified road³, where that access is required in connection with development permitted by any Class in Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995⁴, other than by Class A of Part 2⁵, is permitted development⁶.

No specific provision is made with regard to development not permitted by Class B.

1 For the meaning of 'means of access' see PARA 219 note 1 ante. The Secretary of State has held that the construction of more than one means of access may be permitted development for these purposes: see [1988] JPL 787. See also *James v Secretary of State for Wales* (1997) 76 P & CR 62 (the means of access must directly connect with the highway, and the question whether access is required must be assessed objectively).

2 For the meaning of 'trunk road' see PARA 255 note 16 ante.

3 For the meaning of 'classified road' see PARA 255 note 17 ante.

4 Ie by any Class in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 (as amended): see PARA 265 et seq ante, PARA 283 et seq post.

5 Ie ibid Sch 2 Pt 2, Class A: see PARAS 280-281 ante.

6 Ibid Sch 2 Pt 2, Class B. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of

buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(B) Part 2: Minor Operations/283. Class C; permitted development.

283. Class C; permitted development.

The painting¹ of the exterior of any building² or work is permitted development³.

1 For these purposes, 'painting' includes any application of colour: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 para C.2. In relation to a listed building, such painting may, however, constitute an alteration requiring listed building consent: see eg *Windsor and Maidenhead Royal Borough Council v Secretary of State for the Environment* (1987) 86 LGR 402, 56 P & CR 427; and see PARA 1109 post. For the meaning of 'listed building' see PARA 1091 post.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 2, Class C. As to development not permitted by Sch 2 Pt 2, Class C see PARA 284 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(B) Part 2: Minor Operations/284. Development not permitted by Class C.

284. Development not permitted by Class C.

Development is not permitted by Class C¹ where the painting² is for the purpose of advertisement, announcement or direction³.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 2, Class C: see PARA 283 ante.

2 For the meaning of 'painting' for these purposes see PARA 283 note 1 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 2 para C.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/285. Class A; permitted development.

(C) PART 3: CHANGES OF USE

285. Class A; permitted development.

Development consisting of a change of the use of a building¹ to a use as a shop² from a use:

1162 (1) in England, from a use as a restaurant or café³, drinking establishment⁴ or hot food takeaway⁵; or

1163 (2) in Wales, for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises⁶ or from a use for the sale, or display for sale, of motor vehicles,

is permitted development⁷. No specific provision is made with regard to development not permitted by Class A.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 Ie a use falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

3 Ie a use falling within ibid Schedule, Class A3 (as substituted): see PARA 227 ante.

4 Ie a use falling within ibid Schedule, Class A4 (as substituted): see PARA 227 ante.

5 Ie a use falling within ibid Schedule, Class A5 (as substituted): see PARA 227 ante.

6 le a use falling within ibid Schedule, Class A3 (as originally made): see PARA 227 ante.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class A (substituted in relation to England only (see head (1) in the text) by SI 2005/85; applying in Wales as originally made (see head (2) in the text)). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

285 Class A; permitted development

TEXT AND NOTE 7--See *Cocktails Ltd v Secretary of State for Communities and Local Government* [2008] EWCA Civ 1523, [2009] LLR 170 (use of extrinsic evidence to establish meaning of planning permission on application for change of use from franchised motor dealership to sex shop).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/286. Class AA; permitted development.

286. Class AA; permitted development.

Development consisting of a change of use of a building¹ to a use as a restaurant or café² from a use as a drinking establishment³ or hot food takeaway⁴ is, in England, permitted development⁵. No specific provision is made with regard to development not permitted by Class AA.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 le a use falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A3 (as substituted): see PARA 227 ante.

3 le a use falling within ibid Schedule, Class A4 (as substituted): see PARA 227 ante.

4 le a use falling within ibid Schedule, Class A5 (as substituted): see PARA 227 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class AA (substituted in relation to England only by SI 2005/85). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/287. Class B; permitted development.

287. Class B; permitted development.

Development consisting of a change of the use of a building¹:

- 1164 (1) to a use for business purposes² from any general industrial use³ or use for storage and distribution⁴;
- 1165 (2) to a use for storage and distribution⁵ from any use for business purposes⁶ or general industrial use⁷,

is permitted development⁸.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 Ie to a use for any purposes falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class B1: see PARA 228 ante.

3 Ie from any use falling within ibid Schedule, Class B2 (as amended): see PARA 229 ante.

4 Ie from any use falling within ibid Schedule, Class B8: see PARA 230 ante. In Wales, use for storage and distribution does not include use of that building or land for the storage of, or as a distribution centre for, radioactive material or radioactive waste: see PARA 230 ante.

5 Ie to a use for any purpose falling within ibid Schedule, Class B8.

6 Ie from any use falling within ibid Schedule, Class B1.

7 Ie from any use for any purpose falling within ibid Schedule, Class B2 (as amended).

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class B. As to development not permitted by Sch 2 Pt 3, Class B see PARA 288 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/288. Development not permitted by Class B.

288. Development not permitted by Class B.

Development is not permitted by Class B¹ where the change is to or from a use for storage or distribution² if the change of use relates to more than 235 square metres of floor space³ in the building⁴.

¹ Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class B: see PARA 287 ante.

² Ie to or from a use falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class B8: see PARA 230 ante.

³ For these purposes, unless the context otherwise requires, 'floor space' means the total floor space in a building or buildings: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2). For the meaning of 'building' see PARA 255 note 10 ante.

⁴ Ibid Sch 2 Pt 3 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY

DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/289. Class C; permitted development.

289. Class C; permitted development.

Development consisting of a change of use to a use of premises for financial and professional services¹ from a use:

1166 (1) in England, from a use as a restaurant or café², drinking establishment³ or hot food takeaway⁴; or

1167 (2) in Wales, for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises⁵,

is permitted development⁶. No specific provision is made with regard to development not permitted by Class C.

1 le to a use falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A2: see PARA 226 ante.

2 le a use falling within ibid Schedule, Class A3 (as substituted): see PARA 227 ante.

3 le a use falling within ibid Schedule, Class A4 (as substituted): see PARA 227 ante.

4 le a use falling within ibid Schedule, Class A5 (as substituted): see PARA 227 ante.

5 le from a use falling within ibid Schedule, Class A3 (as originally made): see PARA 227 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class C (amended in relation to England only (see head (1) in the text) by SI 2005/85; applying in Wales as originally made (see head (2) in the text)). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/290. Class D; permitted development.

290. Class D; permitted development.

Development consisting of a change of use of any premises with a display window¹ at ground floor level to a use as a shop² from a use for financial and professional services³ is permitted development⁴.

No specific provision is made with regard to development not permitted by Class D.

1 As to display windows see *North Cornwall District Council v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 2138 (Admin) at [18], [2003] 1 P & CR 400 (Case no 25), [2003] JPL 600.

2 I.e. to a use falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

3 I.e. from a use falling within ibid Schedule, Class A2: see PARA 226 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class D. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/291. Class E; permitted development.

291. Class E; permitted development.

Development consisting of a change of the use of a building¹ or other land² from a use permitted by planning permission³ granted on an application to another use which that permission would have specifically authorised when it was granted is permitted development⁴.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class E. As to development not permitted by Sch 2 Pt 3, Class E see PARA 292 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/292. Development not permitted by Class E.

292. Development not permitted by Class E.

Development is not permitted by Class E¹ if:

- 1168 (1) the application for planning permission² referred to was made before 5 December 1988;
- 1169 (2) it would be carried out more than ten years after the grant of planning permission; or
- 1170 (3) it would result in the breach of any condition, limitation or specification contained in that planning permission in relation to the use in question³.

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class E: see PARA 291 ante.

² For the meaning of 'planning permission' see PARA 43 note 6 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 3 para E.1.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/293. Class F; permitted development and special conditions to which it is subject.

293. Class F; permitted development and special conditions to which it is subject.

Development consisting of a change of the use of a building¹:

- 1171 (1) to a mixed use for any shop purpose² and as a single flat³, from a use for any shop purpose⁴;
- 1172 (2) to a mixed use for any financial and professional services purpose⁵ and as a single flat, from a use for any financial and professional services purpose⁶;
- 1173 (3) where that building has a display window⁷ at ground floor level, to a mixed use for any shop purpose⁸ and as a single flat, from a use for any financial and professional services purpose⁹,

is permitted development¹⁰. No specific provision is made with regard to development not permitted by Class F but it is subject to the following special conditions:

- 1174 (a) some or all of the parts of the building used for any shop purposes¹¹ or any financial and professional services purposes¹², as the case may be, must be situated on a floor below the part of the building used as a single flat;
- 1175 (b) where the development consists of a change of use of any building with a display window at ground floor level, the ground floor must not be used in whole or in part as the single flat;
- 1176 (c) the single flat must not be used otherwise than as a dwelling, whether or not as a sole or main residence:

109

- 153. (i) by a single person or by people living together as a family; or
- 154. (ii) by not more than six residents living together as a single household¹³, including a household where care¹⁴ is provided for residents¹⁵.

110

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 Ie to a use for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

3 For the meaning of 'flat' see PARA 262 note 6 ante.

4 Ie from any use described in note 2 supra.

5 Ie to a use for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class A2: see PARA 226 ante.

6 Ie from any use described in note 5 supra.

7 As to display windows see PARA 290 note 1 ante.

8 See note 2 supra.

9 See note 6 supra.

10 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class F. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

11 For any purposes falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

12 le for any purposes falling within ibid Schedule, Class A2: see PARA 226 ante.

13 As to 'living together as a single household' cf para 233 note 2 ante.

14 For this purpose, 'care' means personal care for people in need of such care by reason of old age, disablement, past or present dependence on alcohol or drugs or past or present mental disorder: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 3 para F.2.

15 Ibid Sch 2 Pt 3 para F.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/294. Class G; permitted development.

294. Class G; permitted development.

Development consisting of a change of the use of a building¹:

- 1177 (1) to a use for any shop purpose² from a mixed use for any shop purpose³ and as a single flat⁴;
- 1178 (2) to a use for any financial and professional services purpose⁵, from a mixed use for any financial and professional services purpose⁶ and as a single flat;
- 1179 (3) where the building has a display window⁷ at ground floor level, to a use for any shop purpose⁸ from a mixed use for any financial and professional services purpose⁹ and as a single flat,

is permitted development¹⁰.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 le to a use for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

- 3 le from any use described in note 2 supra.
- 4 For the meaning of 'flat' see PARA 262 note 6 ante.
- 5 le to a use for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule, Class A2: see PARA 226 ante.
- 6 le from any use described in note 5 supra.
- 7 As to display windows see PARA 290 note 1 ante.
- 8 See note 3 supra.
- 9 See note 6 supra.
- 10 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class G. As to development not permitted by Sch 2 Pt 3, Class G see PARA 295 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/295. Development not permitted by Class G.

295. Development not permitted by Class G.

Development is not permitted by Class G¹ unless the part of the building² used as a single flat³ was, immediately prior to being so used, used for any shop purpose⁴ or any financial and professional services⁵ purposes⁶.

- 1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class G: see PARA 294 ante.
- 2 For the meaning of 'building' see PARA 255 note 10 ante.
- 3 For the meaning of 'flat' see PARA 262 note 6 ante.
- 4 le for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class A1 (as amended): see PARA 225 ante.

5 le for any purpose falling within ibid Schedule, Class A2: see PARA 226 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 3 para G.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(C) Part 3: Changes of Use/295A. Class H; permitted development.

295A. Class H; permitted development.

Development consisting of a change of use of a building¹ from use as a casino² to a use for assembly and leisure³ is permitted development⁴.

1 For the meaning of 'building' see PARA 255 NOTE 10.

2 As to casinos see LICENSING AND GAMBLING vol 67 (2008) PARA 311.

3 le for any purpose falling within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class D2: see PARA 235.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 3, Class H (added by SI 2006/221).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(D) Part 4: Temporary Buildings and Uses/296. Class A; permitted development and special conditions to which it is subject.

(D) PART 4: TEMPORARY BUILDINGS AND USES

296. Class A; permitted development and special conditions to which it is subject.

The provision on land¹ of buildings², movable structures³, works, plant⁴ or machinery⁵ required temporarily in connection with and for the duration of operations⁶ being or to be carried out on, in, under or over that land or on land adjoining that land is permitted development⁷. Such development is, however, so permitted subject to the conditions that, when the operations have been carried out:

- 1180 (1) any building, structure, works, plant or machinery so permitted must be removed; and
- 1181 (2) any adjoining land on which development so permitted has been carried out must, as soon as reasonably practicable, be reinstated to its condition before that development was carried out⁸.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 It is doubtful whether a vessel that has been settled on land constitutes a movable structure: *Lovejoy v Secretary of State for the Environment, Transport and the Regions and Caradon District Council* (1998) 78 P & CR 1, [1999] JPL 441.

4 For the meaning of 'plant' see PARA 255 note 10 ante.

5 For the meaning of 'machinery' see PARA 255 note 10 ante.

6 There is a distinction between 'operations' and 'use'; this provision does not, therefore, permit temporary buildings in connection with a use of which the continuation has been permitted: *Sunbury-on-Thames UDC v Mann* (1958) 56 LGR 235, DC. See also *Brown v Hayes and Harlington UDC* (1963) 62 LGR 66, DC.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 4, Class A. As to development not permitted by Sch 2 Pt 4, Class A see PARA 297 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions to which such development is subject see heads (1)-(2) in the text; and as to directions restricting permitted development see PARA 258 et seq ante.

8 Ibid Sch 2 Pt 4 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of

buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(D) Part 4: Temporary Buildings and Uses/297. Development not permitted by Class A.

297. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1182 (1) the operations referred to are mining operations²; or
- 1183 (2) planning permission³ is required⁴ for those operations but is not granted or deemed⁵ to be granted⁶.

1. See by the Town and Country Planning General Development Order 1988, SI 1988/1813, art 3(1), Sch 2 Pt 4, Class A: see PARA 296 ante.

2. For these purposes, unless the context otherwise requires, 'mining operations' means the winning and working of minerals in, on over or under land, whether by surface or underground working: *ibid* art 1(2). For the meaning of 'land' see PARA 2 note 10 ante.

3. For the meaning of 'planning permission' see PARA 43 note 6 ante.

4. As to the requirement for planning permission see PARA 236 et seq ante.

5. As to deemed planning permission see PARA 238 ante.

6. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 4 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(D) Part 4: Temporary Buildings and Uses/298. Class B; permitted development.

298. Class B; permitted development.

The use of any land¹ for any purpose for not more than 28 days in total in any calendar year, of which not more than 14 days in total may be for the purposes of:

- 1184 (1) the holding of a market²;
- 1185 (2) motor car and motorcycle racing including trials of speed, and practising for these activities,

and the provision on the land of any movable structure for the purposes of the permitted use is permitted development³.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 A car boot sale may be described as a market for these purposes: see *Fitzpatrick v Secretary of State for the Environment and Epping Forest District Council* [1988] JPL 564.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 4, Class B, PARA B.2. As to development not permitted by Sch 2 Pt 4, Class B see PARA 299 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante. The permitted development is a series of developments comprising a change of use on each day when the normal use is replaced by the temporary use: *South Buckinghamshire District Council v Secretary of State for the Environment* (1988) 58 P & CR 121, [1989] 1 PLR 69, CA. Lawful alterations for the purpose of the temporary use are irrelevant so long as they do not prevent reversion to the permanent use: *Ramsey v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 118, [2002] JPL 1123, [2002] All ER (D) 16 (Feb).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(D) Part 4: Temporary Buildings and Uses/299. Development not permitted by Class B.

299. Development not permitted by Class B.

Development is not permitted by Class B¹ if:

- 1186 (1) the land² in question is a building³ or is within the curtilage⁴ of a building;
 1187 (2) the use of the land is for a caravan site⁵; or
 1188 (3) the land is, or is within, a site of special scientific interest⁶ and the use of the land is for:
 111
 155. (a) motor car and motorcycle racing including trials of speed, and practising those activities⁷, or other motor sports; or
 156. (b) clay pigeon shooting; or
 157. (c) any war game⁸;
 112
 1189 (4) the use of the land is for the display of an advertisement⁹.

1 Ibid by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 4, Class B: see PARA 298 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

5 For these purposes, unless the context otherwise requires, 'caravan site' means land on which a caravan is stationed for the purpose of human habitation and land which is used in conjunction with land on which a caravan is so stationed; and 'caravan' has the same meaning as for the purposes of the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-30) (as amended): see PARA 1033 post: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

6 For the meaning of 'site of special scientific interest' see PARA 264 note 7 ante.

7 Ibid the use of the land is for a purpose referred to in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 4 para B.2(b): see PARA 298 ante at head (2) in the text.

8 For this purpose, 'war game' means an enacted, mock or imaginary battle conducted with weapons which are designed not to injure, including smoke bombs, or guns or grenades which fire or spray paint or are otherwise used to mark other participants, but excludes military activities or training exercises organised by or with the authority of the Secretary of State for Defence: *ibid* Sch 2 Pt 4 para B.2.

9 Ibid Sch 2 Pt 4 para B.1. As to the control of advertisements see PARA 769 et seq post.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

PERMITTED DEVELOPMENT/(E) Part 5: Caravan Sites/300. Class A; permitted development and special condition to which it is subject.

(E) PART 5: CARAVAN SITES

300. Class A; permitted development and special condition to which it is subject.

The use of land¹, other than a building², as a caravan site³ in the specified circumstances⁴ is permitted development⁵. No specific provision is made with regard to development not permitted by Class A but such development is permitted subject to the condition that the use must be discontinued when the specified circumstances⁶ cease to exist, and all caravans⁷ on the site must be removed as soon as reasonably practicable⁸.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meaning of 'caravan site' see PARA 299 note 5 ante.

4 The circumstances so specified are those in the Caravan Sites and Control of Development Act 1960 s 2, Sch 1 paras 2-10 (see PARA 1036 post), but in relation to those mentioned in Sch 1 para 10 (see PARA 1036 post at head (10) in the text) do not include use for winter quarters: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 5 para A.2.

5 Ibid Sch 2 Pt 5, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

6 Ie the circumstances described in note 4 supra.

7 For the meaning of 'caravan' see PARA 299 note 5 ante.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 5 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

300 Class A; permitted development and special condition to which it is subject

NOTE 8--It is a matter of fact and degree whether the mere removal of caravans from the land is enough to end the land's use as a caravan site: *R (on the application of Hall Hunter Partnership) v First Secretary of State* [2006] EWHC 3482 (Admin), [2007] 2 P & CR 73 (caravans removed but infrastructure remained so land did not lose characteristics of caravan site).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(E) Part 5: Caravan Sites/301. Class B; permitted development.

301. Class B; permitted development.

Development required by the conditions of a site licence for the time being in force under the Caravan Sites and Control of Development Act 1960¹ is permitted development². No specific provision is made with regard to development not permitted by Class B.

¹ See PARA 1039 et seq post.

² Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 5, Class B. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/302. Class A; permitted development on units of 5 hectares or more.

(F) PART 6: AGRICULTURAL BUILDINGS AND OPERATIONS

302. Class A; permitted development on units of 5 hectares or more.

The carrying out on agricultural land¹ comprised in an agricultural unit² of 5 hectares or more in area of:

- 1190 (1) works for the erection, extension or alteration of a building; or
- 1191 (2) any excavation or engineering operations,

which are reasonably necessary for the purposes of agriculture³ within that unit is permitted development⁴.

1 For these purposes, 'agricultural land' means land which, before development permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6 (as amended) is carried out, is land in use for agriculture and which is so used for the purposes of a trade or business, and excludes any dwelling house or garden: Sch 2 Pt 6 para D.1. For the meaning of 'dwelling house' see PARA 262 note 6 ante. As to the meaning of 'agriculture' see PARA 16 note 6 ante.

2 For these purposes, 'agricultural unit' means agricultural land which is occupied as a unit for the purposes of agriculture, including (1) any dwelling or other building on that land occupied for the purpose of farming the land by the person who occupies the unit; or (2) any dwelling on that land occupied by a farmworker: *ibid* Sch 2 Pt 6 para D.1. 'Building' does not include anything resulting from engineering operations: Sch 2 Pt 6 para D.1. For the normal meaning of 'building' for the purposes of Sch 2 (as amended) see PARA 255 note 10 ante.

3 The question whether a development is reasonably necessary for the purposes of agriculture is an objective question for the determination of the inspector having regard to the particular needs of the particular unit for the particular development: see *Scott v Secretary of State for the Environment, Transport and the Regions* [2000] JPL 833 per Judge Rich QC; *affd* [2000] All ER (D) 1411, CA.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6, Class A. As to development not permitted by Sch 2 Pt 6, Class A see PARA 304 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 303 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/303. Special conditions to which development permitted by Class A is subject.

303. Special conditions to which development permitted by Class A is subject.

Development is permitted by Class A¹ subject to the following conditions:

- 1192 (1) where development is carried out within 400 metres of the curtilage² of a protected building³, any building, structure, excavation or works resulting from the development may not be used for the accommodation of livestock⁴ except in the specified circumstances⁵ or for the storage of slurry⁶ or sewage sludge;

- 1193 (2) where the development involves the extraction of any mineral from the land, including removal from any disused railway embankment, or the removal of any mineral from a mineral-working deposit, the mineral may not be moved off the unit;
- 1194 (3) waste materials may not be brought on to the land from elsewhere for deposit except for use in works for the erection, extension or alteration of a building⁷ or in the provision of a hard surface and any materials so brought must be incorporated forthwith into the building or works in question⁸.

Development consisting of the erection, extension or alteration of a building, the formation or alteration of a private way⁹, the carrying out of excavations or the deposit of waste material, where the relevant area¹⁰ exceeds 0.5 hectare, or the placing or assembly of a tank¹¹ in any waters is permitted by Class A¹² subject to the following conditions:

- 1195 (a) the developer must, before beginning the development, apply to the local planning authority¹³ for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or the siting and appearance of the tank, as the case may be;
- 1196 (b) the application must be accompanied by a written description of the proposed development, the materials to be used and a plan indicating the site together with any fee required to be paid¹⁴;
- 1197 (c) the development may not be begun before the occurrence of one of the following:
- 113
158. (i) the receipt by the applicant from the local planning authority of a written notice of its determination that such prior approval is not required;
159. (ii) where the local planning authority gives the applicant notice within 28 days following the date of receiving his application of its determination that such prior approval is required, the giving of such approval; or
160. (iii) the expiry of 28 days following the date on which the application was received by the local planning authority without that authority making any determination as to whether such approval is required or notifying the applicant of its determination;
- 114
- 1198 (d) where the local planning authority gives the applicant notice that such prior approval is required, the applicant must display a site notice¹⁵ by site display¹⁶ on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant¹⁷;
- 1199 (e) the development must, except to the extent that the local planning authority otherwise agrees in writing, be carried out:
- 115
161. (i) where prior approval is required, in accordance with the details approved;
162. (ii) where prior approval is not required, in accordance with the details submitted with the application; and
- 116
- 1200 (f) the development must be carried out:
- 117
163. (i) where approval has been given by the local planning authority, within a period of five years from the date on which approval was given;
164. (ii) in any other case, within a period of five years from the date on which the local planning authority was given the information referred to in head (ii) above¹⁸.
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The conditions set out in heads (a) to (f) above do not, however, apply to the extension or alteration of a building if the building is not on article 1(6) land¹⁹ except in the case of a significant extension²⁰ or a significant alteration²¹.

Development consisting of the significant extension or the significant alteration of a building may²² be carried out only once²³. Where development consisting of works for the erection, extension or alteration of a building is permitted²⁴, the developer must notify the local planning authority, in writing and within seven days, of the date on which the development was substantially completed²⁵.

Where development consists of works for the erection, significant extension or significant alteration of a building and

1201 (A) the use of the building or extension for the purposes of agriculture within the unit permanently ceases within ten years from the date on which the development was substantially completed²⁶; and

1202 (B) planning permission²⁷ has not been granted on an application²⁸, or has not been deemed to be granted²⁹ for development for purposes other than agriculture, within three years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased³⁰,

then, unless the local planning authority has otherwise agreed in writing, the building or, in the case of development consisting of an extension, the extension, must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing between the local planning authority and the developer³¹.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6, Class A: see PARA 302 ante.

2 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

3 For these purposes, 'protected building' means any permanent building which is normally occupied by people or would be so occupied, if it were in use for purposes for which it is apt; but does not include (1) a building within the agricultural unit; or (2) a dwelling or other building on another agricultural unit which is used for or in connection with agriculture: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.1. For the meaning of 'building' for these purposes, and for the meaning of 'agricultural unit', see PARA 302 note 2 ante.

4 'Livestock' includes fish or shellfish which are farmed: *ibid* Sch 2 Pt 6 para D.1.

5 The circumstances so specified are that no other suitable building or structure, 400 metres or more from the curtilage of a protected building, is available to accommodate the livestock; and (1) that the need to accommodate the livestock arises from (a) quarantine requirements; or (b) an emergency due to another building or structure in which the livestock could otherwise be accommodated being unavailable because it has been damaged or destroyed by fire, flood or storm; or (2) in the case of animals normally kept out of doors, they require temporary accommodation in a building or other structure (a) because they are sick or giving birth or newly born; or (b) to provide shelter against extreme weather conditions: *ibid* Sch 2 Pt 6 para D.3. However, there is no statutory presumption against granting planning permission for agricultural buildings to house livestock within the 400 metres range: see *Graham v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1150 (Admin), [2002] All ER (D) 541 (May).

6 For these purposes, 'slurry' means animal faeces and urine, whether or not water has been added for handling: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.1.

7 Ie except for use in works described in *ibid* Sch 2 Pt 6, Class A(a): see PARA 302 ante at head (1) in the text.

8 *Ibid* Sch 2 Pt 6 para A.2(1).

9 For these purposes, 'private way' means a highway not maintainable at the public expense and any other way other than a highway: *ibid* art 1(2).

10 For these purposes, the relevant area of the proposed excavation or the area on which it is proposed to deposit waste together with the aggregate of the areas of all other excavations within the unit which have not been filled and of all other parts of the unit on or under which waste has been deposited and has not been removed: *ibid* Sch 2 Pt 6 para D.4.

11 For these purposes, 'tank' includes any cage and any other structure for use in fish farming; and 'fish farming' means the breeding, rearing or keeping of fish or shellfish, which includes any kind of crustacean or mollusc: *ibid* Sch 2 Pt 6 para D.1.

12 See note 1 *supra*.

13 As to local planning authorities see PARA 28 *et seq ante*.

14 As to the use of electronic communications see PARA 257 *ante*; and as to the fee payable see PARA 465 *post*. As to the meaning of the phrase 'the materials to be used' see *R v Caradon District Council, ex p Lovejoy* [2000] JPL 186 per Jowitt J (the phrase is to be construed as being a reference to the materials which will be used if the development is carried out and does not refer simply to materials which may be used or one or more of which may be used if the development is carried out).

15 For these purposes, 'site notice' means a notice containing (1) the name of the applicant; (2) the address or location of the proposed development; (3) a description of the proposed development and of the materials to be used; (4) a statement that the prior approval of the authority will be required to the siting, design and external appearance of the building, the siting and means of construction of the private way, the siting of the excavation or deposit or the siting and appearance of the tank, as the case may be; (5) the name and address of the local planning authority, and which is signed and dated by or on behalf of the applicant: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.5.

16 For these purposes, unless the context otherwise requires, 'by site display' means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public: *ibid* art 1(2).

17 Where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in head (d) in the text has elapsed, the applicant is treated as having complied with the requirements set out in that head if he has taken reasonable steps for protection of the notice and, if need be, for its replacement: Sch 2 Pt 6 para A.2(2)(d)(iv)(bb).

18 *Ibid* Sch 2 Pt 6 para A.2(2).

19 For the meaning of 'article 1(6) land' see PARA 256 *ante*.

20 For these purposes, 'significant extension' and 'significant alteration' mean any extension or alteration of the building where the cubic content of the original building would be exceeded by more than 10% or the height of the building as extended or altered would exceed the height of the original building: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.1. For the meaning of 'cubic content' see PARA 265 note 1 *ante*; for the meaning of 'original' see PARA 266 note 4 *ante*; and for the meaning of references to the height of a building see PARA 266 note 7 *ante*.

21 *Ibid* Sch 2 Pt 6 para A.2(3).

22 *Ie* by virtue of *ibid* Sch 2 Pt 6, Class A(a): see PARA 302 *ante* at head (1) in the text.

23 *Ibid* Sch 2 Pt 6 para A.2(4).

24 See note 22 *supra*.

25 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.2(7) (para A.2(5)-(7) added by SI 1997/366).

26 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.2(5)(a) (as added: see note 25 *supra*).

27 For the meaning of 'planning permission' see PARA 43 note 6 *ante*.

28 As to application for planning permission see PARA 448 *et seq post*.

29 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 419 et seq post.

30 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.2(5)(b) (as added: see note 25 supra). Where an appeal has been made, under the Town and Country Planning Act 1990, in relation to an application for development described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.2(5)(b) (as so added) (see the text and notes 27-29 supra), within the period described in the text to this note, that period is extended until the appeal is finally determined or withdrawn: Sch 2 Pt 6 para A.2(6) (as so added). As to appeals see PARA 598 et seq post.

31 Ibid Sch 2 Pt 6 para A.2(5) (as added: see note 25 supra).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/304. Development not permitted by Class A.

304. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1203 (1) the development would be carried out on a separate parcel of land forming part of the agricultural unit² which is less than one hectare in area;
- 1204 (2) it would consist of, or include, the erection, extension or alteration of a dwelling;
- 1205 (3) it would involve the provision of a building³, structure or works not designed for agricultural purposes⁴;
- 1206 (4) the ground area which would be covered by:
- 119 165. (a) any works or structure, other than a fence, for accommodating livestock⁵ or any plant⁶ or machinery⁷ arising from engineering operations; or
- 166. (b) any building erected or extended or altered by virtue of Class A,
- 120 1207 would exceed 465 square metres, calculated in the specified manner⁸;
- 1208 (5) the height⁹ of any part of any building, structure or works within 3 kilometres of the perimeter of an aerodrome¹⁰ would exceed 3 metres;

- 1209 (6) the height of any building, structure or works not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;
- 1210 (7) any part of the development would be within 25 metres of a metalled part of a trunk road¹¹ or classified road¹²;
- 1211 (8) it would consist of, or include, the erection or construction of, or the carrying out of any works to, a building, structure or an excavation used or to be used for the accommodation of livestock or for the storage of slurry¹³ or sewage sludge where the building, structure or excavation is, or would be, within 400 metres of the curtilage¹⁴ of a protected building¹⁵; or
- 1212 (9) it would involve excavations or engineering operations on or over article 1(6) land¹⁶ which are connected with fish farming¹⁷.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6, Class A: see PARA 302 ante.

2 For the meaning of 'agricultural unit' see PARA 302 note 2 ante.

3 For the meaning of 'building' see PARA 302 note 2 ante.

4 'Designed for agricultural purposes' means 'designed for the purposes of agriculture in the sense of its physical appearance and layout': *Belmont Farm Ltd v Minister of Housing and Local Government* (1962) 13 P & CR 417 at 424, DC, per Lord Parker CJ (aircraft hangar not such a building). See also *Harding v Secretary of State for the Environment and Bridgnorth District Council* [1984] JPL 503; *Clarke v Secretary of State for the Environment* (1992) 65 P & CR 85, [1992] EGLR 189, CA.

5 The word 'accommodating' in the phrase 'works or structure for accommodating livestock' in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.1(d)(i) (see head (4)(a) in the text) refers to the provision of something suitable, rather than denoting some form of habitation: *Taylor & Sons (Farms) v Secretary of State for the Environment, Transport and the Regions* [2001] EWCA Civ 1254, [2002] 1 PLR 16. For the meaning of 'livestock' see PARA 303 note 4 ante.

6 For the meaning of 'plant' see PARA 255 note 10 ante.

7 For the meaning of 'machinery' see PARA 255 note 10 ante.

8 le calculated as described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.2. For these purposes: (1) an area so calculated comprises the ground area which would be covered by the proposed development, together with the ground area of any building, other than a dwelling, or any structure, works, plant, machinery or ponds or tanks within the same unit which are being provided or have been provided within the preceding two years and any part of which would be within 90 metres of the proposed development; (2) 400 metres is to be measured along the ground: Sch 2 Pt 6 para D.2. For the meaning of 'tank' see PARA 303 note 11 ante.

9 For the meaning of references to the height of a building see PARA 266 note 7 ante.

10 For the meaning of 'aerodrome' see PARA 258 note 12 ante.

11 For the meaning of 'trunk road' see PARA 255 note 16 ante.

12 For the meaning of 'classified road' see PARA 255 note 17 ante.

13 For the meaning of 'slurry' see PARA 303 note 6 ante.

14 For the meaning of 'curtilage' see PARA 223 note 13 ante. See also PARA 273 note 2 ante.

15 For the meaning of 'protected building' see PARA 303 note 3 ante.

16 For the meaning of 'article 1(6) land' see PARA 256 ante.

17 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.1. For the meaning of 'fish farming' see PARA 303 note 11 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/305. Class B; permitted development on units of less than 5 hectares.

305. Class B; permitted development on units of less than 5 hectares.

The carrying out on agricultural land¹ comprised in an agricultural unit² of not less than 0.4 but less than 5 hectares in area of development consisting of:

- 1213 (1) the extension³ or alteration of an agricultural building;
- 1214 (2) the installation of additional or replacement plant⁴ or machinery⁵;
- 1215 (3) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus;
- 1216 (4) the provision, rearrangement or replacement of a private way⁶;
- 1217 (5) the provision of a hard surface;
- 1218 (6) the deposit of waste; or
- 1219 (7) the carrying out of any of the following operations in connection with fish farming⁷, namely:
- 121 167. (a) repairing ponds and raceways;
- 168. (b) the installation of grading machinery, aeration equipment or flow meters and any associated channel;
- 169. (c) the dredging of ponds; and
- 170. (d) the replacement of tanks⁸ and nets,
- 122

where the development is reasonably necessary for the purposes of agriculture within the unit, is permitted development⁹.

1 For the meaning of 'agricultural land' see PARA 302 note 1 ante.

2 For the meaning of 'agricultural unit' see PARA 302 note 2 ante.

3 For this purpose: (1) the erection of any additional building within the curtilage of another building is to be treated as the extension of that building and the additional building is not to be treated as an original building; (2) where two or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement in connection with the extension or alteration of either of them: Town and Country Planning (General Permitted Development) Order 1995, SI

1995/418, art 3(1), Sch 2 Pt 6 para D.6. For the meaning of 'building' for these purposes see PARA 302 note 2 ante; for the meaning of 'original' see PARA 266 note 4 ante; and for the meaning of 'curtilage' see PARA 223 note 13 ante.

4 For the meaning of 'plant' see PARA 255 note 10 ante.

5 For the meaning of 'machinery' see PARA 255 note 10 ante.

6 For the meaning of 'private way' see PARA 303 note 9 ante.

7 For the meaning of 'fish farming' see PARA 303 note 11 ante.

8 For the meaning of 'tank' see PARA 303 note 11 ante.

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6, Class B. As to development not permitted by Sch 2 Pt 6, Class B see PARA 307 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 306 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/306. Special conditions to which development permitted by Class B is subject.

306. Special conditions to which development permitted by Class B is subject.

Development permitted by Class B¹ and carried out within 400 metres of the curtilage² of a protected building³ is subject to the condition that any building which is extended⁴ or altered, or any works resulting from the development, may not be used for the accommodation of livestock⁵ except in the specified circumstances⁶ or for the storage of slurry⁷ or sewage sludge⁸.

Development consisting of the extension or alteration of a building situated on article 1(6) land⁹ or the provision, rearrangement or replacement of a private way¹⁰ on such land is permitted subject to:

- 1220 (1) the condition that the developer must, before beginning the development, apply to the local planning authority¹¹ for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building as extended or altered or the siting and means of construction of the private way; and

1221 (2) the specified¹² conditions¹³.

Development is permitted for the deposit of waste¹⁴ subject to the following conditions:

- 1222 (a) that waste materials are not brought on to the land from elsewhere for deposit unless they are for use in specified works¹⁵ and are incorporated forthwith into the building or works in question; and
- 1223 (b) that the height of the surface of the land will not be materially increased by the deposit¹⁶.

Development consisting of the extension or alteration of an agricultural building is permitted¹⁷ subject to the following conditions:

- 1224 (i) where development consists of works for the significant extension or significant alteration¹⁸ of a building and
- 123 171. (A) the use of the building or extension for the purposes of agriculture within the unit permanently ceases within ten years from the date on which the development was substantially completed; and
- 172. (B) planning permission¹⁹ has not been granted on an application²⁰, or has not been deemed to be granted²¹, for development for purposes other than agriculture, within three years from the date on which the use of the building or extension for the purposes of agriculture within the unit permanently ceased,
- 124 1225 then, unless the local planning authority has otherwise agreed in writing, the extension, in the case of development consisting of an extension, must be removed from the land and the land must, so far as is practicable, be restored to its condition before the development took place, or to such condition as may have been agreed in writing between the local planning authority and the developer;
- 1226 (ii) where an appeal has been made²² in relation to an application for development described in head (i)(B) above, within the period there described, that period is extended until the appeal is finally determined or withdrawn;
- 1227 (iii) the developer must notify the local planning authority in writing and within seven days, of the date on which the development was substantially completed²³.

1. See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6, Class B: see PARA 305 ante.

2. For the meaning of 'curtilage' see PARA 223 note 13 ante.

3. For the meaning of 'protected building' see PARA 303 note 3 ante.

4. As to the circumstances in which the erection of any additional building within the curtilage of another building is treated as the extension of that building see PARA 305 note 3 ante.

5. For the meaning of 'livestock' see PARA 303 note 4 ante.

6. See the circumstances specified in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.3: see PARA 303 note 5 ante.

7. For the meaning of 'slurry' see PARA 303 note 6 ante.

8. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, 1988 Sch 2 Pt 6 para B.5.

9. For the meaning of 'article 1(6) land' see PARA 256 ante.

- 10 For the meaning of 'private way' see PARA 303 note 9 ante.
- 11 As to the use of electronic communications see PARA 257 ante; and as to local planning authorities see PARA 28 et seq ante.
- 12 Ie the conditions specified in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para A.2(2)(ii)-(vi): see PARA 303 ante at heads (b)-(f) in the text.
- 13 Ibid Sch 2 Pt 6 para B.6.
- 14 Ie by ibid Sch 2 Pt 6, Class B(f): see PARA 305 ante at head (6) in the text.
- 15 Ie works described in ibid Sch 2 Pt 6, Class B(a), (d) or (e): see PARA 305 ante at heads (1), (4), (5) in the text.
- 16 Ibid Sch 2 Pt 6 para B.7.
- 17 Ie by ibid Sch 2 Pt 6, Class B(a): see PARA 305 ante at head (1) in the text.
- 18 For the meaning of 'significant extension' and 'significant alteration' see PARA 303 note 20 ante.
- 19 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 20 As to application for planning permission see PARA 448 et seq post.
- 21 Ie under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 419 et seq post.
- 22 Ie under the Town and Country Planning Act 1990: see PARA 598 et seq post.
- 23 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para B.8 (added by SI 1997/366).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/307. Development not permitted by Class B.

307. Development not permitted by Class B.

Development is not permitted:

1228 (1) by Class B¹ if:

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- 173. (a) the development would be carried out on a separate parcel of land forming part of the agricultural unit² which is less than 0.4 hectare in area;
- 174. (b) the external appearance of the premises would be materially affected;
- 175. (c) any part of the development would be within 25 metres of a metalled part of a trunk road³ or classified road⁴;
- 176. (d) it would consist of, or involve, the carrying out of any works to a building⁵ or structure used or to be used for the accommodation of livestock⁶ or the storage of slurry⁷ or sewage sludge where the building or structure is within 400 metres of the curtilage⁸ of a protected building⁹; or
- 177. (e) it would relate to fish farming¹⁰ and would involve the placing or assembly of a tank¹¹ on land or in any waters or the construction of a pond in which fish may be kept or an increase, otherwise than by the removal of silt, in the size of any tank or pond in which fish may be kept¹²;

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- 1229 (2) for the extension¹³ or alteration of an agricultural building¹⁴ if:

127

- 178. (a) the height¹⁵ of any building would be increased;
- 179. (b) the cubic content¹⁶ of the original¹⁷ building would be increased by more than 10%;
- 180. (c) any part of the new building would be more than 30 metres from the original building;
- 181. (d) the development would involve the extension, alteration or provision of a dwelling;
- 182. (e) any part of the development would be carried out within 5 metres of any boundary of the unit; or
- 183. (f) the ground area of any building extended¹⁸ would exceed 465 square metres¹⁹;

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- 1230 (3) for the installation of additional or replacement plant or machinery²⁰ if:

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- 184. (a) the height of any additional plant or machinery within 3 kilometres of the perimeter of an aerodrome²¹ would exceed 3 metres;
- 185. (b) the height of any additional plant or machinery not within 3 kilometres of the perimeter of an aerodrome would exceed 12 metres;
- 186. (c) the height of any replacement plant or machinery would exceed that of the plant or machinery being replaced; or
- 187. (d) the area to be covered by the development would exceed 465 square metres calculated in the specified²² manner²³;

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- 1231 (4) for the provision of a hard surface²⁴ if the area to be covered by the development would exceed 465 square metres calculated in the specified²⁵ manner²⁶.

1. See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6, Class B: see PARA 305 ante.

2. For the meaning of 'agricultural unit' see PARA 302 note 2 ante.

3. For the meaning of 'trunk road' see PARA 255 note 16 ante.

4. For the meaning of 'classified road' see PARA 255 note 17 ante.

5. For the meaning of 'building' for these purposes see PARA 302 note 2 ante.

6. For the meaning of 'livestock' see PARA 303 note 4 ante.

- 7 For the meaning of 'slurry' see PARA 303 note 6 ante.
- 8 For the meaning of 'curtilage' see PARA 223 note 13 ante.
- 9 For the meaning of 'protected building' see PARA 303 note 3 ante.
- 10 For the meaning of 'fish farming' see PARA 303 note 11 ante.
- 11 For the meaning of 'tank' see PARA 303 note 11 ante.
- 12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para B.1.
- 13 As to the circumstances in which the erection of any additional building within the curtilage of another building is treated as the extension of that building see PARA 305 note 3 ante.
- 14 If development is not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6, Class B(a): see PARA 305 ante at head (1) in the text.
- 15 For the meaning of references to the height of a building see PARA 266 note 7 ante.
- 16 For the meaning of 'cubic content' see PARA 265 note 1 ante.
- 17 For the meaning of 'original' see PARA 266 note 4 ante.
- 18 If by virtue of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6, Class B(a).
- 19 Ibid Sch 2 Pt 6 para B.2.
- 20 If development is not permitted by ibid Sch 2 Pt 6, Class B(b): see PARA 305 ante at head (2) in the text. For the meaning of 'plant' and 'machinery' see PARA 255 note 10 ante.
- 21 For the meaning of 'aerodrome' see PARA 258 note 12 ante.
- 22 If calculated as described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para D.2: see PARA 304 note 8 ante.
- 23 Ibid Sch 2 Pt 6 para B.3.
- 24 If development is not permitted by ibid Sch 2 Pt 6, Class B(e): see PARA 305 ante at head (5) in the text.
- 25 See note 22 supra.
- 26 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para B.4.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/308. Class C; permitted development consisting of mineral working for agricultural purposes and special condition to which it is subject.

308. Class C; permitted development consisting of mineral working for agricultural purposes and special condition to which it is subject.

The winning and working on land¹ held or occupied with land used for the purposes of agriculture² of any minerals reasonably necessary for agricultural purposes within the agricultural unit³ of which it forms part is permitted development⁴. Such development is so permitted subject to the condition that no mineral extracted during the course of the operation is to be moved to any place outside the land from which it was extracted, except to land which is held or occupied with that land and is used for the purposes of agriculture⁵.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For this purpose, 'the purposes of agriculture' includes fertilising land used for the purposes of agriculture and the maintenance, improvement or alteration of any buildings, structures or works occupied or used for such purposes on land so used: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6 para D.6. For the meaning of 'building' for these purposes see PARA 302 note 2 ante.

3 For the meaning of 'agricultural unit' see PARA 302 note 2 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6, Class C. As to development not permitted by Sch 2 Pt 6, Class C (as so substituted) see PARA 309 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see the text and note 5 infra; and as to directions restricting permitted development see PARA 258 et seq ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para C.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(F) Part 6: Agricultural Buildings and Operations/309. Development not permitted by Class C.

309. Development not permitted by Class C.

Development is not permitted by Class C¹ if any excavation would be made within 25 metres of a metalled part of a trunk road² or classified³ road⁴.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 6, Class C: see PARA 308 ante.

² For the meaning of 'trunk road' see PARA 255 note 16 ante.

³ For the meaning of 'classified road' see PARA 255 note 17 ante.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 para C.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added, in relation to England, by SI 2006/765; and, in relation to Wales, by SI 2007/952, and amended, in relation to Wales, by SI 2008/502 (WALES)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(G) Part 7: Forestry Buildings and Operations/310. Class A; permitted development.

(G) PART 7: FORESTRY BUILDINGS AND OPERATIONS

310. Class A; permitted development.

The carrying out on land¹ used for the purposes of forestry, including afforestation, of development reasonably necessary for those purposes consisting of:

- 1232 (1) works for the erection, extension or alteration of a building²;
- 1233 (2) the formation, alteration or maintenance of private ways³;
- 1234 (3) operations on that land, or on land held or occupied with that land, to obtain the materials required for the formation, alteration or maintenance of such ways,
- 1235 (4) other operations, not including engineering or mining operations⁴,

is permitted development⁵.

- 1 For the meaning of 'land' see PARA 2 note 10 ante.
- 2 For the meaning of 'building' see PARA 255 note 10 ante.
- 3 For the meaning of 'private way' see PARA 303 note 9 ante.
- 4 For the meaning of 'mining operations' see PARA 297 note 2 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 7, Class A. As to development not permitted by Sch 2 Pt 7, Class A see PARA 312 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 311 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(G) Part 7: Forestry Buildings and Operations/311. Special conditions to which development permitted by Class A is subject.

311. Special conditions to which development permitted by Class A is subject.

Development consisting of the erection of a building¹ or the extension or alteration of a building or the formation or alteration of a private way² is permitted by Class A³ subject to the following conditions:

- 1236 (1) the developer must, before beginning the development, apply to the local planning authority⁴ for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the building or, as the case may be, the siting and means of construction of the private way;
- 1237 (2) the application must be accompanied by a written description of the proposed development, the materials to be used and a plan indicating the site together with any fee required to be paid⁵;

- 1238 (3) the development may not be begun before the occurrence of one of the following:
- 131
188. (a) the receipt by the applicant from the local planning authority of a written notice of its determination that such prior approval is not required;
189. (b) where the local planning authority gives the applicant notice within 28 days following the date of receiving his application of its determination that such prior approval is required, the giving of such approval;
190. (c) the expiry of 28 days following the date on which the application was received by the local planning authority without that authority making any determination as to whether such approval is required or notifying the applicant of its determination;
- 132
- 1239 (4) where the local planning authority gives the applicant notice that such prior approval is required, the applicant must display a site notice⁶ by site display⁷ on or near the land on which the proposed development is to be carried out, leaving the notice in position for not less than 21 days in the period of 28 days from the date on which the local planning authority gave the notice to the applicant⁸;
- 1240 (5) the development must, except to the extent that the local planning authority otherwise agrees in writing, be carried out:
- 133
191. (a) where prior approval is required, in accordance with the details approved;
192. (b) where prior approval is not required, in accordance with the details submitted with the application;
- 134
- 1241 (6) the development must be carried out:
- 135
193. (a) where approval has been given by the local planning authority, within a period of five years from the date on which approval was given;
194. (b) in any other case, within a period of five years from the date on which the local planning authority was given the information referred to in head (2) above⁹.
- 136

The conditions set out above do not, however, preclude the extension or alteration of a building if the building is not on article 1(6) land¹⁰ except in the case of a significant extension¹¹ or a significant alteration¹².

In the case of development consisting of the significant extension or the significant alteration of a building, such development may be carried out only once¹³.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 For the meaning of 'private way' see PARA 303 note 9 ante.

3 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 7, Class A: see PARA 310 ante.

4 As to the use of electronic communications see PARA 257 ante; and as to local planning authorities see PARA 28 et seq ante.

5 As to the fee payable see PARA 465 post.

6 For these purposes, 'site notice' means a notice containing (1) the name of the applicant; (2) the address or location of the proposed development; (3) a description of the proposed development and of the materials to be used; (4) a statement that the prior approval of the authority will be required to the siting, design and external appearance of the building, or, as the case may be, the siting and means of construction of the private way; (5) the name and address of the local planning authority, and which is signed and dated by or on behalf of

the applicant: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 7 para A.3.

7 For the meaning of 'by site display' see PARA 303 note 16 ante.

8 Where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in head (4) in the text has elapsed, he is treated as having complied with the requirements of that head if he has taken reasonable steps for protection of the notice and, if need be, for its replacement: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 7 para A.2(1)(d)(ii).

9 Ibid Sch 2 Pt 7 para A.2(1).

10 For the meaning of 'article 1(6) land' see PARA 256 ante.

11 For this purpose, 'significant extension' and 'significant alteration' mean any extension or alteration of the building where the cubic content of the original building would be exceeded by more than 10% or the height of the building as extended or altered would exceed the height of the original building: Sch 2 Pt 7 para A.3. For the meaning of 'cubic content' see PARA 265 note 1 ante; for the meaning of 'original' see PARA 266 note 4 ante; and for the meaning of references to the height of a building see PARA 266 note 7 ante.

12 Ibid Sch 2 Pt 7 para A.2(3).

13 Ibid Sch 2 Pt 7 para A.2(2).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(G) Part 7: Forestry Buildings and Operations/312. Development not permitted by Class A.

312. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1242 (1) it would consist of or include the provision or alteration of a dwelling;
- 1243 (2) the height² of any building³ or works within 3 kilometres of the perimeter of an aerodrome⁴ would exceed 3 metres in height; or
- 1244 (3) any part of the development would be within 25 metres of the metalled portion of a trunk road⁵ or classified⁶ road⁷.

- 1 le the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 7, Class A: see PARA 310 ante.
- 2 For the meaning of references to the height of a building see PARA 266 note 7 ante.
- 3 For the meaning of 'building' see PARA 255 note 10 ante.
- 4 For the meaning of 'aerodrome' see PARA 258 note 12 ante.
- 5 For the meaning of 'trunk road' see PARA 255 note 16 ante.
- 6 For the meaning of 'classified road' see PARA 255 note 17 ante.
- 7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 7 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/313. Class A; permitted development and special conditions to which it is subject.

(H) PART 8: INDUSTRIAL AND WAREHOUSE DEVELOPMENT

313. Class A; permitted development and special conditions to which it is subject.

The extension¹ or alteration of an industrial building² or a warehouse³ is permitted development⁴. Development is so permitted subject to the conditions that any building extended or altered:

- 1245 (1) may only be used:
- 137
195. (a) in the case of an industrial building, for the carrying out of an industrial process for the purposes of the undertaking or the provision of employee facilities⁵;
196. (b) in the case of a warehouse, for storage or distribution for the purposes of the undertaking or the provision of employee facilities;
- 138
- 1246 (2) may not be used to provide employee facilities between 7 pm and 6.30 am for employees other than those present at the premises of the undertaking for the purpose of their employment;

1247 (3) may not be used to provide employee facilities if a notifiable quantity of a hazardous substance is present at the premises of the undertaking⁶.

1 For these purposes: (1) the erection of any additional building within the curtilage of another building, whether by virtue of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class A or otherwise, and used in connection with it is to be treated as the extension of that building, and the additional building is not to be treated as an original building; (2) where two or more original buildings are within the same curtilage and are used for the same undertaking, they are to be treated as a single original building in making any measurement: Sch 2 Pt 8 para A.3(a), (b). For the meaning of 'building' see PARA 255 note 10 ante; for the meaning of 'original' see PARA 266 note 4 ante; and for the meaning of 'curtilage' see PARA 223 note 13 ante.

2 For these purposes, 'industrial building' means a building used for the carrying out of an industrial process and includes a building used for the carrying out of such a process on land used as a dock, harbour or quay for the purposes of an industrial undertaking but does not include a building on land in or adjacent to and occupied together with a mine: *ibid* Sch 2 Pt 8 para E. 'Industrial process', unless the context otherwise requires, means a process for or incidental to any of the following purposes: (1) the making of any article or part of an article, including a ship or vessel, or a film, video or sound recording; (2) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (3) the getting, dressing or treatment of minerals in the course of any trade or business other than agriculture, and other than a process carried out on land used as a mine or adjacent to and occupied together with a mine: art 1(2). 'Mine' means any site on which mining operations are carried out: art 1(2). For the meaning of 'mining operations' see PARA 297 note 2 ante.

3 'Warehouse' means a building used for any purpose within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 2, 3, Schedule, Class B8 (storage or distribution: see PARA 230 ante) but does not include a building on land in or adjacent to and occupied together with a mine: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 8 para E.

4 *Ibid* Sch 2 Pt 8, Class A. As to development not permitted by Sch 2 Pt 8, Class A see PARA 314 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

5 For these purposes, 'employee facilities' means social, care or recreational facilities provided for employees of the undertaking, including crèche facilities provided for the children of such employees: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 8 para A.3(c).

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 8 para A.2. As to notifiable quantities of hazardous substances see HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 628.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/314. Development not permitted by Class A.

314. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1248 (1) the building² as extended³ or altered is to be used for purposes other than those of the undertaking concerned;
- 1249 (2) the building is to be used for a purpose other than:
- 139 197. (a) in the case of an industrial building⁴, the carrying out of an industrial process⁵ or the provision of employee facilities⁶;
- 198. (b) in the case of a warehouse⁷, storage or distribution or the provision of employee facilities;
- 140 1250 (3) the height⁸ of the building as extended or altered would exceed the height of the original⁹ building;
- 1251 (4) the cubic content¹⁰ of the original building would be exceeded by more than:
- 141 199. (a) 10%, in respect of development on any article 1(5) land¹¹; or
- 200. (b) 25%, in any other case;
- 142 1252 (5) the floor space¹² of the original building would be exceeded by more than:
- 143 201. (a) 500 square metres in respect of development on any article 1(5) land; or
- 202. (b) 1,000 square metres in any other case;
- 144 1253 (6) the external appearance of the premises of the undertaking concerned would be materially affected;
- 1254 (7) any part of the development would be carried out within 5 metres of any boundary of the curtilage¹³ of the premises; or
- 1255 (8) the development would lead to a reduction in the space available for the parking or turning of vehicles¹⁴.

1 le the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class A: see PARA 313 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 As to the circumstances in which the erection of any additional building within the curtilage of another building is treated as an extension of that building see PARA 313 note 1 ante.

4 For the meaning of 'industrial building' see PARA 313 note 2 ante.

5 For the meaning of 'industrial process' see PARA 313 note 2 ante.

6 For the meaning of 'employee facilities' see PARA 313 note 6 ante.

7 For the meaning of 'warehouse' see PARA 313 note 3 ante.

8 For the meaning of references to the height of a building see PARA 266 note 7 ante.

9 For the meaning of 'cubic content' see PARA 265 note 1 ante.

10 For the meaning of 'original' see PARA 266 note 4 ante.

11 For the meaning of 'article 1(5) land' see PARA 256 ante.

12 For the meaning of 'floor space' see PARA 288 note 3 ante.

13 For the meaning of 'curtilage' see PARA 223 note 13 ante.

14 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 8 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/315. Class B; permitted development.

315. Class B; permitted development.

Development carried out on industrial land¹ for the purposes of an industrial process consisting of:

- 1256 (1) the installation of additional or replacement plant² or machinery³;
- 1257 (2) the provision, rearrangement or replacement of a sewer, main, pipe, cable or other apparatus; or
- 1258 (3) the provision, rearrangement or replacement of a private way⁴, private railway, siding or conveyor,

is permitted development⁵.

1 For these purposes, 'industrial land' means land used for the carrying out of an industrial process, including land used for the purposes of an industrial undertaking as a dock, harbour or quay, but does not include land in or adjacent to and occupied together with a mine: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8 para B.2. For the meanings of 'industrial process' and 'mine' see PARA 313 note 2 ante.

2 For the meaning of 'plant' see PARA 255 note 10 ante.

3 For the meaning of 'machinery' see PARA 255 note 10 ante.

4 For the meaning of 'private way' see PARA 303 note 9 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 8, Class B. As to development not permitted by Sch 2 Pt 8, Class B see PARA 316 post; as to the general conditions

subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/316. Development not permitted by Class B.

316. Development not permitted by Class B.

Development carried out on industrial land for the purposes of an industrial process consisting of the installation of additional or replacement plant or machinery¹ is not permitted if:

1259 (1) it would materially affect the external appearance of the premises of the undertaking concerned; or

1260 (2) any plant or machinery would exceed a height² of 15 metres above ground level or the height of anything replaced, whichever is the greater³.

1 The development described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class B(a): see PARA 315 ante at head (1) in the text. For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

2 For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 8 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/317. Class C; permitted development.

317. Class C; permitted development.

The creation of a hard surface within the curtilage¹ of an industrial building² or warehouse³ to be used for the purposes of the undertaking concerned is permitted development⁴.

No specific provision is made with regard to development not permitted by Class C.

1 For the meaning of 'curtilage' see PARA 223 note 13 ante.

2 For the meaning of 'industrial building' see PARA 313 note 2 ante.

3 For the meaning of 'warehouse' see PARA 313 note 3 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class C. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/318. Class D; permitted development.

318. Class D; permitted development.

The deposit of waste material resulting from an industrial process¹ on any land comprised in a site which was used for that purpose on 1 July 1948, whether or not the superficial area or the height of the deposit is extended as a result, is permitted development².

1 For the meaning of 'industrial process' see PARA 313 note 2 ante.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class D. As to development not permitted by Sch 2 Pt 8, Class D see PARA 319 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante. Such development may include the depositing and processing of imported waste material on land previously used merely for the extraction, processing and depositing of building materials: *Kent County Council v Secretary of State for the Environment* (1997) 75 P & CR 410, [1997] JPL 1115, CA

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(H) Part 8: Industrial and Warehouse Development/319. Development not permitted by Class D.

319. Development not permitted by Class D.

Development is not permitted by Class D¹ if:

- 1261 (1) the waste material is or includes material resulting from the winning and working of minerals; or
- 1262 (2) the use on 1 July 1948 was for the deposit of material resulting from the winning and working of minerals².

1 ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 8, Class D: see PARA 318 ante.

2 Ibid Sch 2 Pt 8 para D.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(I) Part 9: Repairs to Unadopted Streets and Private Ways/320. Class A; permitted development.

(I) PART 9: REPAIRS TO UNADOPTED STREETS AND PRIVATE WAYS

320. Class A; permitted development.

The carrying out on land within the boundaries of an unadopted street¹ or private way² of works required for the maintenance or improvement³ of the street or way is permitted development⁴.

No specific provision is made with regard to development not permitted by Class A.

¹ For these purposes, 'unadopted street' means a street not being a highway maintainable at the public expense: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 9 para A.1.

² For the meaning of 'private way' see PARA 303 note 9 ante.

³ Whether works are an improvement for these purposes is a matter of fact and degree to be decided by the inspector who holds the public local inquiry; furthermore, an 'improvement' ought not to be interpreted by reference what constitutes an 'alteration' under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 6 (as amended) (see PARA 303 ante): *Cowen v Secretary of State for the Environment, Transport and the Regions* [1999] PLR 108, CA.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 9, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(J) Part 10: Repairs to Services/321. Class A; permitted development.

(J) PART 10: REPAIRS TO SERVICES

321. Class A; permitted development.

The carrying out of any works for the purposes of inspecting, repairing or renewing any sewer¹, main, pipe, cable or other apparatus, including breaking open any land² for that purpose, is permitted development³.

No specific provision is made with regard to development not permitted by Class A.

¹ For a consideration of the meaning of 'sewer' see *Doncaster Borough Council v Secretary of State for the Environment and Lee* (1996) 74 P & CR 428.

² For the meaning of 'land' see PARA 2 note 10 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 10, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(K) Part 11: Development under Local or Private Acts or Orders/322. Class A; permitted development.

(K) PART 11: DEVELOPMENT UNDER LOCAL OR PRIVATE ACTS OR ORDERS

322. Class A; permitted development.

Development authorised¹ by:

- 1263 (1) a local or private Act of Parliament;
- 1264 (2) an order approved by both Houses of Parliament; or
- 1265 (3) any order made under the Harbours Act 1964²,

which designates specifically the nature of the development authorised and the land³ upon which it may be carried out, is permitted development⁴.

1 For the meaning of 'authorised' see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL.

2 Under the Harbours Act 1964 s 14 (as amended) or s 16 (as amended): see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARAS 628 et seq, 645 et seq.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 11, Class A. As to development not permitted by Sch 2 Pt 11, Class A see PARA 323 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(K) Part 11: Development under Local or Private Acts or Orders/323. Development not permitted by Class A.

323. Development not permitted by Class A.

Development is not permitted by Class A¹ if it consists of or includes:

- 1266 (1) the erection, construction, alteration or extension of any building², bridge, aqueduct³, pier or dam; or
- 1267 (2) the formation, laying out or alteration of a means of access⁴ to any highway used by vehicular traffic,

unless the prior approval of the appropriate authority⁵ to the detailed plans and specifications is first obtained⁶.

Such prior approval is not, however, to be refused by the appropriate authority nor are conditions to be imposed unless the authority is satisfied that:

- 1268 (a) the development, other than the provision of or works carried out to a dam, ought to be and could reasonably be carried out elsewhere on the land; or
- 1269 (b) the design or external appearance of any building, bridge, aqueduct, pier or dam would injure the amenity⁷ of the neighbourhood and is reasonably capable of modification to avoid such injury⁸.

1 The Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 11, Class A: see PARA 322 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For these purposes, unless the context otherwise requires, 'aqueduct' does not include an underground conduit: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

4 For the meaning of 'means of access' see PARA 219 note 1 ante.

5 For these purposes, 'appropriate authority' means (1) in Greater London or a metropolitan county, the local planning authority; (2) in a National Park in England, outside a metropolitan county, the county planning authority; (3) in any other case in England, the district planning authority; (4) in Wales, the local planning authority: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 para A.3 (amended by SI 1996/528). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities see PARA 28 et seq ante. As to metropolitan counties, county planning authorities and district planning authorities in England see PARA 28 ante; and as to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 para A.1.

7 As to the meaning of 'amenity' see PARA 158 note 8 ante.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 11 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

PERMITTED DEVELOPMENT/(L) Part 12: Development by Local Authorities/324. Class A; permitted development.

(L) PART 12: DEVELOPMENT BY LOCAL AUTHORITIES

324. Class A; permitted development.

The erection or construction and the maintenance, improvement or other alteration by a local authority¹ or by an urban development corporation² of:

- 1270 (1) any small ancillary building, works or equipment³ on land⁴ belonging to or maintained by it required for the purposes of any function exercised by it on that land otherwise than as statutory undertakers⁵;
- 1271 (2) lamp standards, information kiosks, passenger shelters, public shelters and seats, telephone boxes, fire alarms, public drinking fountains, horse-troughs, refuse bins or baskets, barriers for the control of people waiting to enter public service vehicles⁶, and similar structures or works required in connection with the operation of any public service administered by it,

is permitted development⁷.

No specific provision is made with regard to development not permitted by Class A.

1 For these purposes, 'local authority' includes a parish or community council: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 12 para C. As to parish and community councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 27 et seq, 41 et seq.

2 For this purpose, 'urban development corporation' has the same meaning as in the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended) (see PARA 1426 et seq post): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 12 para A.1.

3 For this purpose, the reference to any small ancillary building, works or equipment is a reference to any ancillary building, works or equipment not exceeding 4 metres in height or 200 cubic metres in capacity: ibid art 3(1), Sch 2 Pt 12 para A.2. For the meaning of 'building' see PARA 255 note 10 ante; and for the meaning of references to the height of a building see PARA 266 note 7 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

6 For these purposes, unless the context otherwise requires, 'public service vehicle' means a public service vehicle within the meaning of the Public Passenger Vehicles Act 1981 s 1 (as amended) (definition of public service vehicles: see ROAD TRAFFIC vol 40(3) (2007 Reissue) PARA 1136) or a tramcar or trolley vehicle within the meaning of the Road Traffic Act 1988 s 192(1) (as amended) (general interpretation; see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 219): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 12, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national

security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(L) Part 12: Development by Local Authorities/325. Class B; permitted development.

325. Class B; permitted development.

The deposit by a local authority¹ of waste material on any land² comprised in a site which was used for that purpose on 1 July 1948, whether or not the superficial area or the height of the deposit is extended as a result, is permitted development³.

¹ For the meaning of 'local authority' for this purpose see PARA 324 note 1 ante.

² For the meaning of 'land' see PARA 2 note 10 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 12, Class B. As to development not permitted by Sch 2 Pt 12, Class B see PARA 326 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(L) Part 12: Development by Local Authorities/326. Development not permitted by Class B.

326. Development not permitted by Class B.

Development is not permitted by Class B¹ if the waste material is or includes material resulting from the winning and working of minerals².

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 12, Class B: see PARA 325 ante.

2 Ibid Sch 2 Pt 12 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(M) Part 13: Development by Local Highway Authorities/327. Class A; permitted development.

(M) PART 13: DEVELOPMENT BY LOCAL HIGHWAY AUTHORITIES

327. Class A; permitted development.

The carrying out by a local highway authority¹:

1272 (1) on land² within the boundaries of a road, of any works required for the maintenance or improvement of the road, where such works involve development³; or

1273 (2) on land outside but adjoining the boundary of an existing highway of works required for or incidental to the maintenance or improvement of the highway,

is permitted development⁴.

No specific provision is made with regard to development not permitted by Class A.

1 For the meaning of 'local highway authority' see PARA 39 note 21 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 le by virtue of the Town and Country Planning Act 1990 s 55(2)(b) (as amended): see PARA 223 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 13, Class A (substituted by SI 1999/293). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

327 Class A; permitted development

TEXT AND NOTES--SI 1995/418 Sch 2 Pt 13 Class A substituted: SI 2006/1386 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(N) Part 14: Development by Drainage Bodies/328. Class A; permitted development.

(N) PART 14: DEVELOPMENT BY DRAINAGE BODIES

328. Class A; permitted development.

Development by a drainage body¹ in, on or under a watercourse or land drainage² works in connection with the improvement, maintenance or repair of the watercourse or works is permitted development³.

No specific provision is made with regard to development not permitted by Class A.

1 For this purpose, 'drainage body' has the same meaning as in the Land Drainage Act 1991 s 72(1) (interpretation: see WATER AND WATERWAYS vol 101 (2009) PARA 573) other than the Environment Agency: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 14 para A.1 (amended by the Environment Act 1995 s 120(1), Sch 22 para 233(1)). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq; and as to permitted development by that Agency see PARAS 329-330 post.

2 For these purposes, unless the context otherwise requires, 'land drainage' has the same meaning as in the Land Drainage Act 1976 s 116 (as amended) (interpretation) (ie the drainage of land and the provision of flood warning systems): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2). As to flood defence and land drainage see generally WATER AND WATERWAYS vol 101 (2009) PARA 559 et seq.

3 Ibid Sch 2 Pt 14, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(O) Part 15: Development by the Environment Agency/329. Class A; permitted development and special condition to which it is subject.

(O) PART 15: DEVELOPMENT BY THE ENVIRONMENT AGENCY

329. Class A; permitted development and special condition to which it is subject.

Development by the Environment Agency¹ for the purposes of its functions consisting of:

- 1274 (1) development not above ground level required in connection with conserving, redistributing or augmenting water resources;
- 1275 (2) development in, on or under any watercourse or land drainage² works and required in connection with the improvement or maintenance or repair of that watercourse or those works;
- 1276 (3) the provision of a building³, plant⁴, machinery⁵ or apparatus in, on, over or under land for the purpose of survey or investigation;
- 1277 (4) the maintenance, improvement or repair of works for measuring the flow in any watercourse or channel;
- 1278 (5) any works authorised or required in connection with a drought order made under the Water Resources Act 1991⁶;
- 1279 (6) any other development in, on, over or under its operational land, other than the provision of a building but including the extension or alteration of a building,

is permitted development⁷. Development is, however, permitted by head (3) above subject to the condition that, on completion of the survey or investigation, or at the expiration of six months from the commencement of the development concerned, whichever is the sooner, all such operations must cease and all such buildings, plant, machinery and apparatus must be removed and the land restored as soon as reasonably practicable to its former condition, or to any other condition which may be agreed with the local planning authority⁸.

¹ As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

² For the meaning of 'land drainage' see PARA 328 note 2 ante.

- 3 For the meaning of 'building' see PARA 255 note 10 ante.
- 4 For the meaning of 'plant' see PARA 255 note 10 ante.
- 5 For the meaning of 'machinery' see PARA 255 note 10 ante.
- 6 le under the Water Resources Act 1991 s 73 (as amended) (power to make ordinary or emergency drought orders): see WATER AND WATERWAYS vol 100 (2009) PARA 306 et seq.
- 7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 15, Class A (amended by the Environment Act 1995 s 120(1), Sch 22 para 233(1)). As to development not permitted by Sch 2 Pt 15, Class A (as so amended) see PARA 330 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.
- 8 Ibid Sch 2 Pt 15 para A.2. As to local planning authorities see PARA 28 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(O) Part 15: Development by the Environment Agency/330. Development not permitted by Class A.

330. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1280 (1) in the case of any development not above ground level required in connection with conserving, redistributing or augmenting water resources², it would include the construction of a reservoir;
- 1281 (2) in the case of any development in, on, over or under the Environment Agency's operational land other than the provision of a building³, it would consist of or include the extension or alteration of a building so that:
- 145
203. (a) its design or external appearance would be materially affected;
204. (b) the height⁴ of the original⁵ building would be exceeded, or the content of the original building would be exceeded, by more than 25%; or
205. (c) the floor space⁶ of the original building would be exceeded by more than 1,000 square metres; or
- 146

1282 (3) in the case of any development in, on, over or under the Environment Agency's operational land other than the provision of a building⁷, it would consist of the installation or erection of any plant⁸ or machinery⁹ exceeding 15 metres in height¹⁰ or the height of anything it replaces, whichever is the greater¹¹.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 15, Class A (as amended): see PARA 329 ante.

2 le in the case of any development within ibid Sch 2 Pt 15, Class A(a): see PARA 329 ante at head (1) in the text.

3 le in the case of any development within ibid Sch 2 Pt 15, Class A(f): see PARA 329 ante at head (6) in the text. For the meaning of 'building' see PARA 255 note 10 ante; and as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

4 For the meaning of references to the height of a building see PARA 266 note 7 ante.

5 For the meaning of 'original' see PARA 266 note 4 ante.

6 For the meaning of 'floor space' see PARA 288 note 3 ante.

7 See note 3 supra.

8 For the meaning of 'plant' see PARA 255 note 10 ante.

9 For the meaning of 'machinery' see PARA 255 note 10 ante.

10 For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.

11 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 15 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(P): Part 16: Development by or on behalf of Sewerage Undertakers/331. Class A; permitted development and special condition to which it is subject.

(P): PART 16: DEVELOPMENT BY OR ON BEHALF OF SEWERAGE UNDERTAKERS

331. Class A; permitted development and special condition to which it is subject.

Development by or on behalf of a sewerage undertaker¹ consisting of:

- 1283 (1) development not above ground level required in connection with the provision, improvement, maintenance or repair of a sewer, outfall pipe, sludge main² or associated apparatus³;
- 1284 (2) the provision of a building⁴, plant⁵, machinery or apparatus in, on, over or under land for the purpose of survey or investigation;
- 1285 (3) the maintenance, improvement or repair of works for measuring the flow in any watercourse or channel;
- 1286 (4) any works authorised by or required in connection with a drought order made under the Water Resources Act 1991⁶;
- 1287 (5) any other development in, on, over or under its operational land other than the provision of a building but including the extension or alteration of a building,

is permitted development⁷. Development is, however, permitted under head (2) above subject to the condition that, on completion of the survey or investigation, or at the expiration of six months from the commencement of the development concerned, whichever is the sooner, all such operations must cease and all such buildings, plant, machinery and apparatus must be removed and the land restored as soon as reasonably practicable to its former condition, or to any other condition which may be agreed with the local planning authority⁸.

1 As to sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

2 For these purposes, 'sludge main' means a pipe or system of pipes, together with any pumps or other machinery or apparatus associated with it, for the conveyance of the residue of water or sewage treated in a water or sewage treatment works as the case may be, including final effluent or the products of the dewatering or incineration of such residue, or partly for any of those purposes and partly for the conveyance of trade effluent or its residue: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 16 para A.3. For the meaning of 'machinery' see PARA 255 note 10 ante.

3 For these purposes, 'associated apparatus', in relation to any sewer, main or pipe, means pumps, machinery or apparatus associated with the relevant sewer, main or pipe: *ibid* Sch 2 Pt 16 para A.3.

4 For the meaning of 'building' see PARA 255 note 10 ante.

5 For the meaning of 'plant' see PARA 255 note 10 ante.

6 *Ie* under the Water Resources Act 1991 s 73 (as amended) (power to make ordinary and emergency drought orders): see WATER AND WATERWAYS vol 100 (2009) PARA 306 et seq.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 16, Class A. As to development not permitted by Sch 2 Pt 16, Class A see PARA 332 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

8 *Ibid* Sch 2 Pt 16 para A.2. As to local planning authorities see PARA 28 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(P): Part 16: Development by or on behalf of Sewerage Undertakers/332. Development not permitted by Class A.

332. Development not permitted by Class A.

Development in, on, over or under a sewerage undertaker's operational land other than the provision of a building is not permitted¹ if:

- 1288 (1) it would consist of or include the extension or alteration of a building² so that:
- 147
- 206. (a) its design or external appearance would be materially affected; or
- 207. (b) the height³ of the original⁴ building would be exceeded, or the content of the original building would be exceeded, by more than 25%; or
- 208. (c) the floor space⁵ of the original building would be exceeded by more than 1,000 square metres; or
- 148
- 1289 (2) it would consist of the installation or erection of any plant⁶ or machinery⁷ exceeding 15 metres in height or the height of anything it replaces, whichever is the greater⁸.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 16, Class A(e): see PARA 331 ante at head (5) in the text.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ For the meaning of references to the height of a building see PARA 266 note 7 ante.

⁴ For the meaning of 'original' see PARA 266 note 4 ante.

⁵ For the meaning of 'floor space' see PARA 288 note 3 ante.

⁶ For the meaning of 'plant' see PARA 255 note 10 ante.

⁷ For the meaning of 'machinery' see PARA 255 note 10 ante.

⁸ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 16 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order

1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/333. Class A; permitted development by railway operators.

(Q) PART 17: DEVELOPMENT BY STATUTORY UNDERTAKERS

333. Class A; permitted development by railway operators.

Development by railway undertakers on their operational land, required in connection with the movement of traffic by rail, is permitted development¹.

¹ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class A. As to development not permitted by Sch 2 Pt 17, Class A see PARA 334 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

Certain descriptions of development in connection with electronic communications are also permitted, on railway operational land, by the Town and Country Planning (Telecommunications Networks) (Railway Operational Land) Special Development Order 1982, SI 1982/817: see art 2 (amended by SI 2003/2155). As to special development orders generally see PARA 252 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/334. Development not permitted by Class A.

334. Development not permitted by Class A.

Development is not permitted by Class A¹ if it consists of or includes:

- 1290 (1) the construction² of a railway;
- 1291 (2) the construction or erection of a hotel, railway station or bridge; or
- 1292 (3) the construction or erection otherwise than wholly within a railway station of:
- 149
- 209. (a) an office³, residential or educational building, or a building used for an industrial process⁴;
- 210. (b) a car park, shop, restaurant, garage, petrol filling station or other building or structure provided under transport legislation⁵.
- 150

1. See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class A: see PARA 333 ante.

2. For these purposes, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected: *ibid* Sch 2 Pt 17 para A.2. For the meaning of 'building' see PARA 255 note 10 ante.

3. 'Office' means an office building, not a building which has some offices within it: *Railtrack plc v Secretary of State for Transport* (1997) 76 P & CR 448.

4. For the meaning of 'industrial process' see PARA 313 note 2 ante.

5. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para A.1. For these purposes, 'transport legislation' means the Transport Act 1962 s 14(1)(d) (see WATER AND WATERWAYS vol 101 (2009) PARA 739) or the Transport Act 1968 s 10(1)(x) (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 249): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17 para K.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/335. Class B; permitted development in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings.

335. Class B; permitted development in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings.

Development on operational land¹ by statutory undertakers² or their lessees in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required:

- 1293 (1) for the purposes of shipping; or
- 1294 (2) in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking,

is permitted development³.

1 For these purposes, the reference to operational land includes land designated by an order made under the Harbours Act 1964 s 14 (as amended) or s 16 (as amended) (orders for securing harbour efficiency etc and orders conferring powers for improvement, construction etc of harbours: see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARAS 628 et seq, 645 et seq) and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945 (see PARLIAMENT vol 34 (Reissue) PARA 912 et seq): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17 para B.2.

2 For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class B. As to development not permitted by Sch 2 Pt 17, Class B see PARA 336 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/336. Development not permitted by Class B.

336. Development not permitted by Class B.

Development is not permitted by Class B¹ if it consists of or includes:

- 1295 (1) the construction or erection² of a hotel, or of a bridge or other building not required in connection with the handling of traffic;

- 1296 (2) the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of:
- 151
211. (a) an educational building; or
212. (b) a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation³.
- 152

1. See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class B: see PARA 335 ante.

2. For these purposes, references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected: *ibid* Sch 2 Pt 17 para B.2. For the meaning of 'building' see PARA 255 note 10 ante.

3. *Ibid* Sch 2 Pt 17 para B.1. For the meaning of 'transport legislation' see PARA 334 note 5 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/337. Class C; permitted development in respect of works to inland waterways.

337. Class C; permitted development in respect of works to inland waterways.

The improvement, maintenance or repair of an inland waterway¹, other than a commercial waterway or cruising waterway, and the repair or maintenance of a culvert, weir, lock, aqueduct², sluice, reservoir, let-off valve or other work used in connection with the control and operation of such a waterway is permitted development³.

No specific provision is made with regard to development not permitted by Class C.

1. See to which the Transport Act 1968 s 104 (as amended) (classification of waterways) applies: see WATER AND WATERWAYS vol 101 (2009) PARA 741.

2. For the meaning of 'aqueduct' see PARA 323 note 3 ante.

3. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class C. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/338. Class D; permitted development in respect of dredgings.

338. Class D; permitted development in respect of dredgings.

The use of any land¹ by statutory undertakers² in respect of dock, pier, harbour, water transport, canal or inland navigation undertakings for the spreading of any dredged material is permitted development³.

No specific provision is made with regard to development not permitted by Class D.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class D. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE**265-418 Classes of Permitted Development**

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/339. Class E; permitted development in respect of water or hydraulic power undertakings and special condition to which it is subject.

339. Class E; permitted development in respect of water or hydraulic power undertakings and special condition to which it is subject.

Development for the purposes of their undertaking by statutory undertakers¹ for the supply of water or hydraulic power consisting of:

- 1297 (1) development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources, or for the conveyance of water treatment sludge;
- 1298 (2) development in, on or under any watercourse and required in connection with the improvement or maintenance of that watercourse;
- 1299 (3) the provision of a building², plant³, machinery⁴ or apparatus in, on, over or under land for the purpose of survey or investigation;
- 1300 (4) the maintenance, improvement or repair of works for measuring the flow in any watercourse or channel;
- 1301 (5) the installation in a water distribution system of a booster station, valve house, meter or switch-gear house;
- 1302 (6) any works authorised by or required in connection with a drought order made under the Water Resources Act 1991⁵;
- 1303 (7) any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building,

is permitted development⁶. Development is permitted by head (3) above, however, subject to the condition that, on completion of the survey or investigation, or at the expiration of six months from the commencement of the development, whichever is the sooner, all such operations must cease and all such buildings, plant, machinery and apparatus must be removed and the land restored as soon as reasonably practicable to its former condition, or to any other condition which may be agreed with the local planning authority⁷.

1 For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meaning of 'plant' see PARA 255 note 10 ante.

4 For the meaning of 'machinery' see PARA 255 note 10 ante.

5 Ie under the Water Resources Act 1991 s 73 (as amended) (power to make ordinary and emergency drought orders): see WATER AND WATERWAYS vol 100 (2009) PARA 306 et seq.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class E. As to development not permitted by Sch 2 Pt 17, Class E see PARA 340 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

7 Ibid Sch 2 Pt 17 para E.2. As to local planning authorities see PARA 28 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/340. Development not permitted by Class E.

340. Development not permitted by Class E.

Development is not permitted by Class E¹ if:

- 1304 (1) in the case of development not above ground level required in connection with the supply of water or for conserving, redistributing or augmenting water resources, or for the conveyance of water treatment sludge², it would include the construction of a reservoir;
- 1305 (2) in the case of the installation in a water distribution system of a booster station, valve house, meter or switch-gear house³ involving the installation of a station or house exceeding 29 cubic metres in capacity, that installation is carried out at or above ground level or under a highway used by vehicular traffic;
- 1306 (3) in the case of any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building⁴, it would consist of or include the extension or alteration of a building so that:
 - 153 213. (a) its design or external appearance would be materially affected;
 - 214. (b) the height⁵ of the original⁶ building would be exceeded, or the cubic content⁷ of the original building would be exceeded, by more than 25%; or
 - 215. (c) the floor space⁸ of the original building would be exceeded by more than 1,000 square metres; or
- 154 1307 (4) in the case of any other development in, on, over or under operational land other than the provision of a building but including the extension or alteration of a building⁹, it would consist of the installation or erection of any plant¹⁰ or machinery¹¹ exceeding 15 metres in height or the height of anything it replaces, whichever is the greater¹².

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class E: see PARA 339 ante.

- 2 le any development falling within ibid Sch 2 Pt 17, Class E(a): see PARA 339 ante at head (1) in the text.
- 3 le any development falling within ibid Sch 2 Pt 17, Class E(e): see PARA 339 ante at head (5) in the text.
- 4 le any development falling within ibid Sch 2 Pt 17, Class E(g): see PARA 339 ante at head (7) in the text. For the meaning of 'building' see PARA 255 note 10 ante.
- 5 For the meaning of references to the height of a building see PARA 266 note 7 ante.
- 6 For the meaning of 'original' see PARA 266 note 4 ante.
- 7 For the meaning of 'cubic content' see PARA 265 note 1 ante.
- 8 For the meaning of 'floor space' see PARA 288 note 3 ante.
- 9 See note 4 supra.
- 10 For the meaning of 'plant' see PARA 255 note 10 ante.
- 11 For the meaning of 'machinery' see PARA 255 note 10 ante.
- 12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para E.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/341. Class F; permitted development by gas transporters.

341. Class F; permitted development by gas transporters.

Development by a gas transporter¹ required for the purposes of its undertaking consisting of:

- 1308 (1) the laying underground of mains, pipes or other apparatus;
- 1309 (2) the installation in a gas distribution system of apparatus for measuring, recording, controlling or varying the pressure, flow or volume of gas, and structures for housing such apparatus;
- 1310 (3) the construction, in any storage area or protective area specified in an order made under the Gas Act 1965², of boreholes, and the erection or construction in any such area of any plant³ or machinery⁴ required in connection with the construction of such boreholes;

- 1311 (4) the placing and storage on land of pipes and other apparatus to be included in a main or pipe which is being or is about to be laid or constructed in pursuance of planning permission⁵ granted or deemed to be granted⁶;
- 1312 (5) the erection on operational land of the gas transporter of a building⁷ solely for the protection of plant or machinery;
- 1313 (6) any other development carried out in, on, over or under the operational land of the gas transporter,

is permitted development⁸.

1 As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 835 et seq.

2 le under the Gas Act 1965 s 4 (as amended) (storage authorisation orders): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983 et seq.

3 For the meaning of 'plant' see PARA 255 note 10 ante.

4 For the meaning of 'machinery' see PARA 255 note 10 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 le granted or deemed to be granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 419 et seq post.

7 For the meaning of 'building' see PARA 255 note 10 ante.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F (amended by SI 1996/252; and by virtue of the Utilities Act 2000 s 76(7)). As to development not permitted by Sch 2 Pt 17, Class F (as so amended) see PARA 343 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 342 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/342. Special conditions to which development permitted by Class F is subject.

342. Special conditions to which development permitted by Class F is subject.

Development is permitted by Class F¹ subject to the following conditions:

- 1314 (1) in the case of any development consisting of the laying underground of mains, pipes or other apparatus², not less than eight weeks before the beginning of operations to lay a notifiable pipeline³ the gas transporter must give notice in writing to the local planning authority⁴ of its intention to carry out that development, identifying the land under which the pipeline is to be laid;
- 1315 (2) in the case of any development consisting of the placing and storage on land of pipes and other apparatus to be included in a main or pipe which is being or is about to be laid or constructed in pursuance of planning permission granted or deemed to be granted⁵, on completion of the laying or construction of the main or pipe, or at the expiry of a period of nine months from the beginning of the development, whichever is the sooner, any pipes or other apparatus still stored on the land must be removed and the land restored as soon as reasonably practicable to its condition before the development took place, or to any other condition which may be agreed with the local planning authority;
- 1316 (3) in the case of any development consisting of the erection on operational land of the gas transporter of a building⁶ solely for the protection of plant or machinery⁷, approval of the details of the design and external appearance of the building must be obtained, before the development is begun, from:
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216. (a) in Greater London⁸ or a metropolitan county⁹, the local planning authority;
217. (b) in a National Park¹⁰ in England, outside a metropolitan county, the county planning authority¹¹;
218. (c) in any other case in England, the district planning authority¹²;
219. (d) in Wales, the local planning authority¹³.
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1. See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F (as amended): see PARA 341 ante.

2. See any development falling within ibid Sch 2 Pt 17, Class F(a): see PARA 341 ante at head (1) in the text.

3. For the meaning of 'notifiable pipeline' see PARA 255 note 19 ante.

4. As to local planning authorities see PARA 28 et seq ante.

5. See any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class F(d): see PARA 341 ante at head (4) in the text.

6. For the meaning of 'building' see PARA 255 note 10 ante.

7. See any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class F(e): see PARA 341 ante at head (5) in the text. For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

8. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

9. As to metropolitan counties see PARA 28 note 1 ante.

10. As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

11. As to county planning authorities see PARA 28 ante.

12. As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

13. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para F.2 (amended by SI 1996/252; SI 1996/528; and by virtue of the Utilities Act 2000 s 76(7)).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/343. Development not permitted by Class F.

343. Development not permitted by Class F.

Development is not permitted by Class F¹ if:

- 1317 (1) in the case of any development consisting of the installation in a gas distribution system of apparatus for measuring, recording, controlling or varying the pressure, flow or volume of gas and structures for housing such apparatus² involving the installation of a structure for housing apparatus exceeding 29 cubic metres in capacity, that installation would be carried out at or above ground level, or under a highway used by vehicular traffic;
- 1318 (2) in the case of any development consisting of the construction, in any storage area or protective area specified in an order made under the Gas Act 1965³, of boreholes, and the erection or construction in any such area of any plant or machinery⁴ required in connection with the construction of such boreholes⁵:
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- 220. (a) the borehole is shown in an order approved by the Secretary of State for Trade and Industry for the purpose of the Gas Act 1965⁶; or
- 221. (b) any plant or machinery would exceed six metres in height⁷;
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- 1319 (3) in the case of any development consisting of the erection on operational land of the gas transporter of a building⁸ solely for the protection of plant or machinery⁹, the building would exceed 15 metres in height; or
- 1320 (4) in the case of any other development carried out in, on, over or under the operational land of the gas transporter¹⁰:
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- 222. (a) it would consist of or include the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected;
- 223. (b) it would involve the installation of plant or machinery exceeding 15 metres in height, or capable without the carrying out of additional works of being extended to a height exceeding 15 metres; or

224. (c) it would consist of or include the replacement of any plant or machinery by plant or machinery exceeding 15 metres in height or exceeding the height of the plant or machinery replaced, whichever is the greater¹¹.

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- 1 le the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class F (as amended): see PARA 341 ante.
- 2 le any development falling within ibid Sch 2 Pt 17, Class F(b): see PARA 341 ante at head (2) in the text.
- 3 le under the Gas Act 1965 s 4 (as amended): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983 et seq.
- 4 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.
- 5 le any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class F(c): see PARA 341 ante at head (3) in the text.
- 6 le for the purposes of the Gas Act 1965 s 4(6) (as amended): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 983.
- 7 For the meaning of references to the height of a building or plant or machinery see PARA 266 note 7 ante.
- 8 For the meaning of 'building' see PARA 255 note 10 ante.
- 9 le any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class F(e): see PARA 341 ante at head (5) in the text.
- 10 le any development falling within ibid Sch 2 Pt 17, Class F(f): see PARA 341 ante at head (6) in the text.
- 11 Ibid Sch 2 Pt 17 para F.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/344. Class G; permitted development in respect of electricity undertakings.

344. Class G; permitted development in respect of electricity undertakings.

Development by statutory undertakers¹ for the generation, transmission or supply of electricity² for the purposes of their undertaking consisting of:

- 1321 (1) the installation or replacement in, on, over or under land of an electric line³ and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line;
- 1322 (2) the installation or replacement of any electronic communications line⁴ which connects any part of an electric line to any electrical plant⁵ or building⁶, and the installation or replacement of any support for any such line;
- 1323 (3) the sinking of boreholes to ascertain the nature of the subsoil and the installation of any plant or machinery⁷ reasonably necessary in connection with such boreholes;
- 1324 (4) the extension or alteration of buildings on operational land⁸;
- 1325 (5) the erection on operational land of the undertaking of a building solely for the protection of plant or machinery;
- 1326 (6) any other development carried out in, on, over or under the operational land of the undertaking,

is permitted development⁹.

1 For the meaning of 'statutory undertaker' see PARA 258 note 10 ante.

2 References to the supply of electricity in any enactment now have effect as references to the supply of electricity, the distribution of electricity, or both the supply and distribution of electricity, according to the nature of the activities to which they referred before 1 October 2001: see the Utilities Act 2000 s 31(2).

3 For these purposes, 'electric line' has the meaning assigned to that term by the Electricity Act 1989 s 64(1) (as amended) (interpretation etc: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17 para G.3.

4 For these purposes, 'electronic communications line' means a wire or cable, including its casing or coating, which forms part of an electronic communications apparatus within the meaning assigned to that term by the Telecommunications Act 1984 s 10(1), Sch 2 para 1 (as amended) (see TELECOMMUNICATIONS vol 97 (2010) PARA 163): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17 para G.4 (definition amended by SI 2003/2155).

5 For these purposes, 'electrical plant' has the meaning assigned to that term by the Electricity Act 1989 s 64(1) (as amended) (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1041): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para G.4.

6 For the meaning of 'building' see PARA 255 note 10 ante.

7 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

8 For these purposes, the land of an electricity supplier is treated as operational land if it would be operational land within the Town and Country Planning Act 1990 s 263 (as amended) (see PARA 1010 post) if such suppliers were statutory undertakers for the purposes of s 263 (as amended): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para G.5 (amended by virtue of the Utilities Act 2000 s 31(3)).

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G (amended by SI 2003/2155). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G (as so amended) see PARA 346 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 345 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/345. Special conditions to which development permitted by Class G is subject.

345. Special conditions to which development permitted by Class G is subject.

Development is permitted by Class G¹ subject to the following conditions:

- 1327 (1) in the case of any development² consisting of or including the replacement of an existing electric line³, compliance with any conditions contained in a planning permission⁴ relating to the height, design or position of the existing electric line which are capable of being applied to the replacement line;
- 1328 (2) in the case of any development⁵ consisting of or including the installation of a temporary electric line providing a diversion for an existing electric line, on the ending of the diversion or at the end of a period of six months from the completion of the installation, whichever is the sooner, the temporary electric line must be removed and the land on which any operations have been carried out to install that line must be restored as soon as reasonably practicable to its condition before the installation took place;
- 1329 (3) in the case of any development consisting of the sinking of boreholes to ascertain the nature of the subsoil and the installation of any plant or machinery⁶ reasonably necessary in connection with such boreholes⁷, on the completion of that development, or at the end of a period of six months from the beginning of that development, whichever is the sooner, any such plant or machinery installed must be removed and the land must be restored as soon as reasonably practicable to its condition before the development took place;
- 1330 (4) in the case of any development consisting of the erection on operational land⁸ of the undertaking of a building solely for the protection of plant or machinery⁹, approval of details of the design and external appearance of the buildings must be obtained, before development is begun, from:

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225. (a) in Greater London¹⁰ or a metropolitan county¹¹, the local planning authority¹²;

226. (b) in a National Park¹³ in England, outside a metropolitan county, the county planning authority¹⁴;

227. (c) in any other case in England, the district planning authority¹⁵;

228. (d) in Wales, the local planning authority¹⁶.

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- 1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class G (as amended): see PARA 344 ante.
- 2 le any development falling within ibid Sch 2 Pt 17, Class G(a): see PARA 344 ante at head (1) in the text.
- 3 For the meaning of 'electric line' see PARA 344 note 3 ante.
- 4 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 5 See note 2 supra.
- 6 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.
- 7 le any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class G(c): see PARA 344 ante at head (3) in the text.
- 8 For the meaning of 'operational land' see PARA 344 note 8 ante.
- 9 le any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class G(e): see PARA 344 ante at head (5) in the text.
- 10 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 11 As to metropolitan counties see PARA 28 ante.
- 12 As to local planning authorities see PARA 28 et seq ante.
- 13 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 14 As to county planning authorities see PARA 28 ante.
- 15 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.
- 16 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17 para G.2 (amended by SI 1996/528).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/346. Development not permitted by Class G.

346. Development not permitted by Class G.

Development is not permitted by Class G¹ if:

- 1331 (1) in the case of any development consisting of the installation or replacement in, on, over or under land of an electric line² and the construction of shafts and tunnels and the installation or replacement of feeder or service pillars or transforming or switching stations or chambers reasonably necessary in connection with an electric line³:
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229. (a) it would consist of or include the installation or replacement of an electric line to which the consent requirement under the Electricity Act 1989⁴ applies; or
230. (b) it would consist of or include the installation or replacement at or above ground level or under a highway used by vehicular traffic of a chamber for housing apparatus and the chamber would exceed 29 cubic metres in capacity;
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- 1332 (2) in the case of any development consisting of the installation or replacement of any electronic communications line⁵ which connects any part of an electric line to any electrical plant⁶ or building⁷, and the installation or replacement of any support for any such line⁸:
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231. (a) the development would take place in a National Park⁹, an area of outstanding natural beauty¹⁰, or a site of special scientific interest¹¹;
232. (b) the height of any support would exceed 15 metres; or
233. (c) the electronic communications line would exceed 1,000 metres in length;
- 166
- 1333 (3) in the case of any development consisting of the extension or alteration of buildings on operational land¹²:
- 167
234. (a) the height¹³ of the original¹⁴ building would be exceeded;
235. (b) the cubic content¹⁵ of the original building would be exceeded by more than 25%, or in the case of any building on article 1(5) land¹⁶ by more than 10%; or
236. (c) the floor space¹⁷ of the original building would be exceeded by more than 1,000 square metres, or, in the case of any building on article 1(5) land, by more than 500 square metres;
- 168
- 1334 (4) in the case of any development consisting of the erection on operational land of the undertaking of a building solely for the protection of plant or machinery¹⁸, the building would exceed 15 metres in height; or
- 1335 (5) in the case of any other development carried out in, on, over or under the operational land of the undertaking¹⁹, it would consist of or include:
- 169
237. (a) the erection of a building, or the reconstruction or alteration of a building where its design or external appearance would be materially affected; or
238. (b) the installation or erection by way of addition or replacement of any plant or machinery exceeding 15 metres in height or the height of any plant or machinery replaced, whichever is the greater²⁰.
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1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class G (as amended): see PARA 344 ante.

2 For the meaning of 'electric line' see PARA 344 note 3 ante.

3 Ie any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 17, Class G(a): see PARA 344 ante at head (1) in the text.

4 Ie an electric line to which the Electricity Act 1989 s 37(1) (consent required for overhead lines) applies: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1252.

- 5 For the meaning of 'electronic communications line' see PARA 344 note 4 ante.
- 6 For the meaning of 'electrical plant' see PARA 344 note 5 ante.
- 7 For the meaning of 'building' see PARA 255 note 10 ante.
- 8 Is any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G(b) (as amended): see PARA 344 ante at head (2) in the text.
- 9 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 10 For the meaning of 'area of outstanding natural beauty' see PARA 256 note 4 ante.
- 11 For the meaning of 'site of special scientific interest' see PARA 264 note 7 ante.
- 12 Is any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G(d): see PARA 344 ante at head (4) in the text. For the meaning of 'operational land' see PARA 344 note 8 ante.
- 13 For the meaning of references to the height of a building see PARA 266 note 7 ante.
- 14 For the meaning of 'original' see PARA 266 note 4 ante.
- 15 For the meaning of 'cubic content' see PARA 265 note 1 ante.
- 16 For the meaning of 'article 1(5) land' see PARA 256 ante.
- 17 For the meaning of 'floor space' see PARA 288 note 3 ante.
- 18 Is any development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class G(e): see PARA 344 ante at head (5) in the text. For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.
- 19 Is any development falling within ibid Sch 2 Pt 17, Class G(f): see PARA 344 ante at head (6) in the text.
- 20 Ibid Sch 2 Pt 17 para G.1 (amended by SI 2003/2155). For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/347. Class H; permitted development in respect of tramway or road transport undertakings.

347. Class H; permitted development in respect of tramway or road transport undertakings.

Development required for the purposes of the carrying on of any tramway or road transport undertaking consisting of:

- 1336 (1) the installation of posts, overhead wires, underground cables, feeder pillars or transformer boxes in, on, over or adjacent to a highway for the purpose of supplying current to public service vehicles¹;
- 1337 (2) the installation of tramway tracks, and conduits, drains and pipes in connection with such tracks for the working of tramways;
- 1338 (3) the installation of telephone cables and apparatus, huts, stop posts and signs required in connection with the operation of public service vehicles;
- 1339 (4) the erection or construction and the maintenance, improvement or other alteration of passenger shelters and barriers for the control of people waiting to enter public service vehicles;
- 1340 (5) any other development on operational land of the undertaking,

is permitted development².

1 For the meaning of 'public service vehicle' see PARA 324 note 6 ante.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class H. As to development not permitted by Sch 2 Pt 17, Class H see PARA 348 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/348. Development not permitted by Class H.

348. Development not permitted by Class H.

Development is not permitted by Class H¹, if it would consist of:

- 1341 (1) in the case of any development consisting of the installation of posts, overhead wires, underground cables, feeder pillars or transformer boxes in, on, over or adjacent to a highway for the purpose of supplying current to public service vehicles², the installation of a structure exceeding 17 cubic metres in capacity;
- 1342 (2) in the case of any other development on operational land of the undertaking³:
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239. (a) the erection of a building⁴ or the reconstruction or alteration of a building where its design or external appearance would be materially affected;
240. (b) the installation or erection by way of addition or replacement of any plant or machinery⁵ which would exceed 15 metres in height⁶ or the height of any plant or machinery it replaces, whichever is the greater;
241. (c) development, not wholly within an omnibus or tramway station, in pursuance of powers contained in transport legislation⁷.
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1. ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class H: see PARA 347 ante.
2. ie any development falling within ibid Sch 2 Pt 17, Class H(a): see PARA 347 ante at head (1) in the text. For the meaning of 'public service vehicle' see PARA 324 note 6 ante.
3. ie any development falling within ibid Sch 2 Pt 17, Class H(e): see PARA 347 ante at head (5) in the text.
4. For the meaning of 'building' see PARA 255 note 10 ante.
5. For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.
6. For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.
7. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17 para H.1. For the meaning of 'transport legislation' see PARA 334 note 5 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/349. Class I; permitted development in respect of lighthouse undertakings.

349. Class I; permitted development in respect of lighthouse undertakings.

Development required for the purposes of the functions of a general or local lighthouse authority under the Merchant Shipping Act 1995¹ and any other statutory provision made with respect to a local lighthouse authority, or in the exercise by a local lighthouse authority of rights, powers or duties acquired by usage² is permitted development³.

¹ See the Merchant Shipping Act 1995 Pt VIII (ss 193-223) (as amended); and SHIPPING AND MARITIME LAW vol 94 (2008) PARA 1068 et seq.

² ie by usage prior to the Merchant Shipping Act 1894 (repealed).

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class I; Interpretation Act 1978 s 17(2)(a). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class I see PARA 350 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/350. Development not permitted by Class I.

350. Development not permitted by Class I.

Development is not permitted by Class I¹ if it consists of or includes the erection of offices, or the reconstruction or alteration of offices where their design or external appearance would be materially affected².

¹ ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class I: see PARA 349 ante.

² Ibid Sch 2 Pt 17 para I.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and

lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/351. Class J; permitted development by universal service providers.

351. Class J; permitted development by universal service providers.

Development required for the purposes of a universal service provider within the meaning of the Postal Services Act 2000¹ in connection with the provision of a universal postal service² consisting of:

- 1343 (1) the installation of posting boxes or self-service machines;
- 1344 (2) any other development carried out in, on, over or under the operational land of the undertaking,

is permitted development³.

1 As to universal service providers see POST OFFICE.

2 Ie within the meaning of the Postal Services Act 2000: see POST OFFICE.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class J (amended by SI 2001/1149). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17, Class J (as so amended) see PARA 352 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Q) Part 17: Development by Statutory Undertakers/352. Development not permitted by Class J.

352. Development not permitted by Class J.

Development is not permitted by Class J¹ if:

1345 (1) it would consist of or include the erection of a building², or the reconstruction or alteration of a building where its design or external appearance would be materially affected; or

1346 (2) it would consist of or include the installation or erection by way of addition or replacement of any plant or machinery³ which would exceed 15 metres in height⁴ or the height of any existing⁵ plant or machinery, whichever is the greater⁶.

1 ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 17, Class J (as amended): see PARA 351 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

4 For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.

5 For the meaning of 'existing' see PARA 255 note 10 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 17 para J.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/353. Class A; permitted development at an airport and special conditions to which it is subject.

(R) PART 18: AVIATION DEVELOPMENT

353. Class A; permitted development at an airport and special conditions to which it is subject.

The carrying out on operational land by a relevant airport operator¹ or its agent of development, including the erection or alteration of an operational building², in connection with the provision of services and facilities at a relevant airport is permitted development³. Development is so permitted, however, subject to the condition that the relevant airport operator consults⁴ the local planning authority⁵ before carrying out any development, unless that development is development which:

- 1347 (1) is urgently required for the efficient running of the airport; and
- 1348 (2) consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the works, structure, building, or equipment do not exceed four metres in height⁶ or 200 cubic metres in capacity⁷.

1 For these purposes, 'relevant airport operator' means a relevant airport operator within the meaning of the Airports Act 1986 s 57 (as amended) (see AIR LAW vol 2 (2008) PARA 189): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18 para K.

2 For these purposes, 'operational building' means a building, other than a hotel, required in connection with the movement or maintenance of aircraft, or with the embarking, disembarking, loading, discharge or transport of passengers, livestock or goods at a relevant airport; and 'relevant airport' means an airport to which the Airports Act 1986 Pt V (ss 57-62) (as amended) applies (see AIR LAW vol 2 (2008) PARA 189 et seq): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para K. For the meaning of 'building' see PARA 255 note 10 ante.

3 Ibid Sch 2 Pt 18, Class A. As to development not permitted by Sch 2 Pt 18, Class A see PARA 354 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

4 For the meaning of 'consult' see PARA 2 note 1 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 For the meaning of references to the height of a building see PARA 266 note 7 ante.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 paras A.2, A.4.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/354. Development not permitted by Class A.

354. Development not permitted by Class A.

Development is not permitted by Class A¹ if it would consist of or include:

- 1349 (1) the construction or extension of a runway;
- 1350 (2) the construction of a passenger terminal the floor space² of which would exceed 500 square metres³;
- 1351 (3) the extension or alteration of a passenger terminal, where the floor space of the building as existing at 5 December 1988 or, if built after that date, of the building as built, would be exceeded by more than 15%;
- 1352 (4) the erection of a building⁴ other than an operational building⁵;
- 1353 (5) the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected⁶.

¹ See by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class A: see PARA 353 ante.

² For the meaning of 'floor space' see PARA 288 note 3 ante; but see note 3 infra.

³ For these purposes, floor space must be calculated by external measurement and without taking account of the floor space in any pier or satellite: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para A.3.

⁴ For the meaning of 'building' see PARA 255 note 10 ante.

⁵ For the meaning of 'operational building' see PARA 353 note 2 ante.

⁶ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/355. Class B; permitted development with respect to air traffic services at an airport.

355. Class B; permitted development with respect to air traffic services at an airport.

The carrying out on operational land within the perimeter of a relevant airport¹ by a relevant airport operator² or its agent of development in connection with the provision of air traffic services³ is permitted development⁴.

No specific provision is made with regard to development not permitted by Class B.

1 For the meaning of 'relevant airport' see PARA 353 note 2 ante.

2 For the meaning of 'relevant airport operator' see PARA 353 note 1 ante.

3 'Air traffic services' has the same meaning as in the Transport Act 2000 s 98 (air traffic services: see AIR LAW vol 2 (2008) PARA 34): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18 para J (definition added by SI 2001/4050).

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 Class B (substituted by SI 2001/4050). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/356. Class C; permitted development with respect to air traffic services near an airport.

356. Class C; permitted development with respect to air traffic services near an airport.

The carrying out on operational land outside but within 8 kilometres of the perimeter of a relevant airport¹, by a relevant airport operator² or its agent, of development in connection with the provision of air traffic services³ is permitted development⁴.

1 For the meaning of 'relevant airport' see PARA 353 note 2 ante.

2 For the meaning of 'relevant airport operator' see PARA 353 note 1 ante.

3 For the meaning of 'air traffic services' see PARA 355 note 3 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 Class C (substituted by SI 2001/4050). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 Class C (as so substituted) see PARA 357 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/357. Development not permitted by Class C.

357. Development not permitted by Class C.

Development is not permitted by Class C¹ if:

- 1354 (1) any building² erected would be used for a purpose other than housing equipment used in connection with the provision of air traffic services³;
- 1355 (2) any building erected would exceed a height⁴ of 4 metres;
- 1356 (3) it would consist of the installation or erection of any radar or radio mast, antenna or other apparatus which would exceed 15 metres in height, or, where an existing mast, antenna or apparatus is replaced, the height of that mast, antenna or apparatus, if greater⁵.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 Class C (as substituted): see PARA 264 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meaning of 'air traffic services' see PARA 355 note 3 ante.

4 For the meaning of references to the height of a building see PARA 266 note 7 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para C.1 (substituted by SI 2001/4050).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/358. Class D; permitted development by an air traffic services licence holder within an airport.

358. Class D; permitted development by an air traffic services licence holder within an airport.

The carrying out by an air traffic services licence holder¹ or its agents within the perimeter of an airport of development in connection with the provision of air traffic services² is permitted development³.

No specific provision is made with regard to development not permitted by Class D.

¹ 'Air traffic services licence holder' means a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended) (see AIR LAW vol 2 (2008) PARA 139 et seq): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18 para J (definition added by SI 2001/4050).

² For the meaning of 'air traffic services' see PARA 355 note 3 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18, Class D (substituted by SI 2001/4050). As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/359. Class E; permitted development by an air traffic services licence holder on operational land.

359. Class E; permitted development by an air traffic services licence holder on operational land.

The carrying out on operational land of an air traffic services licence holder¹ by that licence holder or its agents of development in connection with the provision of air traffic services² is permitted development³.

1 For the meaning of 'air traffic services licence holder' see PARA 358 note 1 ante.

2 For the meaning of 'air traffic services' see PARA 355 note 3 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class E (substituted by SI 2001/4050). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18, Class E (as so substituted) see PARA 360 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/360. Development not permitted by Class E.

360. Development not permitted by Class E.

Development is not permitted by Class E¹ if:

- 1357 (1) any building² erected would be used for a purpose other than housing equipment used in connection with the provision of air traffic services³;
- 1358 (2) any building erected would exceed a height⁴ of 4 metres; or

1359 (3) it would consist of the installation or erection of any radar or radio mast, antenna or other apparatus which would exceed 15 metres in height, or, where an existing mast, antenna or apparatus is replaced, the height of that mast, antenna or apparatus, if greater⁵.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class E (as substituted): see PARA 359 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meaning of 'air traffic services' see PARA 355 note 3 ante.

4 For the meaning of references to the height of a building see PARA 266 note 7 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para E.1 (substituted by SI 2001/4050).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/361. Class F; permitted development by an air traffic services licence holder in an emergency and special condition to which it is subject.

361. Class F; permitted development by an air traffic services licence holder in an emergency and special condition to which it is subject.

The use of land by or on behalf of an air traffic services licence holder¹ in an emergency to station movable apparatus replacing unserviceable apparatus is permitted development². Such development is, however, so permitted subject to the condition that on or before the expiry of a period of six months beginning with the date on which the use began, the use must cease, and any apparatus must be removed, and the land must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority³ and the developer⁴.

No specific provision is made with regard to development not permitted by Class F.

1 For the meaning of 'air traffic services licence holder' see PARA 358 note 1 ante.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class F (substituted by SI 2001/4050). As to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see the text and notes 3-4 infra; and as to directions restricting permitted development see PARA 258 et seq ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para F.1 (substituted by SI 2001/4050).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/362. Class G; permitted development by an air traffic services licence holder involving movable structures and special condition to which it is subject.

362. Class G; permitted development by an air traffic services licence holder involving movable structures and special condition to which it is subject.

The use of land by or on behalf of an air traffic services licence holder¹ to provide services and facilities in connection with the provision of air traffic services² and the erection or placing of movable structures on the land for the purposes of that use is permitted development³. Such development is, however, so permitted subject to the condition that, on or before the expiry of the period of six months beginning with the date on which the use began, the use must cease, and any structure must be removed, and the land must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority⁴ and the developer⁵.

No specific provision is made with regard to development not permitted by Class G.

1 For the meaning of 'air traffic services licence holder' see PARA 358 note 1 ante.

2 For the meaning of 'air traffic services' see PARA 355 note 3 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class G (substituted by SI 2001/4050). As to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special condition subject to which such development is permitted see the text and notes 4-5 infra; and as to directions restricting permitted development see PARA 258 et seq ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para G.1 (substituted by SI 2001/4050).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/363. Class H; permitted development by the Civil Aviation Authority for surveys etc and special condition to which it is subject.

363. Class H; permitted development by the Civil Aviation Authority for surveys etc and special condition to which it is subject.

The use of land by or on behalf of the Civil Aviation Authority¹ for the stationing and operation of apparatus in connection with the carrying out of surveys or investigations is permitted development². Such development is, however, permitted subject to the condition that, on or before the expiry of the period of six months beginning with the date on which the use began, the use must cease, and any apparatus must be removed, and the land must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority³ and the developer⁴.

No specific provision is made with regard to development not permitted by Class H.

1 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class H. As to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see the text and notes 3-4 infra; and as to directions restricting permitted development see PARA 258 et seq ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 18 para H.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(R) Part 18: Aviation Development/364. Class I; permitted development with respect to the use of airport buildings managed by relevant airport operators.

364. Class I; permitted development with respect to the use of airport buildings managed by relevant airport operators.

The use of buildings¹ within the perimeter of an airport managed by a relevant airport operator² for purposes connected with air transport services or other flying activities at that airport is permitted development³.

No specific provision is made with regard to development not permitted by Class I.

¹ For the meaning of 'building' see PARA 255 note 10 ante.

² For the meaning of 'relevant airport operator' see PARA 353 note 1 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 18, Class I. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante. As to aviation development see also *PPG13--Transport* (2001) Annex B; and as to the status of such guidance see generally para 9 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY

DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/365. Class A; permitted development and special condition to which it is subject.

(S) PART 19: DEVELOPMENT ANCILLARY TO MINING OPERATIONS

365. Class A; permitted development and special condition to which it is subject.

The carrying out of operations for the erection, extension, installation, rearrangement, replacement, repair or other alteration of any:

- 1360 (1) plant¹ or machinery²;
- 1361 (2) buildings³;
- 1362 (3) private ways⁴ or private railways or sidings; or
- 1363 (4) sewers, mains, pipes, cables or other similar apparatus,

on land used as a mine⁵ is permitted development⁶. Development is so permitted, however, subject to the condition that before the end of the period of 24 months from the date when the mining operations⁷ have permanently ceased, or any longer period which the mineral planning authority⁸ agrees in writing:

- 1364 (a) all buildings, plant and machinery permitted by Class A must be removed from the land unless the mineral planning authority has otherwise agreed in writing; and
- 1365 (b) the land must be restored, so far as is practicable, to its condition before the development took place, or restored to such condition as may have been agreed in writing between the mineral planning authority and the developer⁹.

1 For the meaning of 'plant' see PARA 255 note 10 ante.

2 For the meaning of 'machinery' see PARA 255 note 10 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 For the meaning of 'private way' see PARA 303 note 9 ante.

5 For the meaning of 'mine' see PARA 313 note 2 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19, Class A. As to development not permitted by Sch 2 Pt 19, Class A see PARA 366 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

7 For the meaning of 'mining operations' see PARA 297 note 2 ante.

8 For the meaning of 'mineral planning authority' see PARA 29 ante.

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and

lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/366. Development not permitted by Class A.

366. Development not permitted by Class A.

Development is not permitted by Class A¹:

- 1366 (1) in relation to land at an underground mine²:
173
- 242. (a) on land which is not an approved site³; or
- 243. (b) on land immediately adjoining an active access to an underground mine which, on 5 December 1988, was in use for the purposes of that mine⁴ in connection with certain specified purposes⁵, unless a plan of that land was deposited with the mineral planning authority⁶ before 5 June 1989;
174
- 1367 (2) if the principal purpose of the development would be any purpose other than:
175
- 244. (a) purposes in connection with the winning and working of minerals at that mine or of minerals brought to the surface at that mine; or
- 245. (b) the treatment, storage or removal from the mine of such minerals or waste materials derived from them;
176
- 1368 (3) if the external appearance of the mine would be materially affected;
- 1369 (4) if the height⁷ of any building⁸, plant or machinery⁹ which is not in an excavation would exceed:
177
- 246. (a) 15 metres above ground level; or
- 247. (b) the height of the building, plant or machinery, if any, which is being rearranged, replaced or repaired or otherwise altered,
178
- 1370 whichever is the greater;
- 1371 (5) if the height of any building, plant or machinery in an excavation would exceed:
179
- 248. (a) 15 metres above the excavated ground level; or
- 249. (b) 15 metres above the lowest point of the unexcavated ground immediately adjacent to the excavation; or
- 250. (c) the height of the building, plant or machinery, if any, which is being rearranged, replaced or repaired or otherwise altered,
180

- 1372 whichever is the greatest;
 1373 (6) if any building erected, other than a replacement building, would have a
 floor space¹⁰ exceeding 1,000 square metres; or
 1374 (7) if the cubic content¹¹ of any replaced, extended or altered building would
 exceed by more than 25% the cubic content of the building replaced, extended or
 altered or the floor space would exceed by more than 1,000 square metres the
 floor space of that building¹².

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 1, Class A: see PARA 365 ante.

2 For these purposes, 'underground mine' means a mine at which minerals are worked principally by underground methods; and 'minerals' does not include any coal other than coal won or worked during the course of operations which are carried on exclusively for the purpose of exploring for coal or confined to the digging or carrying away of coal that it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal: *ibid* Sch 2 Pt 19 para D.2. For the meaning of 'mine' see PARA 313 note 2 ante.

3 An area of land is an approved site for these purposes if (1) it is identified in a grant of planning permission or any instrument by virtue of which planning permission is deemed to be granted, as land which may be used for development described in *ibid* Sch 2 Pt 19; or (2) in any other case, it is land immediately adjoining an active access to an underground mine which, on 5 December 1988, was in use for the purposes of that mine, in connection with the purposes described in Sch 2 Pt 19 para A.1(b)(i) or (ii) (see heads (2)(a), (2)(b) in the text) or Sch 2 Pt 19 para B.1(b)(i)-(iii) (see PARA 369 post at heads (2)(a)-(2)(c) in the text): Sch 2 Pt 19 para D.1. 'Active access' means a surface access to underground workings which is in normal and regular use for the transportation of minerals, materials, spoil or men: Sch 2 Pt 19 para D.2.

4 le land within the definition in *ibid* Sch 2 Pt 19 para D.1(b): see note 3 head (2) *supra*.

5 le in connection with the purposes mentioned in *ibid* Sch 2 Pt 19 para D.1(b): see note 3 head (2) *supra*.

6 For the meaning of 'mineral planning authority' see PARA 29 ante.

7 For the meaning of 'building' see PARA 255 note 10 ante.

8 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

9 For the meaning of references to the height of a building or plant or machinery see PARA 266 note 7 ante.

10 For the meaning of 'floor space' see PARA 288 note 3 ante.

11 For the meaning of 'cubic content' see PARA 265 note 1 ante.

12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 19 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/367. Class B; permitted development.

367. Class B; permitted development.

The carrying out, on land used as a mine¹ or on ancillary mining land², with the prior approval of the mineral planning authority³, of operations for the erection, installation, extension, rearrangement, replacement, repair or other alteration of any:

- 1375 (1) plant or machinery;
- 1376 (2) buildings; or
- 1377 (3) structures or erections,

is permitted development⁴.

Such prior approval may not be refused or granted subject to conditions unless the authority is satisfied that it is expedient to do so because:

- 1378 (a) the proposed development would injure the amenity⁵ of the neighbourhood and modifications can reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or
- 1379 (b) the proposed development ought to be, and could reasonably be, sited elsewhere⁶.

1 For the meaning of 'mine' see PARA 313 note 2 ante.

2 For these purposes, 'ancillary mining land' means land adjacent to and occupied together with a mine at which the winning and working of minerals is carried out in pursuance of planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, PARA 419 et seq post): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19 para D.2. For the meaning of 'minerals' see PARA 366 note 2 ante.

3 For these purposes, 'the prior approval of the mineral planning authority' means prior written approval of that authority of detailed proposals for the siting, design and external appearance of the building, plant or machinery proposed to be erected, installed, extended or altered: ibid Sch 2 Pt 19 para D.2. For the meaning of 'mineral planning authority' see PARA 29 ante; and for the meanings of 'building', 'plant' and 'machinery' see PARA 255 note 10 ante.

4 Ibid Sch 2 Pt 19, Class B. As to development not permitted by Sch 2 Pt 19, Class B see PARA 369 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 368 post; and as to directions restricting permitted development see PARA 258 et seq ante.

5 As to the meaning of 'amenity' see PARA 158 note 8 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 19 para B.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/368. Special conditions to which development permitted by Class B is subject.

368. Special conditions to which development permitted by Class B is subject.

Development is permitted by Class B¹ subject to the condition that before the end of the period of 24 months from the date when the mining operations² have permanently ceased, or any longer period which the mineral planning authority³ agrees in writing:

- 1380 (1) all buildings⁴, plant⁵, machinery⁶, structures and erections permitted by Class B must be removed from the land unless the mineral planning authority has otherwise agreed in writing; and
- 1381 (2) the land must be restored, so far as is practicable, to its condition before the development took place or restored to such condition as may have been agreed in writing between the mineral planning authority and the developer⁷.

¹ See by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19, Class B: see PARA 367 ante.

² For the meaning of 'mining operations' see PARA 297 note 2 ante.

³ For the meaning of 'mineral planning authority' see PARA 29 ante.

⁴ For the meaning of 'building' see PARA 255 note 10 ante.

⁵ For the meaning of 'plant' see PARA 255 note 10 ante.

⁶ For the meaning of 'machinery' see PARA 255 note 10 ante.

⁷ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para B.3.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of

buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/369. Development not permitted by Class B.

369. Development not permitted by Class B.

Development is not permitted by Class B¹:

- 1382 (1) in relation to land at an underground mine²:
181
 - 251. (a) on land which is not an approved site³; or
 - 252. (b) on land immediately adjoining an active access⁴ to an underground mine which, on 5 December 1988, was in use for the purposes of that mine⁵ in connection with certain specified purposes⁶, unless a plan of that land was deposited with the mineral planning authority⁷ before 5 June 1989;
- 182
 - 1383 (2) if the principal purpose of the development would be any purpose other than:
183
 - 253. (a) purposes in connection with the operation of the mine;
 - 254. (b) the treatment, preparation for sale, consumption or utilisation of minerals⁸ won or brought to the surface at that mine; or
 - 255. (c) the storage or removal from the mine of such minerals, their products or waste materials derived from them⁹.
- 184

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19, Class B: see PARA 367 ante.

2 For the meaning of 'underground mine' see PARA 366 note 2 ante.

3 For the meaning of 'approved site' see PARA 366 note 3 ante.

4 For the meaning of 'active access' see PARA 366 note 3 ante.

5 le land within the definition in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para D.1(b): see PARA 366 note 3 head (2) ante.

6 le the purposes mentioned in ibid Sch 2 Pt 19 para D.1(b): see PARA 366 note 3 head (2) ante.

7 For the meaning of 'mineral planning authority' see PARA 29 ante.

8 For the meaning of 'minerals' see PARA 366 note 2 ante.

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/370. Class C; permitted development.

370. Class C; permitted development.

The carrying out with the prior approval of the mineral planning authority¹ of development required for the maintenance or safety of a mine² or a disused mine or for the purposes of ensuring the safety of the surface of the land at or adjacent to a mine or a disused mine is permitted development³.

The prior approval of the mineral planning authority to development permitted by Class C is not, however, required if:

- 1384 (1) the external appearance of the mine or disused mine at or adjacent to which the development is to be carried out would not be materially affected;
- 1385 (2) no building⁴, plant⁵, machinery⁶, structure or erection:
- 185
- 256. (a) would exceed a height⁷ of 15 metres above ground level; or
- 257. (b) would, where any building, plant, machinery, structure or erection is rearranged, replaced or repaired, exceed a height of 15 metres above ground level or the height of what was replaced, rearranged or repaired, whichever is the greater; and
- 186
- 1386 (3) the development consists of the extension, alteration or replacement of an existing⁸ building, within the specified⁹ limits¹⁰.

Furthermore, such prior approval may not be refused or granted subject to conditions unless the authority is satisfied that it is expedient to do so because:

- 1387 (i) the proposed development would injure the amenity¹¹ of the neighbourhood and modifications can reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or
- 1388 (ii) the proposed development ought to be, and could reasonably be, sited elsewhere¹².

- 1 For the meaning of 'the prior approval of the mineral planning authority' see PARA 367 note 3 ante.
- 2 For the meaning of 'mine' see PARA 313 note 2 ante.
- 3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19, Class C. As to development not permitted by Sch 2 Pt 19, Class C see PARA 371 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.
- 4 For the meaning of 'building' see PARA 255 note 10 ante.
- 5 For the meaning of 'plant' see PARA 255 note 10 ante.
- 6 For the meaning of 'machinery' see PARA 255 note 10 ante.
- 7 For the meaning of references to the height of a building or plant or machinery see PARA 266 note 7 ante.
- 8 For the meaning of 'existing' see PARA 255 note 10 ante.
- 9 The limits so specified are (1) that the cubic content of the building as extended, altered or replaced does not exceed that of the existing building by more than 25%; and (2) that the floor space of the building as extended, altered or replaced does not exceed that of the existing building by more than 1,000 square metres: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para C.2(3). For the meaning of 'cubic content' see PARA 265 note 1 ante; and for the meaning of 'floor space' see PARA 288 note 3 ante.
- 10 Ibid Sch 2 Pt 19 para C.2(1).
- 11 As to the meaning of 'amenity' see PARA 158 note 8 ante.
- 12 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para C.2(2).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(S) Part 19: Development Ancillary to Mining Operations/371. Development not permitted by Class C.

371. Development not permitted by Class C.

Development is not permitted by Class C¹ if it is carried out by the Coal Authority² or any licensed operator³ within the meaning of the Coal Industry Act 1994⁴.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 19, Class C: see PARA 370 ante.

2 As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq; and as to permitted development by that Authority see PARA 372 et seq post.

3 le within the meaning of the Coal Industry Act 1994 s 65 (interpretation): see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 60 note 12; and as to permitted development by such operators see PARA 372 et seq post.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 19 para C.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/372. Class A; permitted development.

(T) PART 20: COAL MINING DEVELOPMENT BY THE COAL AUTHORITY AND LICENSED OPERATORS

372. Class A; permitted development.

Development by a licensee of the Coal Authority¹, in a mine² started before 1 July 1948, consisting of:

1389 (1) the winning and working underground of coal or coal-related minerals³ in a designated seam area⁴; or

1390 (2) the carrying out of development underground which is required in order to gain access to and work coal or coal-related minerals in a designated seam area,

is permitted development⁵.

1 For these purposes, 'a licensee of the Coal Authority' means any person who is for the time being authorised by a licence under the Coal Industry Act 1994 Pt II (ss 26-36) (as amended) to carry on coal-mining operations to which s 25 (coal-mining operations to be licensed) (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 91) applies: Town and Country Planning (General Permitted Development) Order 1995, SI

1995/418, art 3(1), Sch 2 Pt 20 para A.2. As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq.

2 For the meaning of 'mine' see PARA 313 note 2 ante.

3 For these purposes, 'coal-related minerals' means minerals other than coal which are, or may be, won and worked by coal-mining operations: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para A.2. 'Coal-mining operations' has the same meaning as in the Coal Industry Act 1994 s 65 (interpretation: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 50 note 10) and references to any development or use in connection with coal-mining operations include references to development or use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para F.1.

4 'Designated seam area' means land identified, in accordance with para (a) of the definition of 'seam plan' (see head (1) *infra*), in a seam plan which was deposited with the mineral planning authority before 30 September 1993; and 'seam plan' means a plan or plans on a scale of not less than 1 to 25,000 showing: (1) land comprising the maximum extent of the coal seam or seams that could have been worked from shafts or drifts existing at a mine at 13 November 1992, without further development on an authorised site other than development permitted by the Town and Country Planning General Development Order 1988, SI 1988/1813, Sch 2 Pt 20, Class B (revoked) as originally enacted; (2) any active access used in connection with the land referred to in head (1) *supra*; (3) the National Grid lines and reference numbers shown on Ordnance Survey maps; (4) a typical stratigraphic column showing the approximate depths of the coal seam referred to in head (1) *supra*: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para A.2. 'Active access' means a surface access to underground workings which is in normal and regular use for the transportation of coal, materials, spoil or men; and 'normal and regular use' means use other than intermittent visits to inspect and maintain the fabric of the mine or any plant or machinery: Sch 2 Pt 20 para F.1.

5 Ibid Sch 2 Pt 20, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which development under Sch 2 Pt 20, Class A is permitted see PARA 373 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/373. Special conditions to which development permitted by Class A is subject.

373. Special conditions to which development permitted by Class A is subject.

Except on land in respect of which there is an extant planning permission¹ which has been granted on an application² and has been implemented³, development is permitted by Class A⁴ subject to the following conditions:

- 1391 (1) except in a case where there is an approved restoration scheme⁵ or mining operations⁶ have permanently ceased, the developer was before 31 December 1995 to apply, or must before any later date which the mineral planning authority⁷ may agree in writing apply, to the mineral planning authority for approval of a restoration scheme;
- 1392 (2) where there is an approved restoration scheme, reinstatement, restoration and aftercare must be carried out in accordance with that scheme;
- 1393 (3) if an approved restoration scheme does not specify the periods within which reinstatement, restoration or aftercare should be carried out, it is subject to conditions that:
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258. (a) reinstatement or restoration, if any, must be carried out before the end of the period of 24 months from either the date when the mining operations have permanently ceased or the date when any application for approval of a restoration scheme under head (1) above has been finally determined⁸, whichever is later; and
259. (b) aftercare, if any, in respect of any part of a site must be carried out throughout the period of five years from either the date when any reinstatement or restoration in respect of that part is completed or the date when any application for approval of a restoration scheme under head (1) above has been finally determined, whichever is later;
- 188
- 1394 (4) where there is no approved restoration scheme, then before the end of the specified period⁹:
- 189
260. (a) all buildings¹⁰, plant¹¹, machinery¹², structures and erections used at any time for or in connection with any previous coal-mining operations¹³ at that mine must be removed from any land which is an authorised site¹⁴ unless the mineral planning authority has otherwise agreed in writing; and
261. (b) that land must, so far as practicable, be restored to its condition before any previous coal-mining operations at that mine took place or to such condition as may have been agreed in writing between the mineral planning authority and the developer¹⁵.
- 190

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 Ie on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 419 et seq post.

3 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20 para A.1(a) (see the text and notes 4-15 infra) does not apply to such land: see Sch 2 Pt 20 para A.1(b).

4 Ie by ibid Sch 2 Pt 20, Class A: see PARA 372 ante.

5 For these purposes, 'approved restoration scheme' means a restoration scheme which is approved when an application made under ibid Sch 2 Pt 20 para A.1(a)(i) (see head (1) in the text) is finally determined, as approved (with or without conditions), or as subsequently varied with the written approval of the mineral planning authority (with or without conditions); and 'restoration scheme' means a scheme which makes provision for the reinstatement, restoration or aftercare (or a combination of these) of any land which is an authorised site and has been used at any time for or in connection with any previous coal-mining operations at that mine: Sch 2 Pt 20 para A.2. As to when an application made under head (1) in the text is finally determined see note 8 infra; for the meaning of 'previous coal-mining operations' see note 13 infra; and for the meaning of 'authorised site' see note 14 infra.

6 For the meaning of 'mining operations' see PARA 297 note 2 ante.

7 For the meaning of 'mineral planning authority' see PARA 29 ante.

8 For these purposes, an application for approval of a restoration scheme has been finally determined when the following conditions have been met: (1) any proceedings on the application, including any proceeding on or in consequence of an application under the Town and Country Planning Act 1990 s 288 (as amended) (proceedings for questioning the validity of certain orders, decisions and directions: see PARA 47 ante), have been determined; and (2) any time for appealing under s 78 (as amended) (right to appeal against planning decisions and failure to take such decisions: see PARA 598 post), or applying or further applying under s 288 (as amended), where there is a right to do so, has expired: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para A.1(a)(vi).

9 The period referred to in head (4) in the text is: (1) the period of 24 months from the date when the mining operations have permanently ceased or, if an application for approval of a restoration scheme has been made under head (1) in the text before that date, 24 months from the date when that application has been finally determined, whichever is later; or (2) any longer period which the mineral planning authority has agreed in writing: *ibid* Sch 2 Pt 20 para A.1(a)(v).

10 For the meaning of 'building' see PARA 255 note 10 ante.

11 For the meaning of 'plant' see PARA 255 note 10 ante.

12 For the meaning of 'machinery' see PARA 255 note 10 ante.

13 For these purposes, 'previous coal-mining operations' has the same meaning as in the Coal Industry Act 1994 s 54(3) (obligations to restore land affected by coal-mining operations: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 357) and references in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 Class A to the use of anything in connection with any such operations includes references to its use for or in connection with activities carried on in association with, or for purposes connected with, the carrying on of those operations: Sch 2 Pt 20 para A.2.

14 Subject to *ibid* Sch 2 Pt 20 para F.2(2), land is an authorised site for these purposes if: (1) it is identified in a grant of planning permission or any instrument by virtue of which planning permission is deemed to be granted as land which may be used for development described in Sch 2 Pt 20; or (2) in any other case, it is land immediately adjoining an active access which, on 5 December 1988, was in use for the purposes of that mine in connection with coal-mining operations: Sch 2 Pt 20 para F.2(1). For the purposes of heads (1)-(2) *supra*, however, land is not to be regarded as in use in connection with coal-mining operations if (a) it is used for the permanent deposit of waste derived from the winning and working of minerals; or (b) there is on, over or under it a railway, conveyor, aerial ropeway, roadway, overhead power line or pipeline which is not itself surrounded by other land used for those purposes: Sch 2 Pt 20 para F.2(2).

15 *Ibid* Sch 2 Pt 20 para A.1(a).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/374. Class B; permitted development.

374. Class B; permitted development.

Development by a licensee of the (former) British Coal Corporation¹, in a mine started before 1 July 1948, consisting of:

- 1395 (1) the winning and working underground of coal or coal-related minerals² in a designated seam area³; or
- 1396 (b) the carrying out of development underground which is required in order to gain access to and work coal or coal-related minerals in a designated seam area,

is permitted development⁴.

No specific provision is made with regard to development not permitted by Class B.

1 For this purpose, 'a licensee of the British Coal Corporation' means any person who is for the time being authorised by virtue of the Coal Industry Act 1994 s 25(3) (coal-mining operations to be licensed: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 91) to carry on coal-mining operations to which s 25 applies: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para B.1. For the meaning of 'coal-mining operations' see PARA 372 note 3 ante. As to the former British Coal Corporation see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 2.

2 For this purpose, 'coal-related minerals' means minerals other than coal which can only be economically worked in association with the working of coal or which can only be economically brought to the surface by the use of a mine of coal: *ibid* Sch 2 Pt 20 para B.1. For the meaning of 'mine' see PARA 313 note 2 ante.

3 For this purpose, 'designated seam area' has the same meaning as in *ibid* Sch 2 Pt 20 para A.2 (see PARA 372 note 4 ante): Sch 2 Pt 20 para B.1.

4 *Ibid* Sch 2 Pt 20, Class B. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/375. Class C; permitted development and special condition to which it is subject.

375. Class C; permitted development and special condition to which it is subject.

Any development required for the purposes of a mine¹ which is carried out on an authorised site² at that mine by a licensed operator³, in connection with coal-mining operations⁴, is permitted development⁵.

Development is so permitted, however, subject to the condition that before the end of the period of 24 months from the date when the mining operations⁶ have permanently ceased, or any longer period which the mineral planning authority⁷ agrees in writing:

1397 (1) all buildings⁸, plant⁹, machinery¹⁰, structures and erections and deposits of minerals or waste permitted by Class C must be removed from the land unless the mineral planning authority has otherwise agreed in writing; and

1398 (2) the land must, so far as is practicable, be restored to its condition before the development took place or to such condition as may have been agreed in writing between the mineral planning authority and the developer¹¹.

1 For the meaning of 'mine' see PARA 313 note 2 ante.

2 For the meaning of 'authorised site' see PARA 373 note 14 ante.

3 For these purposes, 'licensed operator' has the same meaning as in the Coal Industry Act 1994 s 65 (see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 60 note 12): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20 para F.1.

4 For the meaning of 'coal-mining operations' see PARA 372 note 3 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20, Class C. As to development not permitted by Sch 2 Pt 20, Class C see PARA 376 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

6 For the 'meaning of 'mining operations' see PARA 297 note 2 ante.

7 For the meaning of 'mineral planning authority' see PARA 29 ante.

8 For the meaning of 'building' see PARA 255 note 10 ante.

9 For the meaning of 'plant' see PARA 255 note 10 ante.

10 For the meaning of 'machinery' see PARA 255 note 10 ante.

11 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 20 para C.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/376. Development not permitted by Class C.

376. Development not permitted by Class C.

Development is not permitted by Class C¹ if:

- 1399 (1) the external appearance of the mine² would be materially affected;
- 1400 (2) any building³, plant or machinery⁴, structure or erection or any deposit of minerals or waste would exceed a height⁵ of 15 metres above ground level, or, where a building, plant or machinery would be rearranged, replaced or repaired, the resulting development would exceed a height of 15 metres above ground level or the height of what was replaced, rearranged or repaired, whichever is the greater;
- 1401 (3) any building erected, other than a replacement building, would have a floor space⁶ exceeding 1,000 square metres;
- 1402 (4) the cubic content⁷ of any replaced, extended or altered building would exceed by more than 25% the cubic content of the building replaced, extended or altered or the floor space would exceed by more than 1,000 square metres the floor space of that building;
- 1403 (5) it would be for the purpose of creating a new surface access to underground workings or of improving an existing access, which is not an active access⁸, to underground workings; or
- 1404 (6) it would be carried out on land to which the specified description⁹ applies and a plan of that land had not been deposited with the mineral planning authority¹⁰ before 5 June 1989¹¹.

1 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20, Class C: see PARA 375 ante.

2 For the meaning of 'mine' see PARA 313 note 2 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

5 For the meaning of references to the height of a building or plant or machinery see PARA 266 note 7 ante.

6 For the meaning of 'floor space' see PARA 288 note 3 ante.

7 For the meaning of 'cubic content' see PARA 265 note 1 ante.

8 For the meaning of 'active access' see PARA 372 note 4 ante.

9 Ie land to which the description in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para F.2(1)(b) applies: see PARA 373 note 14 head (2) ante.

10 For the meaning of 'mineral planning authority' see PARA 29 ante.

11 Ibid Sch 2 Pt 20 para C.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/377. Class D; permitted development.

377. Class D; permitted development.

Any development required for the purposes of a mine¹ which is carried out on an authorised site² at that mine by a licensed operator³ in connection with coal-mining operations⁴ and with the prior approval of the mineral planning authority⁵ is permitted development⁶.

Such prior approval may not be refused or granted subject to conditions unless the authority is satisfied that it is expedient to do so because:

- 1405 (1) the proposed development would injure the amenity⁷ of the neighbourhood and modifications could reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or
- 1406 (2) the proposed development ought to be, and could reasonably be, sited elsewhere⁸.

1 For the meaning of 'mine' see PARA 313 note 2 ante.

2 For the meaning of 'authorised site' see PARA 373 note 14 ante.

3 For the meaning of 'licensed operator' see PARA 375 note 3 ante.

4 For the meaning of 'coal-mining operations' see PARA 372 note 3 ante.

5 For these purposes, 'prior approval of the mineral planning authority' means prior written approval of that authority of detailed proposals for the siting, design and external appearance of the proposed building, plant or machinery or structure or erection as erected, installed, extended or altered: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20 para F.1. For the meaning of 'mineral planning authority' see PARA 29 ante; and for the meanings of 'building', 'plant' and 'machinery' see PARA 255 note 10 ante.

6 Ibid Sch 2 Pt 20, Class D. As to development not permitted by Sch 2 Pt 20, Class D see PARA 379 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special condition subject to which such development is permitted see PARA 378 post; and as to directions restricting permitted development see PARA 258 et seq ante.

7 As to the meaning of 'amenity' see PARA 158 note 8 ante.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para D.3.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/378. Special condition to which development permitted by Class D is subject.

378. Special condition to which development permitted by Class D is subject.

Development is permitted by Class D¹ subject to the condition that, before the end of the period of 24 months from the date when the mining operations² have permanently ceased, or any longer period which the mineral planning authority³ agrees in writing:

- 1407 (1) all buildings⁴, plant⁵, machinery⁶, structures or erections or deposits of minerals or waste permitted by Class D must be removed from the land, unless the mineral planning authority has otherwise agreed in writing; and
- 1408 (2) the land must, so far as is practicable, be restored to its condition before the development took place or to such condition as may have been agreed in writing between the mineral planning authority and the developer⁷.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20, Class D: see PARA 377 ante.

² For the meaning of 'mining operations' see PARA 297 note 2 ante.

³ For the meaning of 'mineral planning authority' see PARA 29 ante.

⁴ For the meaning of 'building' see PARA 255 note 10 ante.

⁵ For the meaning of 'plant' see PARA 255 note 10 ante.

⁶ For the meaning of 'machinery' see PARA 255 note 10 ante.

⁷ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para D.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/379. Development not permitted by Class D.

379. Development not permitted by Class D.

Development is not permitted by Class D¹ if:

- 1409 (1) it would be for the purpose of creating a new surface access or improving an existing access, which is not an active access², to underground workings; or
- 1410 (2) it would be carried out on land to which the specified description³ applies and a plan of that land had not before 5 June 1989 been deposited with the mineral planning authority⁴.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20, Class D: see PARA 377 ante.

2 For the meaning of 'active access' see PARA 372 note 4 ante.

3 Ie land to which the description in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para F.2(1)(b) applies: see PARA 373 note 14 head (2) ante.

4 Ibid Sch 2 Pt 20 para D.1. For the meaning of 'mineral planning authority' see PARA 29 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(T) Part 20: Coal Mining Development by the Coal Authority and Licensed Operators/380. Class E; permitted development.

380. Class E; permitted development.

The carrying out by the Coal Authority¹ or a licensed operator², with the prior approval of the mineral planning authority³, of development required for the maintenance or safety of a mine⁴ or a disused mine or for the purposes of ensuring the safety of the surface of the land at or adjacent to a mine or a disused mine is permitted development⁵.

The prior approval of the mineral planning authority to development permitted by Class E is not, however, required if:

- 1411 (1) the external appearance of the mine or disused mine at or adjacent to which the development is to be carried out would not be materially affected;
- 1412 (2) no building⁶, plant or machinery⁷, structure or erection:
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 - 262. (a) would exceed a height⁸ of 15 metres above ground level; or
 - 263. (b) would, where any building, plant, machinery, structure or erection is rearranged, replaced or repaired, exceed a height of 15 metres above ground level or the height of what was replaced, rearranged or repaired, whichever is the greater; and
- 192 1413 (3) the development consists of an extension, alteration or replacement of an existing⁹ building, within the specified¹⁰ limits¹¹.

Furthermore, such prior approval may not be refused or granted subject to conditions unless the authority is satisfied that it is expedient to do so because:

- 1414 (i) the proposed development would injure the amenity¹² of the neighbourhood and modifications could reasonably be made or conditions reasonably imposed in order to avoid or reduce that injury; or
- 1415 (ii) the proposed development ought to be, and could reasonably be, sited elsewhere¹³.

No specific provision is made with regard to development not permitted by Class E.

1 As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq.

2 For the meaning of 'licensed operator' see PARA 375 note 3 ante.

3 For the meaning of 'prior approval of the mineral planning authority' see PARA 377 note 5 ante; and for the meaning of 'mineral planning authority' see PARA 29 ante.

4 For the meaning of 'mine' see PARA 313 note 2 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 20, Class E. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

- 6 For the meaning of 'building' see PARA 255 note 10 ante.
- 7 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.
- 8 For the meaning of references to the height of a building or plant or machinery see PARA 266 note 7 ante.
- 9 For the meaning of 'existing' see PARA 255 note 10 ante.
- 10 The limits so specified are (1) that the cubic content of the building as extended, altered or replaced does not exceed that of the existing building by more than 25%; and (2) that the floor space of the building as extended, altered or replaced does not exceed that of the existing building by more than 1,000 square metres: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 20 para E.1(3). For the meaning of 'cubic content' see PARA 265 note 1 ante; and for the meaning of 'floor space' see PARA 288 note 3 ante.
- 11 Ibid Sch 2 Pt 20 para E.1(1).
- 12 As to the meaning of 'amenity' see PARA 158 note 8 ante.
- 13 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 20 para E.1(2).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(U) Part 21: Waste Tipping at a Mine/381. Class A; permitted development and special conditions to which it is subject.

(U) PART 21: WASTE TIPPING AT A MINE

381. Class A; permitted development and special conditions to which it is subject.

The deposit, on premises used as a mine¹ or on ancillary mining land² already used for the purpose, of waste derived from the winning and working of minerals at that mine or from minerals brought to the surface at that mine, or from the treatment or the preparation for sale, consumption or utilisation of minerals from the mine is permitted development³.

Development is so permitted, however, subject to the following conditions:

- 1416 (1) except in a case where a relevant scheme⁴ or a waste management scheme⁵ has already been approved by the mineral planning authority, the developer must, if the mineral planning authority so requires, within three months

or such longer period as the authority may specify, submit a waste management scheme for that authority's approval;
1417 (2) where a waste management scheme or a relevant scheme has been approved, the depositing of waste and all other activities in relation to that deposit must be carried out in accordance with the scheme as approved⁶.

1 For the meaning of 'mine' see PARA 313 note 2 ante.

2 For these purposes, 'ancillary mining land' means land adjacent to and occupied together with a mine at which the winning and working of minerals is carried out in pursuance of planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, PARA 419 et seq post): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 21 para A.3. For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

3 Ibid Sch 2 Pt 21, Class A. As to development not permitted by Sch 2 Pt 21, Class A see PARA 382 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

4 For these purposes, 'relevant scheme' means a scheme, other than a waste management scheme, requiring approval by the mineral planning authority in accordance with a condition or limitation on any planning permission granted or deemed to be granted under the Town and Country Planning Act 1990 Pt III (as amended), for making provision for the manner in which the deposit of waste is to be carried out and for the carrying out of other activities in relation to that deposit: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 21 para C. For the meaning of 'waste management scheme' see note 5 infra; and for the meaning of 'mineral planning authority' see PARA 29 ante.

5 For these purposes, 'waste management scheme' means a scheme required by the mineral planning authority to be submitted for its approval in accordance with the condition in ibid Sch 2 Pt 21 para A.2(a) (see head (1) in the text) which makes provision for (1) the manner in which the depositing of waste, other than waste deposited on a site for use for filling any mineral excavation in the mine or on ancillary mining land in order to comply with the terms of any planning permission granted on an application or deemed to be granted under the Town and Country Planning Act 1990 Pt III (as amended), is to be carried out after the date of the approval of that scheme; (2) where appropriate, the stripping and storage of the subsoil and topsoil; (3) the restoration and aftercare of the site: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 21 para A.3. For the meaning of 'mine' see PARA 313 note 2 ante.

6 Ibid Sch 2 Pt 21 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(U) Part 21: Waste Tipping at a Mine/382. Development not permitted by Class A.

382. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1418 (1) in the case of waste deposited in an excavation, waste would be deposited at a height above the level of the land adjoining the excavation, unless that is provided for in a waste management scheme² or a relevant scheme³;
- 1419 (2) in any other case, the superficial area or height of the deposit, measured as at 21 October 1988⁴, would be increased by more than 10%, unless such an increase is provided for in a waste management scheme or in a relevant scheme⁵.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 21, Class A: see PARA 381 ante.

² For the meaning of 'waste management scheme' see PARA 381 note 5 ante.

³ For the meaning of 'relevant scheme' see PARA 381 note 4 ante.

⁴ le the date of the making of the Town and Country Planning (General Permitted Development) Order 1988, SI 1988/1813 (now revoked and replaced by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended)).

⁵ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 21 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(U) Part 21: Waste Tipping at a Mine/383. Class B; permitted development.

383. Class B; permitted development.

The deposit on land comprised in a site used for the deposit of waste materials or refuse on 1 July 1948 of waste resulting from coal-mining operations¹ is permitted development².

1 For these purposes, 'coal-mining operations' has the same meaning as in the Coal Industry Act 1994 s 65 (interpretation: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 50 note 10): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 21, PARA B.2.

2 Ibid Sch 2 Pt 21, Class B. As to development not permitted by Sch 2 Pt 21, Class B see PARA 384 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(U) Part 21: Waste Tipping at a Mine/384. Development not permitted by Class B.

384. Development not permitted by Class B.

Development is not permitted by Class B¹ unless it is in accordance with a relevant scheme² approved by the mineral planning authority³ before 5 December 1988⁴.

1 ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 21, Class B: see PARA 383 ante.

2 For the meaning of 'relevant scheme' see PARA 381 note 4 ante.

3 For the meaning of 'mineral planning authority' see PARA 29 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 21 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/385. Class A; permitted development.

(V) PART 22: MINERAL EXPLORATION

385. Class A; permitted development.

Development on any land during a period not exceeding 28 consecutive days consisting of:

- 1420 (1) the drilling of boreholes;
- 1421 (2) the carrying out of seismic surveys; or
- 1422 (3) the making of other excavations,

for the purpose of mineral exploration¹, and the provision or assembly on that land or adjoining land of any structure² required in connection with any of those operations is permitted development³.

1 For these purposes 'mineral exploration' means ascertaining the presence, extent or quality of any deposit of a mineral with a view to exploiting that mineral: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22 para A.3.

2 For these purposes, 'structure' includes a building, plant or machinery: *ibid* Sch 2 Pt 22 para A.3. For the meanings of 'building', 'plant' and 'machinery' see PARA 255 note 10 ante.

3 *Ibid* Sch 2 Pt 22, Class A. As to development not permitted by Sch 2 Pt 22, Class A see PARA 387 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 386 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/386. Special conditions to which development permitted by Class A is subject.

386. Special conditions to which development permitted by Class A is subject.

Development is permitted by Class A¹ subject to the following conditions:

- 1423 (1) no operations may be carried out between 6 pm and 7 am;
 - 1424 (2) no trees on the land may be removed, felled, lopped or topped and no other thing may be done on the land likely to harm or damage any trees, unless the mineral planning authority has so agreed in writing²;
 - 1425 (3) before any excavation, other than a borehole, is made, any topsoil and any subsoil must be separately removed from the land to be excavated and stored separately from other excavated material and from each other;
 - 1426 (4) within a period of 28 days from the cessation of operations, unless the mineral planning authority has agreed otherwise in writing:
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- 264. (a) any structure³ permitted by Class A and any waste material arising from development permitted by Class A must be removed from the land;
 - 265. (b) any borehole must be adequately sealed;
 - 266. (c) any other excavation must be filled with material from the site;
 - 267. (d) the surface of the land on which any operations have been carried out must be levelled and any topsoil replaced as the uppermost layer; and
 - 268. (e) the land must, so far as is practicable, be restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting⁴.

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¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22, Class A: see PARA 385 ante.

² For the meaning of 'mineral planning authority' see PARA 29 ante; and as to the use of electronic communications see PARA 257 ante.

³ For the meaning of 'structure' see PARA 385 note 2 ante.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 22 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/387. Development not permitted by Class A.

387. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1427 (1) it consists of the drilling of boreholes for petroleum exploration;
- 1428 (2) any operation would be carried out within 50 metres of any part of an occupied residential building² or a building occupied as a hospital or school;
- 1429 (3) any operation would be carried out within a National Park³, an area of outstanding natural beauty⁴, a site of archaeological interest⁵ or a site of special scientific interest⁶;
- 1430 (4) any explosive charge of more than one kilogram would be used;
- 1431 (5) any excavation other than the drilling of boreholes or the carrying out of seismic surveys⁷ would exceed 10 metres in depth or 12 square metres in surface area;
- 1432 (6) more than ten such excavations as are mentioned in head (5) above would⁸, as a result, be made within any area of one hectare within the land during any period of 24 months; or
- 1433 (7) any structure⁹ assembled or provided would exceed 12 metres in height¹⁰, or, where the structure would be within 3 kilometres of the perimeter of an aerodrome¹¹, 3 metres in height¹².

¹ Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22, Class A: see PARA 385 ante.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

⁴ For the meaning of 'area of outstanding natural beauty' see PARA 256 note 4 ante.

⁵ For the meaning of 'site of archaeological interest' see PARA 264 note 6 ante.

⁶ For the meaning of 'site of special scientific interest' see PARA 264 note 7 ante.

⁷ Ie any excavation referred to in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 22, Class A(c): see PARA 385 ante at head (3) in the text.

⁸ Ie in the case described in ibid Sch 2 Pt 22, Class A(c).

⁹ For the meaning of 'structure' see PARA 385 note 2 ante.

¹⁰ For the meaning of references to the meaning of the height of a building etc see PARA 266 note 7 ante.

¹¹ For the meaning of 'aerodrome' see PARA 258 note 12 ante.

¹² Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 22 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/388. Class B; permitted development.

388. Class B; permitted development.

Development on any land consisting of:

- 1434 (1) the drilling of boreholes,
- 1435 (2) the carrying out of seismic surveys; or
- 1436 (3) the making of other excavations,

for the purposes of mineral exploration¹, and the provision or assembly on that land or on adjoining land of any structure² required in connection with any of those operations is permitted development³.

1 For the meaning of 'mineral exploration' see PARA 385 note 1 ante.

2 For the meaning of 'structure' see PARA 385 note 2 ante.

3 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22, Class B. As to development not permitted by Sch 2 Pt 22, Class B see PARA 390 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 389 post; and as to directions restricting permitted development see PARA 264 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/389. Special conditions to which development permitted by Class B is subject.

389. Special conditions to which development permitted by Class B is subject.

Development is permitted by Class B¹ subject to the following conditions:

1437 (1) the development must be carried out in accordance with the details in the specified notification², unless the mineral planning authority has otherwise agreed in writing³;

1438 (2) no trees on the land may be removed, felled, lopped or topped and no other thing may be done on the land likely to harm or damage any trees, unless specified in detail in the notification referred to above⁴ or unless the mineral planning authority has otherwise agreed in writing;

1439 (3) before any excavation other than a borehole is made, any topsoil and any subsoil must be separately removed from the land to be excavated and stored separately from other excavated material and from each other;

1440 (4) within a period of 28 days from operations ceasing, unless the mineral planning authority has agreed otherwise in writing:

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269. (a) any structure⁵ permitted by Class B and any waste material arising from development so permitted must be removed from the land;

270. (b) any borehole must be adequately sealed;

271. (c) any other excavation must be filled with material from the site;

272. (d) the surface of the land must be levelled and any topsoil replaced as the uppermost layer; and

273. (e) the land must, so far as is practicable, be restored to its condition before the development took place, including the carrying out of any necessary seeding and replanting; and

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1441 (5) the development must cease no later than a date six months after the elapse of the relevant period⁶, unless the mineral planning authority has otherwise agreed in writing⁷.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22, Class B: see PARA 388 ante.

2 le the notification referred to in ibid Sch 2 Pt 22 para B.1(b): see PARA 390 post at head (2) in the text.

3 For the meaning of 'mineral planning authority' see PARA 29 ante; and as to the use of electronic communications see PARA 257 ante.

4 See note 2 supra.

5 For the meaning of 'structure' see PARA 388 note 2 ante.

6 For these purposes, 'relevant period' means the period elapsing: (1) where a direction is not issued under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 7 (see PARA 264 ante), 28 days after the notification referred to in Sch 2 Pt 22 para B.1(b) or, if earlier, on the date on which the mineral planning authority notifies the developer in writing that it will not issue such a direction; or (2) where a direction is issued under art 7, 28 days from the date on which notice of that decision is sent to the Secretary of State or the National Assembly for Wales, or, if earlier, the date on which the mineral planning authority notifies the developer that the Secretary of State or the Assembly has disallowed the direction: Sch 2 Pt 22 para B.3. As to the Secretary of State and the Assembly see PARAS 19-20 ante.

UPDATE

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(V) Part 22: Mineral Exploration/390. Development not permitted by Class B.

390. Development not permitted by Class B.

Development is not permitted by Class B¹ if:

- 1442 (1) it consists of the drilling of boreholes for petroleum exploration;
- 1443 (2) the developer has not previously notified the mineral planning authority² in writing of his intention to carry out the development, specifying the nature and location of the development;
- 1444 (3) the relevant period³ has not elapsed;
- 1445 (4) any explosive charge of more than two kilograms would be used;
- 1446 (5) any excavation other than the drilling of boreholes or the carrying out of seismic surveys⁴ would exceed 10 metres in depth or 12 square metres in surface area; or
- 1447 (6) any structure⁵ assembled or provided would exceed 12 metres in height⁶.

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 22, Class B: see PARA 388 ante.

² For the meaning of 'mineral planning authority' see PARA 29 ante.

³ For the meaning of 'relevant period' see PARA 389 note 6 ante.

4 le any excavation referred to in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 22, Class B(c): see PARA 388 ante at head (3) in the text.

5 For the meaning of 'structure' see PARA 388 note 2 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 22 para B.1. For the meaning of references to the height etc of a building see PARA 266 note 7 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(W) Part 23: Removal of Material from Mineral-working Deposits/391. Class A; permitted development.

(W) PART 23: REMOVAL OF MATERIAL FROM MINERAL-WORKING DEPOSITS

391. Class A; permitted development.

The removal of material of any description from a stockpile¹ is permitted development².

No specific provision is made with regard to development not permitted by Class A.

1 For these purposes, 'stockpile' means a mineral-working deposit consisting primarily of minerals which have been deposited for the purposes of their processing or sale: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 23 para C.

2 Ibid Sch 2 Pt 23, Class A. As to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them

from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(W) Part 23: Removal of Material from Mineral-working Deposits/392. Class B; permitted development and special conditions to which it is subject.

392. Class B; permitted development and special conditions to which it is subject.

The removal of material of any description from a mineral-working deposit other than a stockpile¹ is permitted development². Development is so permitted, however, subject to the following conditions:

- 1448 (1) it must be carried out in accordance with the details given in the notice sent³ to the mineral planning authority⁴, unless that authority has agreed otherwise in writing;
- 1449 (2) if the mineral planning authority so requires, the developer must, within a period of three months from the date of the requirement, or such other longer period as that authority may provide, submit to it for approval a scheme providing for the restoration and aftercare of the site;
- 1450 (3) where such a scheme is required, the site must be restored and aftercare must be carried out in accordance with the provisions of the approved scheme;
- 1451 (4) development may not be commenced until the relevant period⁵ has elapsed⁶.

1 For the meaning of 'stockpile' see PARA 391 note 1 ante.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 23, Class B. As to development not permitted by Sch 2 Pt 23, Class B see PARA 393 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

3 I.e the notice referred to in ibid Sch 2 Pt 23 para B.1(a): see PARA 393 post at head (1) in the text.

4 For the meaning of 'mineral planning authority' see PARA 29 ante.

5 For these purposes, 'relevant period' means the period elapsing (1) where a direction is not issued under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 7 (see PARA 264 ante), 28 days after the notification referred to in Sch 2 Pt 23 para B.1(a) or, if earlier, on the date on which the mineral planning authority notifies the developer in writing that it will not issue such a direction; or (2) where a direction is issued under art 7, 28 days from the date on which notice of that direction is sent to the Secretary of State or, in relation to Wales, to the National Assembly for Wales, or, if earlier, the date on which the mineral planning authority notifies the developer that the Secretary of State or the Assembly has disallowed the direction: Sch 2 Pt 23 para B.3. As to the Secretary of State and the Assembly see PARAS 19-20 ante.

6 Ibid Sch 2 Pt 23 para B.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(W) Part 23: Removal of Material from Mineral-working Deposits/393. Development not permitted by Class B.

393. Development not permitted by Class B.

Development is not permitted by Class B¹ if:

- 1452 (1) the developer has not previously notified the mineral planning authority² in writing of his intention to carry out development together with the appropriate details³;
- 1453 (2) the deposit covers a ground area exceeding 2 hectares, unless the deposit contains no mineral or other material which was deposited on the land more than five years before the development; or
- 1454 (3) the deposit derives from the carrying out of any permitted agricultural⁴ operations⁵.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 23, Class B: see PARA 392 ante.

2 For the meaning of 'mineral planning authority' see PARA 29 ante.

3 For these purposes, 'appropriate details' means the nature of the development, the exact location of the mineral-working deposit from which the material would be removed, the proposed means of vehicular access to the site at which the development is to be carried out, and the earliest date at which any mineral presently contained in the deposit was deposited on the land: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 23 para B.3.

4 Ie any operations permitted by ibid Sch 2 Pt 6 (as amended) (see PARAS 302-309 ante) or any Class in a previous development order which it replaces.

5 Ibid Sch 2 Pt 23 para B.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of

buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(X) Part 24: Development by Electronic Communications Code Operators/394. Class A; permitted development.

(X) PART 24: DEVELOPMENT BY ELECTRONIC COMMUNICATIONS CODE OPERATORS

394. Class A; permitted development.

Development by or on behalf of a electronic communications code operator¹ for the purpose of the operator's electronic communications network in, on, over or under land controlled by that operator² or in accordance with the electronic communications code, consisting of:

- 1455 (1) the installation, alteration or replacement of any electronic communications apparatus;
- 1456 (2) the use of land in an emergency for a period not exceeding six months to station and operate movable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of movable structures on the land for the purposes of that use; or
- 1457 (3) development ancillary to radio equipment housing³,

is permitted development⁴.

1 As to the electronic communications code see TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

2 For these purposes, 'land controlled by the operator' means land occupied by the operator in right of a freehold interest or a leasehold interest under a lease granted for a term of not less than ten years: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 24 para A.4 (Sch 2 Pt 24 substituted in relation to England by SI 2001/2718 and in relation to Wales by SI 2002/1878).

3 For these purposes, 'development ancillary to radio equipment housing' means the construction, installation, alteration or replacement of structures, equipment or means of access which are ancillary to and reasonably required for the purposes of the radio equipment housing: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.4 (as substituted: see note 2 supra).

4 Ibid Sch 2 Pt 24, Class A (as substituted (see note 2 supra); amended by SI 2003/2155; SI 2004/945). As to development not permitted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24, Class A (as so substituted and amended) see PARA 396 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 395 post; and as to directions restricting permitted development see PARA 258 et seq ante. For government guidance in relation to England see *PPG 8--Telecommunications* and in relation to Wales see *TAN 19--Telecommunications* (2002); and as to the status of such guidance see generally para 9 ante. See also Shiner and Rosenberg 'Challenging Mobile Phone Masts' 155 NLJ 890.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(X) Part 24: Development by Electronic Communications Code Operators/395. Special conditions to which development permitted by Class A is subject.

395. Special conditions to which development permitted by Class A is subject.

Development is permitted by Class A¹ subject to the following conditions:

- 1458 (1) in the case of development consisting of the installation, alteration or replacement of any electronic communications apparatus² or development ancillary to radio equipment housing³, that:
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274. (a) any antenna or supporting apparatus, radio equipment housing or development ancillary to radio equipment housing constructed, installed, altered or replaced on a building⁴ in accordance with that permission must, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building⁵;
275. (b) any apparatus or structure provided in accordance with that permission must be removed from the land, building or structure on which it is situated, either, if such development was carried out in an emergency on any article 1(5) land⁶ or on any land which is, or is within, a site of special scientific interest⁷, at the expiry of the relevant period⁸ or, in any other case, as soon as reasonably practicable after it is no longer required for electronic communications purposes⁹, and such land, building or structure must be restored to its condition before the development took place, or to any other condition as may be agreed in writing between the local planning authority¹⁰ and the developer¹¹;
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- 1459 (2) in the case of development consisting of the use of land in an emergency for a period not exceeding six months to station and operate movable electronic communications apparatus required for the replacement of unserviceable electronic communications apparatus, including the provision of movable structures on the land for the purposes of that use¹², that any apparatus or structure provided in accordance with that permission must at the expiry of the relevant period be removed from the land and the land restored to its condition before the development took place¹³;
- 1460 (3) except in case of emergency, in the case of development falling within any of the permitted categories¹⁴, either on article 1(5) land or on land which is, or is within, a site of special scientific interest¹⁵, or on any other land and consisting of the construction, installation, alteration or replacement of a mast¹⁶ or of an antenna on a building or structure other than a mast where the antenna, including any

supporting structure, would exceed the height¹⁷ of the building or structure at the point where it is installed or to be installed by 4 metres or more, or of a public call box, or of radio equipment housing with a volume in excess of 2.5 cubic metres, or of development ancillary to radio equipment housing¹⁸, that:

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- 276. (a) the developer must give notice of the proposed development to any person other than the developer who is an owner¹⁹ of the land to which the development relates, or a tenant²⁰, before making the application required by head (c) below, by serving a developer's notice²¹ on every such person whose name and address is known to him and, where he has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement²²;
- 277. (b) where the proposed development consists of the installation of a mast within 3 kilometres of the perimeter of an aerodrome²³, the developer must notify the Civil Aviation Authority²⁴, the Secretary of State for Defence or the aerodrome operator²⁵, as appropriate, before making the application required by head (c) below²⁶;
- 278. (c) before beginning the development, the developer must apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development²⁷;
- 279. (d) the application must be accompanied by a written description of the proposed development and a plan indicating its proposed location together with any fee required to be paid²⁸ and by the required evidence²⁹;
- 280. (e) upon receipt of the application under head (d) above the local planning authority must consult the appropriate authority or person³⁰ and give the prescribed notices³¹;
- 281. (f) the local planning authority must take into account any representations made to it as a result of consultations or notices given under these provisions when determining the application made under head (c) above³²;
- 282. (g) the development may not be begun before the occurrence of one of the prescribed events³³;
- 283. (h) the development must, except to the extent that the local planning authority otherwise agrees in writing, be carried out either, where prior approval has been given³⁴, in accordance with the details approved or, in any other case, in accordance with the details submitted with the application³⁵;
- 284. (i) the development must be begun either, where prior approval has been given³⁶, not later than the expiration of five years beginning with the date on which the approval was given or, in any other case, not later than the expiration of five years beginning with the date on which the local planning authority was given the information referred to in head (d) above³⁷;

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- 1461 (4) in a case of emergency, in the case of development falling within any of the permitted categories³⁸, that the operator must give written notice to the local planning authority of such development as soon as possible after the emergency begins³⁹.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 24, Class A (as substituted and amended): see PARA 394 ante.

2 Ie development falling within ibid Sch 2 Pt 24, Class A(a) (as substituted and amended): see PARA 394 ante at head (1) in the text.

3 Ie development falling within ibid Sch 2 Pt 24, Class A(c) (as substituted): see PARA 394 ante at head (3) in the text. For the meaning of 'development ancillary to radio equipment housing' see PARA 394 note 3 ante.

4 For the meaning of 'building' see PARA 255 note 10 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.2(1) (Sch 2 Pt 24 substituted in relation to England by SI 2001/2718; and in relation to Wales by SI 2002/1878).

6 For the meaning of 'article 1(5) land' see PARA 256 ante.

7 For the meaning of 'site of special scientific interest' see PARA 264 note 7 ante.

8 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.2(2)(a) (as substituted: see note 5 supra). 'Relevant period' means a period which expires (1) six months from the commencement of the construction, installation, alteration or replacement of any apparatus or structure permitted by Sch 2 Pt 24, Class A(a) (as substituted and amended) or Class A(c) (as substituted) or from the commencement of the use permitted by Class A(b) (as substituted and amended), as the case may be; or (2) when the need for such apparatus, structure or use ceases, whichever occurs first: Sch 2 Pt 24 para A.4 (as so substituted).

9 Ibid Sch 2 Pt 24 para A.2(2)(b) (as substituted (see note 5 supra); amended by SI 2003/2155).

10 As to local planning authorities see PARA 28 et seq ante; and as to the use of electronic communications see PARA 257 ante.

11 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.2(2) (as substituted and amended: see notes 5, 9 supra).

12 Ie development falling within ibid Sch 2 Pt 24, Class A(b) (as substituted and amended): see PARA 394 ante at head (2) in the text.

13 Ibid Sch 2 Pt 24 para A.2(3) (as substituted: see note 5 supra).

14 Ie development permitted by ibid Sch 2 Pt 24, Class A (as substituted and amended): see PARA 394 ante at heads (1)-(3) in the text.

15 Ibid Sch 2 Pt 24 para A.2(4)(a) (as substituted: see note 5 supra).

16 For these purposes, 'mast' means a radio mast or a radio tower: ibid Sch 2 Pt 24 para A.4 (as substituted: see note 5 supra).

17 For the meaning of references to the height of a building see PARA 266 note 7 ante.

18 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.2(4)(b) (as substituted: see note 5 supra).

19 For these purposes, 'owner' means any person who is the estate owner in respect of the fee simple, or who is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: ibid Sch 2 Pt 24 para A.4 (as substituted: see note 5 supra).

20 For these purposes, 'tenant' means the tenant of an agricultural holding any part of which is comprised in the land to which the application relates: ibid Sch 2 Pt 24 para A.4 (as substituted: see note 5 supra).

21 For these purposes, 'developer's notice' means a notice signed and dated by or on behalf of the developer and containing (1) the name of the developer; (2) the address or location of the proposed development; (3) a description of the proposed development (including its siting and appearance and the height of any mast); (4) a statement that the developer will apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the siting and appearance of the development; (5) the name and address of the local planning authority to which the application will be made; (6) a statement that the application will be available for public inspection at the offices of the local planning authority during usual office hours; (7) a statement that any person who wishes to make representations about the siting and appearance of the proposed development may do so in writing to the local planning authority; (8) the date by which any such representations should be received by the local planning authority, being a date not less than 14 days from the date of the notice; and (9) the address to which such representations should be made: ibid Sch 2 Pt 24 para A.4 (as substituted: see note 5 supra).

22 Ibid Sch 2 Pt 24 para A.3(1) (as substituted: see note 5 supra).

23 For the meaning of 'aerodrome' see PARA 258 note 12 ante.

24 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

25 For these purposes, 'aerodrome operator' means the person for the time being having the management of an aerodrome or, in relation to a particular aerodrome, the management of that aerodrome: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.4 (as substituted: see note 5 supra).

26 Ibid Sch 2 Pt 24 para A.3(2) (as substituted: see note 5 supra).

27 Ibid Sch 2 Pt 24 para A.3(3) (as substituted: see note 5 supra).

28 As to the required fee see PARA 465 post.

29 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(4) (as substituted: see note 5 supra). The evidence referred to in the text is evidence: (1) where Sch 2 Pt 24 para A.3(1) (as so substituted) applies (see head (3)(a) in the text), evidence that the requirements of Sch 2 Pt 24 para A.3(1) (as so substituted) have been satisfied; and (2) where Sch 2 Pt 24 para A.3(2) (as so substituted) applies (see head (3)(b) in the text), by evidence that the Civil Aviation Authority, the Secretary of State for Defence or the aerodrome operator, as the case may be, has been notified of the proposal: Sch 2 Pt 24 para A.3(4)(b), (c) (as so substituted).

30 Subject to ibid Sch 2 Pt 24 para A.3(7)(c), (d) (as substituted) (see note 33 heads (3)-(4) infra), upon receipt of the application the local planning authority must, for development plan in force in the area in which the category set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10, Table (as amended) (see PARA 475 post), consult the authority or person mentioned in relation to that category, except where (1) the local planning authority is the authority so mentioned; or (2) the authority or person so mentioned has advised the local planning authority that it does not wish to be consulted, and must give the consultees at least 14 days within which to comment: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(5)(a) (as substituted: see note 5 supra).

31 See ibid Sch 2 Pt 24 para A.3(5)(b)-(d) (as substituted: see note 5 supra). In the case of development which does not accord with the provisions of the development plan in force in the area in which the land to which the application relates is situated or which would affect a right of way to which the Wildlife and Countryside Act 1981 Pt III (ss 53-66) (as amended) (public rights of way: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 591 et seq) applies, upon receipt of the application the local planning authority must give notice of the proposed development, in the appropriate form set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, Sch 3 (as amended), (1) by site display in at least one place on or near the land to which the application relates for not less than 21 days; and (2) by local advertisement: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(5)(b) (as so substituted). In the case of development which does not fall within Sch 2 Pt 24 para A.3(5)(b) (as so substituted) but which involves development carried out on a site having an area of one hectare or more, the local planning authority must give notice of the proposed development, in such appropriate form, (a) by site display in at least one place on or near the land to which the application relates for not less than 21 days or by serving notice on any adjoining owner or occupier; and (b) by local advertisement: Sch 2 Pt 24 para A.3(5)(c) (as so substituted). In the case of development which does not fall within either of those provisions, the local planning authority must give notice of the proposed development, in such appropriate form, (i) by site display in at least one place on or near the land to which the application relates for not less than 21 days; or (ii) by serving the notice on any adjoining owner or occupier: Sch 2 Pt 24 para A.3(5)(d) (as so substituted). For these purposes, 'by local advertisement' means by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and 'by site display' means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public: Sch 2 Pt 24 para A.4 (as so substituted).

32 Ibid Sch 2 Pt 24 para A.3(6) (as substituted: see note 5 supra).

33 Ibid Sch 2 Pt 24 para A.3(7) (as substituted: see note 5 supra). The events referred to in the text are: (1) the receipt by the applicant from the local planning authority of a written notice of its determination that such prior approval is not required; (2) where the local planning authority gives the applicant written notice that such prior approval is required, the giving of that approval to the applicant, in writing, within a period of 56 days beginning with the date on which it received his application; (3) where the local planning authority gives the applicant written notice that such prior approval is required, the expiry of a period of 56 days beginning with the date on which the local planning authority received his application without the local planning authority notifying the applicant, in writing, that such approval is given or refused; or (4) the expiry of a period of 56 days beginning with the date on which the local planning authority received the application without the local planning authority notifying the applicant, in writing, of its determination as to whether such prior approval is required: Sch 2 Pt 24 para A.3(7)(a)-(d) (as so substituted). A failure by the local planning authority to reach a decision within the 56-day period is not necessarily unreasonable: see eg *R (on the application of Richards) v South Bucks District Council* [2004] EWHC 2145 (Admin), [2004] All ER (D) 156 (Sep). Where prior approval for the installation of a mobile telephone mast is refused but notification to that effect is served on the developer

outside the 56-day period mentioned in head (3) *supra*, the developer is not in breach of planning control if it installs the mast: see *R (on the application of Nunn) v First Secretary of State* [2005] EWCA Civ 101, [2005] 2 All ER 987, (2005) Times, 23 February. An inspector subsequently appointed to determine an appeal against enforcement notices served by the local planning authority in the belief that such a breach has taken place has no jurisdiction to consider objections to the siting of the mast: *R (on the application of Nunn) v First Secretary of State* *supra*.

As to the consideration of alternative sites see *Phillips v First Secretary of State* [2003] EWHC 2415 (Admin), [2003] All ER (D) 362 (Oct); *St Leger-Davey v First Secretary of State* [2004] EWCA Civ 1612, [2005] 2 P & CR 86, [2004] All ER (D) 08 (Dec); and as to the extent to which local concerns about possible health risks can be taken into account see *T-Mobile (UK) Ltd v First Secretary of State* [2004] EWHC 1713 (Admin), (2004) Times, 8 July, [2004] All ER (D) 253 (Jun); *affd* [2004] EWCA Civ 1763, (2004) Times, 16 November, [2004] All ER (D) 208 (Nov).

34 Ibid as mentioned in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(7)(b) (as substituted): see note 33 head (2) *supra*.

35 Ibid Sch 2 Pt 24 para A.3(8) (as substituted: see note 5 *supra*). For a case where enforcement action was upheld when the finished structure was higher than indicated in the details supplied see *Wandsworth London Borough Council v First Secretary of State* [2003] EWHC 622 (Admin), [2004] 1 P & CR 507, [2003] All ER (D) 280 (Jan). See also *R (on the application of Orange Personal Communications Services Ltd) v Islington London Borough Council* [2005] EWHC 963 (Admin), [2005] 20 EG 261 (CS), [2005] All ER (D) 94 (May) (subsequent designation of conservation area did not take away planning permission previously granted and defined in application for prior approval).

36 See note 34 *supra*.

37 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(9) (as substituted: see note 5 *supra*).

38 See note 14 *supra*.

39 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.3(10) (as substituted: see note 5 *supra*).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

395 Special conditions to which development permitted by Class A is subject

NOTE 33--Where prior approval for general permitted development has been sought and granted, or where notice has been given that prior approval is not required, the right to carry out the development is not defeated by the subsequent designation of the site in question as a conservation area: *R (on the application of Orange Personal Communications Services Ltd) v Islington LBC* (2006) Times, 24 January, CA.

DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(X) Part 24: Development by Electronic Communications Code Operators/396. Development not permitted by Class A.

396. Development not permitted by Class A.

Development consisting of the installation, alteration or replacement of any electronic communications apparatus¹ is not permitted by Class A² if:

- 1462 (1) in the case of the installation of apparatus, other than on a building³ or other structure, the apparatus, excluding any antenna⁴, would exceed a height of 15 metres above ground level;
- 1463 (2) in the case of the alteration or replacement of apparatus already installed, other than on a building or other structure, the apparatus, excluding any antenna, would when altered or replaced exceed the height of the existing apparatus or a height of 15 metres above ground level, whichever is the greater;
- 1464 (3) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the height of the apparatus taken by itself would exceed:
 - 201 285. (a) 15 metres, where it is installed, or is to be installed, on a building or other structure which is 30 metres or more in height⁵; or
 - 286. (b) 10 metres in any other case;
- 202 1465 (4) in the case of the installation, alteration or replacement of apparatus on a building or other structure, the highest part of the apparatus when installed, altered or replaced would exceed the height of the highest part of the building or structure by more than:
 - 203 287. (a) 10 metres, in the case of a building or structure which is 30 metres or more in height;
 - 288. (b) 8 metres, in the case of a building or structure which is more than 15 metres but less than 30 metres in height; or
 - 289. (c) 6 metres in any other case;
- 204 1466 (5) in the case of the installation, alteration or replacement of apparatus, other than an antenna, on a mast⁶, the height of the mast would, when the apparatus was installed, altered or replaced, exceed any relevant height limit specified in heads (1) to (4) above⁷ in respect of apparatus;
- 1467 (6) in the case of the installation, alteration or replacement of any apparatus other than:
 - 205 290. (a) a mast;
 - 291. (b) an antenna;
 - 292. (c) a public call box;
 - 293. (d) any apparatus which does not project above the level of the surface of the ground; or
 - 294. (e) radio equipment housing,
- 206 1468 the ground or base area of the structure would exceed 1.5 square metres;
- 1469 (7) in the case of the installation, alteration or replacement of an antenna on a building or structure, other than a mast, which is less than 15 metres in height, on a mast located on such a building or structure or, where the antenna is to be

- located below a height of 15 metres above ground level, on a building or structure (other than a mast) which is 15 metres or more in height:
- 207
295. (a) the antenna is to be located on a wall or roof slope facing a highway which is within 20 metres of the building or structure on which the antenna is to be located;
296. (b) in the case of dish antennas, the size of any dish would exceed 0.9 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 1.5 metres, when measured in any dimension;
297. (c) in the case of antennas other than dish antennas, the development, other than the installation, alteration or replacement of one small antenna⁸ would result in the presence on the building or structure of more than two antenna systems⁹; or
298. (d) the building or structure is a listed building¹⁰ or a scheduled monument¹¹;
- 208
- 1470 (8) in the case of the installation, alteration or replacement of an antenna on a building or structure, other than a mast, which is 15 metres or more in height, or on a mast located on such a building or structure, where the antenna is located at a height of 15 metres or above, measured from ground level:
- 209
299. (a) in the case of dish antennas, the size of any dish would exceed 1.3 metres or the aggregate size of all of the dishes on the building, structure or mast would exceed 3.5 metres, when measured in any dimension;
300. (b) in the case of antennas other than dish antennas, the development, other than the installation, alteration or replacement of a maximum of two small antennas, would result in the presence on the building or structure of more than three antenna systems; or
301. (c) the building or structure is a listed building or a scheduled monument;
- 210
- 1471 (9) in the case of development, other than the installation, alteration or replacement of one small antenna on a dwelling house¹² or within the curtilage¹³ of a dwelling house, on any article 1(5) land¹⁴ or any land which is, or is within, a site of special scientific interest¹⁵, it would consist of:
- 211
302. (a) the installation or alteration of an antenna or of any apparatus which includes or is intended for the support of such an antenna; or
303. (b) the replacement of such an antenna or such apparatus by an antenna or apparatus which differs from that which is being replaced,
- 212
- 1472 unless the development is carried out in an emergency;
- 1473 (10) it would consist of the installation, alteration or replacement of system apparatus within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989¹⁶;
- 1474 (11) in the case of the installation of a mast, on a building or structure which is less than 15 metres in height, such a mast would be within 20 metres of a highway;
- 1475 (12) in the case of the installation, alteration or replacement of radio equipment housing:
- 213
304. (a) the development is not ancillary to the use of any other electronic communications apparatus;
305. (b) the development would exceed 90 cubic metres or, if located on the roof of a building, the development would exceed 30 cubic metres; or
306. (c) on any article 1(5) land, or on any land which is, or is within, a site of special scientific interest, the development would exceed 2.5 cubic metres, unless the development is carried out in an emergency;
- 214

- 1476 (13) in the case of the installation, alteration or replacement on a dwelling house or within the curtilage of a dwelling house of any electronic communications apparatus, that apparatus:
- 215
307. (a) is not a small antenna;
308. (b) being a small antenna, would result in the presence on that dwelling house or within the curtilage of that dwelling house of more than one such antenna; or
309. (c) being a small antenna, is to be located on a roof or on a chimney so that the highest part of the antenna would exceed in height the highest part of that roof or chimney respectively;
- 216
- 1477 (14) in the case of the installation, alteration or replacement on article 1(5) land of a small antenna on a dwelling house or within the curtilage of a dwelling house, the antenna is to be located:
- 217
310. (a) on a chimney;
311. (b) on a building which exceeds 15 metres in height;
312. (c) on a wall or roof slope which fronts a highway; or
313. (d) in the Broads¹⁷, on a wall or roof slope which fronts a waterway;
- 218
- 1478 (15) in the case of the installation, alteration or replacement of a small antenna on a building which is not a dwelling house or within the curtilage of a dwelling house:
- 219
314. (a) the building is on article 1(5) land;
315. (b) the building is less than 15 metres in height, and the development would result in the presence on that building of more than one such antenna; or
316. (c) the building is 15 metres or more in height, and the development would result in the presence on that building of more than two such antennas¹⁸.
- 220

Nor are the development rights under Class A available to regularise development which has been carried out other than in accordance with the prescribed requirements¹⁹.

1 Ie development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24, Class A(a) (as substituted and amended): see PARA 394 ante at head (1) in the text.

2 Ie by *ibid* Sch 2 Pt 24, Class A (as substituted and amended): see PARA 394 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 The upright supports of an antenna are part of the antenna, and not 'apparatus', for these purposes: see *Airwave mm02 Ltd v First Secretary of State* [2005] 28 LS Gaz R 33, [2005] All ER (D) 371 (Jun).

5 For the meaning of references to the height of a building etc see PARA 266 note 7 ante.

6 For the meaning of 'mast' see PARA 395 note 16 ante.

7 Ie specified in respect of apparatus in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.1(a), (b), (c) and (d) (Sch 2 Pt 24 substituted in relation to England by SI 2001/2718 and in respect of Wales by SI 2002/1878); and for the purposes of applying the limit specified in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.1(c) (as so substituted) (see head (3) in the text), the words 'taken by itself' are to be omitted: Sch 2 Pt 24 para A.1(e) (as so substituted).

8 For these purposes, 'small antenna' means an antenna which: (1) is for use in connection with a telephone system operating on a point to fixed multi-point basis; (2) does not exceed 50 centimetres in any linear

measurement; and (3) does not, in two-dimensional profile, have an area exceeding 1,591 square centimetres, and any calculation for the purposes of heads (2) and (3) *supra* must exclude any feed element, reinforcing rim mountings and brackets: *ibid* Sch 2 Pt 24 para A.4 (as substituted: see note 7 *supra*).

9 For these purposes, 'antenna system' means a set of antennas installed on a building or structure and operated by a single electronic communications code operator or in accordance with the electronic communications code: *ibid* Sch 2 Pt 24 para A.4 (as substituted (see note 7 *supra*); definition amended by SI 2003/2155; SI 2004/945). As to the electronic communications code see TELECOMMUNICATIONS vol 97 (2010) PARA 151 *et seq*.

10 For the meaning of 'listed building' see PARA 259 note 11 *ante*, PARA 1091 *post*.

11 For these purposes, and unless the context otherwise requires, 'scheduled monument' has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 s 1(11) (schedule of monuments: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 *et seq*): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2).

12 For the meaning of 'dwelling house' see PARA 262 note 6 *ante*.

13 For the meaning of 'curtilage' see PARA 223 note 13 *ante*.

14 For the meaning of 'article 1(5) land' see PARA 256 *ante*.

15 For the meaning of 'site of special scientific interest' see PARA 264 note 7 *ante*.

16 *le* within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6) (definitions of driver information systems etc): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651.

17 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735.

18 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 para A.1 (as substituted (see note 7 *supra*); amended by SI 2003/2155).

19 See *Airwave mm02 Ltd v First Secretary of State* [2005] 28 LS Gaz R 33, [2005] All ER (D) 371 (Jun) (rights under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24 (as substituted and amended) do not include the retention of a mast that has previously been installed unlawfully; in those circumstances the claimant must apply for normal retrospective planning permission).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

396 Development not permitted by Class A

NOTES 4, 19--*Airwave*, cited, reported at [2005] EWHC 1701 (Admin), [2006] JPL 362.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF

PERMITTED DEVELOPMENT/(Y) Part 25: Other Telecommunications Development/397. Class A; permitted development and conditions to which it is subject.

(Y) PART 25: OTHER TELECOMMUNICATIONS DEVELOPMENT

397. Class A; permitted development and conditions to which it is subject.

The installation, alteration or replacement on any building¹ or other structure of a height² of 15 metres or more of a microwave antenna³ and any structure intended for the support of a microwave antenna is permitted development⁴.

Development is so permitted, however, subject to the following conditions:

- 1479 (1) the antenna must, so far as is practicable, be sited so as to minimise its effect on the external appearance of the building or structure on which it is installed;
- 1480 (2) an antenna no longer needed for the reception or transmission of microwave radio energy must be removed from the building or structure as soon as reasonably practicable⁵.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 For the meaning of references to the height of a building see PARA 266 note 7 ante.

3 For these purposes, unless the context otherwise requires, 'microwave antenna' means a satellite antenna or a terrestrial microwave antenna; and 'terrestrial microwave antenna' means apparatus designed for transmitting or receiving terrestrial microwave radio energy between two fixed points: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 1(2). For the meanings of 'microwave' and 'satellite antenna' see PARA 262 note 13 ante.

4 Ibid art 3(1), Sch 2 Pt 25, Class A. As to development not permitted by Sch 2 Pt 25, Class A see PARA 398 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 25 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

397 Class A; permitted development and conditions to which it is subject

TEXT AND NOTES--Now, head (2) an antenna no longer needed for reception or transmission purposes shall be removed from the building or structure as soon as reasonably practicable: SI 1995/418 Sch 2 Pt 25 para A.2 (replaced by SI 2006/124).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Y) Part 25: Other Telecommunications Development/398. Development not permitted by Class A.

398. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1481 (1) the building² is a dwelling house³ or the building or other structure is within the curtilage⁴ of a dwelling house;
- 1482 (2) it would consist of development of a kind described in Class A of Part 24 above⁵;
- 1483 (3) the development would result in the presence on the building or structure of more than two microwave antennas⁶;
- 1484 (4) in the case of a satellite antenna⁷, the size of the antenna, including its supporting structure but excluding any projecting feed element, would exceed 1.3 metres;
- 1485 (5) in the case of a terrestrial microwave antenna⁸:
- 221 317. (a) the size of the antenna, when measured in any dimension but excluding any projecting feed element, would exceed 1.3 metres; and
- 318. (b) the highest part of the antenna or its supporting structure would be more than 3 metres higher than the highest part of the building or structure on which it is installed or is to be installed;
- 222 1486 (6) it is on article 1(5) land⁹;
- 1487 (7) it would consist of the installation, alteration or replacement of system apparatus¹⁰ within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989¹¹.

1 Ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 25, Class A: see PARA 397 ante.

2 For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meaning of 'dwelling house' see PARA 262 note 6 ante.

4 For the meaning of 'curtilage' see PARA 223 note 13 ante.

5 Ie described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 24, Class A (as substituted): see PARA 394 ante.

6 For the meaning of 'microwave antenna' see PARA 397 note 3 ante.

7 For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

8 For the meaning of 'terrestrial microwave antenna' see PARA 397 note 3 ante.

9 For the meaning of 'article 1(5) land' see PARA 256 ante.

10 Ie system apparatus within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651.

11 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 25 para A.1 (amended by SI 1998/462).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

398 Development not permitted by Class A

TEXT AND NOTES--Replaced.

Development is not permitted by Class A¹ if:

- 1 (1) the building² is a dwelling house³ or the building or other structure is within the curtilage⁴ of a dwelling house;
- 2 (2) it would consist of development of a kind described in Class A of Part 24 above⁵;
- 3 (3) it would consist of the installation, alteration or replacement of system apparatus⁶;
- 4 (4) it would result in the presence on the building or structure of more than four antennas;
- 5 (5) in the case of an antenna installed on a chimney, the length of the antenna⁷ would exceed 60cm;
- 6 (6) in all other cases, the length of the antenna would exceed 130cm;
- 7 (7) it would consist of the installation of an antenna with a cubic capacity in excess of 35 litres;
- 8 (8) the highest part of the antenna or its supporting structure would be more than three metres higher than the highest part of the building or structure on which it is installed or is to be installed;
- 9 (9) in the case of article 1(5) land⁸, it would consist of the installation of an antenna:
- 1
 1. (a) on a chimney, wall or roof slope which faces onto, and is visible from, a highway;
 2. (b) in the Broads⁹, on a chimney, wall or roof slope which faces onto, and is visible from, a waterway¹⁰.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 25, Class A: see PARA 397.

2 For the meaning of 'building' see PARA 255 note 10.

3 For the meaning of 'dwelling house' see PARA 262 note 6.

4 For the meaning of 'curtilage' see PARA 223 note 13.

5 le described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 24, Class A (as substituted): see PARA 394.

6 'System apparatus' means within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6).

7 The length of an antenna is to be measured in any linear direction and will exclude any projecting feed element, reinforcing rim, mounting or brackets: SI 1995/418 Sch 2 Pt 25 para A.3 (added by SI 2005/2935 (England), SI 2006/124 (Wales)).

8 For the meaning of 'article 1(5) land' see PARA 256.

9 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735).

10 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 25 para A.1 (substituted by SI 2005/2935 (England), SI 2006/124 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Y) Part 25: Other Telecommunications Development/399. Class B; permitted development and special conditions to which it is subject.

399. Class B; permitted development and special conditions to which it is subject.

The installation, alteration or replacement on any building¹ or other structure of a height² of less than 15 metres of a satellite antenna³ is permitted development⁴.

Development is so permitted, however, subject to the following conditions:

1488 (1) the antenna must, so far as practicable, be sited so as to minimise its effect on the external appearance of the building or structure on which it is installed;

1489 (2) an antenna no longer needed for the reception or transmission of microwave⁵ radio energy must be removed from the building or structure as soon as reasonably practicable⁶.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 For the meaning of references to the height of a building see PARA 266 note 7 ante.

3 For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 25, Class B. As to development not permitted by Sch 2 Pt 25, Class B see PARA 400 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

5 For the meaning of 'microwave' see PARA 262 note 13 ante.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 25 para B.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Y) Part 25: Other Telecommunications Development/400. Development not permitted by Class B.

400. Development not permitted by Class B.

Development is not permitted by Class B¹ if:

- 1490 (1) the building² is a dwelling house³ or the building or other structure is within the curtilage⁴ of a dwelling house;
- 1491 (2) it would consist of development of a kind described in Class A of Part 24 above⁵;
- 1492 (3) it would consist of the installation, alteration or replacement of system apparatus within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989⁶;
- 1493 (4) the size of the antenna, excluding any projecting feed element, reinforcing rim, mountings or brackets, when measured in any dimension would exceed 90 centimetres;
- 1494 (5) the highest part of the antenna to be installed on a roof would, when installed, exceed in height the highest part of the roof;
- 1495 (6) there is any other satellite antenna⁷ on the building or other structure on which the antenna is to be installed;
- 1496 (7) it would consist of the installation of an antenna on a chimney;
- 1497 (8) it would consist of the installation of an antenna on a wall or roof slope which fronts a highway;
- 1498 (9) in the Broads⁸, it would consist of the installation of an antenna on a wall or roof slope which fronts a waterway⁹.

¹ ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 25, Class B: see PARA 399 ante.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ For the meaning of 'dwelling house' see PARA 262 note 6 ante.

⁴ For the meaning of 'curtilage' see PARA 223 note 13 ante.

⁵ ie of a kind described in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 24, Class A (as substituted and amended): see PARA 394 ante.

⁶ ie system apparatus within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651.

7 For the meaning of 'satellite antenna' see PARA 262 note 13 ante.

8 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735).

9 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 25 para B.1 (amended by SI 1998/462; SI 1999/1661).

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

400 Development not permitted by Class B

TEXT AND NOTES--Replaced.

Development is not permitted by Class B¹ if:

- 10 (1) the building² is a dwelling house³ or the building or other structure is within the curtilage⁴ of a dwelling house;
- 11 (2) it would consist of development of a kind described in Class A of Part 24 above⁵;
- 12 (3) it would consist of the installation, alteration or replacement of system apparatus within the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989⁶;
- 13 (4) it would result in the presence on the building or structure of
 - 3 (a) more than two antennas;
 - 4 (b) a single antenna exceeding 100 centimetres in length⁷;
 - 5 (c) two antennas which do not meet the relevant size criteria⁸;
 - 6 (d) an antenna installed on a chimney, where the length of the antenna would exceed 60 centimetres;
 - 7 (e) an antenna installed on a chimney, where the antenna would protrude over the chimney;
 - 8 (f) an antenna with a cubic capacity in excess of 35 litres;
- 4 (5) in the case of an antenna to be installed on a roof without a chimney, the highest part of the antenna would be higher than the highest part of the roof;
- 15 (6) in the case of an antenna to be installed on a roof with a chimney, the highest part of the antenna would be higher than the highest part of the chimney stack, or 60 centimetres measured from the highest part of the ridge tiles of the roof, whichever is the lowest;
- 16 (7) in the case of article 1(5) land⁹, it would consist of the installation of an antenna

9. (a) on a chimney, wall or roof slope which faces onto, and is visible from, a highway;
10. (b) in the Broads¹⁰, on a chimney, wall or roof slope which faces onto, and is visible from, a waterway¹¹.

6

1. In the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 25, Class B: see PARA 399.

2. For the meaning of 'building' see PARA 255 note 10.

3. For the meaning of 'dwelling house' see PARA 262 note 6.

4. For the meaning of 'curtilage' see PARA 223 note 13.

5. In the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 24, Class A (as substituted and amended): see PARA 394.

6. In the meaning of the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651.

7. The length of an antenna is to be measured in any linear direction and will exclude any projecting feed element, reinforcing rim, mounting or brackets: SI 1995/418 Sch 2 Pt 25 para B.4 (added by SI 2005/2935 (England), SI 2006/124 (Wales)).

8. The relevant size criteria are that only one of the antennas may exceed 60 centimetres in length, and any antenna which exceeds 60 centimetres in length must not exceed 100 centimetres in length: SI 1995/418 Sch 2 Pt 25 para B.3 (added by SI 2005/2935 (England), SI 2006/124 (Wales)).

9. The length of an antenna is to be measured in any linear direction and will exclude any projecting feed element, reinforcing rim, mounting or brackets: SI 1995/418 Sch 2 Pt 25 para A.3.

10. As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735).

11. Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 25 para B.1 (substituted by SI 2005/2935 (England), SI 2006/124 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Z) Part 26: Development by English Heritage/401. Class A; permitted development and special condition to which it is subject.

(Z) PART 26: DEVELOPMENT BY ENGLISH HERITAGE

401. Class A; permitted development and special condition to which it is subject.

Development by or on behalf of the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage')¹, consisting of:

- 1499 (1) the maintenance, repair or restoration of any building or monument²;
- 1500 (2) the erection of screens, fences or covers designed or intended to protect or safeguard any building or monument; or
- 1501 (3) the carrying out of works to stabilise ground conditions by any cliff, watercourse or the coastline,

where such works are required for the purposes of securing the preservation of any building or monument, is permitted development³.

Except for development also falling within head (1) above, however, development falling within head (2) above is so permitted subject to the condition that any structure erected in accordance with that permission must be removed at the expiry of a period of six months, or such longer period as the local planning authority⁴ may agree in writing, from the date on which work to erect the structure was begun⁵.

1 As to English Heritage see PARA 1058 post.

2 For these purposes, 'building or monument' means any building or monument in the guardianship of the Historic Buildings and Monuments Commission for England or owned, controlled or managed by the Commission: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 26 para A.3.

3 Ibid Sch 2 Pt 26, Class A. As to development not permitted by Sch 2 Pt 26, Class A see PARA 402 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 26 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(Z) Part 26: Development by English Heritage/402. Development not permitted by Class A.

402. Development not permitted by Class A.

Development consisting of the maintenance, repair or restoration of any building or monument¹ is not permitted by Class A² if the works involve the extension of the building or monument³.

1 I.e. development falling within the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 26, Class A(a): see PARA 401 ante at head (1) in the text.

2 I.e. by Sch 2 Pt 26, Class A: see PARA 401 ante.

- 3 Ibid Sch 2 Pt 26 para A.1. For the meaning of 'building or monument' see PARA 401 note 2 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZA) Part 27: Use by Members of Certain Recreational Organisations/403. Class A; permitted development.

(ZA) PART 27: USE BY MEMBERS OF CERTAIN RECREATIONAL ORGANISATIONS

403. Class A; permitted development.

The use of land by members of a recreational organisation¹ for the purposes of recreation or instruction, and the erection or placing of tents on the land for the purposes of the use, is permitted development².

¹ For these purposes, a 'recreational organisation' is an organisation holding a certificate of exemption under the Public Health Act 1936 s 269 (as amended) (power of local authority to control use of movable dwellings: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 960 et seq): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 27 para A.2.

² Ibid Sch 2 Pt 27, Class A. As to development not permitted by Sch 2 Pt 27, Class A see PARA 404 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZA) Part 27: Use by Members of Certain Recreational Organisations/404. Development not permitted by Class A.

404. Development not permitted by Class A.

Development is not permitted by Class A¹ if the land is a building² or is within the curtilage³ of a dwelling house⁴.

¹ See by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 27, Class A: see PARA 403 ante.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ For the meaning of 'curtilage' see PARA 223 note 13 ante.

⁴ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 27 para A.1. For the meaning of 'dwelling house' see PARA 262 note 6 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZB) Part 28: Development at Amusement Parks/405. Class A; permitted development.

(ZB) PART 28: DEVELOPMENT AT AMUSEMENT PARKS

405. Class A; permitted development.

Development on land used as an amusement park¹ consisting of:

- 1502 (1) the erection of booths or stalls² or the installation of plant or machinery³ to be used for or in connection with the entertainment of the public within the amusement park; or
- 1503 (2) the extension, alteration or replacement of any existing⁴ booths or stalls, plant or machinery so used,

is permitted development⁵.

1 For these purposes, 'amusement park' means an inclosed area of open land, or any part of a seaside pier, which is principally used, other than by way of a temporary use, as a funfair or otherwise for the purposes of providing public entertainment by means of mechanical amusements and sideshows; but, where part only of an inclosed area is commonly so used as a funfair or for such public entertainment, only the part so used is to be regarded as an amusement park: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 28 para A.2.

2 For these purposes, 'booths or stalls' includes buildings or structures similar to booths or stalls: ibid Sch 2 Pt 28 para A.2. For the meaning of 'building' see PARA 255 note 10 ante.

3 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

4 For the meaning of 'existing' see PARA 255 note 10 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 28, Class A. As to development not permitted by Sch 2 Pt 28, Class A see PARA 406 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZB) Part 28: Development at Amusement Parks/406. Development not permitted by Class A.

406. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1504 (1) the plant or machinery²:
- 223

319. (a) would, if the land or pier is within 3 kilometres of the perimeter of an aerodrome³, exceed a height⁴ of 25 metres or the height of the highest existing⁵ structure, whichever is the lesser; or
320. (b) would in any other case exceed a height of 25 metres;
- 224 1505 (2) in the case of an extension to an existing building⁶ or structure, that building or structure would as a result exceed 5 metres above ground level or the height of the roof of the existing building or structure, whichever is the greater; or
- 1506 (3) in any other case, the height of the building or structure erected, extended, altered or replaced would exceed 5 metres above ground level⁷.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 28, Class A: see PARA 405 ante.

2 For the meanings of 'plant' and 'machinery' see PARA 255 note 10 ante.

3 For the meaning of 'aerodrome' see PARA 258 note 12 ante.

4 For the meaning of references to the height of plant or machinery see PARA 266 note 7 ante.

5 For the meaning of 'existing' see PARA 255 note 10 ante.

6 For the meaning of 'building' see PARA 255 note 10 ante.

7 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 28 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZC) Part 29: Driver Information Systems/407. Class A; permitted development and special conditions to which it is subject.

(ZC) PART 29: DRIVER INFORMATION SYSTEMS

407. Class A; permitted development and special conditions to which it is subject.

The installation, alteration or replacement of system apparatus¹ by or on behalf of a driver information system operator² is permitted development³.

Development is so permitted, however, subject to the following conditions:

- 1507 (1) any system apparatus must, so far as practicable, be sited so as to minimise its effect on the external appearance of any building⁴ or other structure on which it is installed;
- 1508 (2) any system apparatus which is no longer needed for a driver information system must be removed as soon as reasonably practicable⁵.

1 For these purposes, 'system apparatus' has the meaning assigned to that term by the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 8(6) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 651): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 29 para A.3.

2 For these purposes, 'driver information system operator' means a person granted an operator's licence under the Road Traffic (Driver Licensing and Information Systems) Act 1989 s 10 (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 653): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 29 para A.3.

3 Ibid Sch 2 Pt 29, Class A. As to development not permitted by Sch 2 Pt 29, Class A see PARA 408 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

4 For the meaning of 'building' see PARA 255 note 10 ante.

5 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 29 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZC) Part 29: Driver Information Systems/408. Development not permitted by Class A.

408. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1509 (1) in the case of the installation, alteration or replacement of system apparatus² other than on a building³ or other structure:

321. (a) the ground or base area of the system apparatus would exceed 1.5 square metres; or
322. (b) the system apparatus would exceed a height of 15 metres above ground level;
- 226
- 1510 (2) in the case of the installation, alteration or replacement of system apparatus on a building or other structure:
- 227
323. (a) the highest part of the apparatus when installed, altered or replaced would exceed in height the highest part of the building or structure by more than 3 metres; or
324. (b) the development would result in the presence on the building or structure of more than two microwave antennas⁴.
- 228

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 29, Class A: see PARA 407 ante.

2 For the meaning of 'system apparatus' see PARA 407 note 1 ante.

3 For the meaning of 'building' see PARA 255 note 10 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 29 para A.1. For the meaning of 'microwave antenna' see PARA 397 note 3 ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZD) Part 30: Toll Road Facilities/409. Class A; permitted development.

(ZD) PART 30: TOLL ROAD FACILITIES

409. Class A; permitted development.

Development consisting of: (1) the setting up and the maintenance, improvement or other alteration of facilities for the collection of tolls¹; (2) the provision of a hard surface to be used

for the parking of vehicles in connection with the use of such facilities, is permitted development².

1 For these purposes, 'facilities for the collection of tolls' means such buildings, structures or other facilities as are reasonably required for the purpose of or in connection with the collection of tolls in pursuance of a toll order; 'toll' means a toll which may be charged pursuant to a toll order; and 'toll order' has the same meaning as in the New Roads and Street Works Act 1991 Pt I (ss 1-26) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 762): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 30 para A.3. For the meaning of 'building' see PARA 255 note 10 ante.

2 Ibid Sch 2 Pt 30, Class A. As to development not permitted by Sch 2 Pt 30, Class A see PARA 411 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see PARA 410 post; and as to directions restricting permitted development see PARA 258 et seq ante.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZD) Part 30: Toll Road Facilities/410. Special conditions to which development permitted by Class A is subject.

410. Special conditions to which development permitted by Class A is subject.

In the case of any article 1(5) land¹, development is permitted by Class A² subject to the following conditions:

1511 (1) the developer must, before beginning the development, apply to the local planning authority³ for a determination as to whether the prior approval of the authority will be required to the siting, design and external appearance of the facilities for the collection of tolls⁴;

1512 (2) the application must be accompanied by a written description, together with plans and elevations, of the proposed development together with any fee required to be paid⁵;

1513 (3) the development may not be begun before the occurrence of one of the following:

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325. (a) the receipt by the applicant from the local planning authority of a written notice of its determination that such prior approval is not required;

326. (b) where the local planning authority gives the applicant notice within 28 days following the date of receiving his application of its determination that such prior approval is required, the giving of such approval; or
327. (c) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of its determination;
- 230
- 1514 (4) the development must, except to the extent that the local planning authority otherwise agrees in writing, be carried out:
- 231
328. (a) where prior approval is required, in accordance with the details approved;
329. (b) where prior approval is not required, in accordance with the details submitted with the application; and
- 232
- 1515 (5) the development must be carried out:
- 233
330. (a) where approval has been given by the local planning authority, within a period of five years from the date on which approval was given;
331. (b) in any other case, within a period of five years from the date on which the local planning authority was given the information referred to in head (2) above⁶.
- 234

1 For the meaning of 'article 1(5) land' see PARA 256 ante.

2 I.e. the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 30, Class A: see PARA 409 ante.

3 As to local planning authorities see PARA 28 et seq ante; and as to the use of electronic communications see PARA 257 ante.

4 For the meaning of 'facilities for the collection of tolls' see PARA 409 note 1 ante.

5 As to the fee payable see PARA 459 et seq post.

6 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 30 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZD) Part 30: Toll Road Facilities/411. Development not permitted by Class A.

411. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

1516 (1) it is not located within 100 metres, measured along the ground, of the boundary of a toll road²;

1517 (2) the height³ of any building⁴ or structure would exceed:

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332. (a) 7.5 metres excluding any rooftop structure⁵; or

333. (b) 10 metres including any rooftop structure;

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1518 (3) the aggregate area of the floor space⁶ at or above ground level⁷ of any building or group of buildings within a toll collection area⁸, excluding the floor space of any toll collection booth⁹, would exceed 1, 500 square metres¹⁰.

1 le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 30, Class A: see PARA 409 ante.

2 For these purposes, 'toll road' means a road which is the subject of a toll order: *ibid* Sch 2 Pt 30 para A.3. For the meaning of 'toll order' see PARA 409 note 1 ante.

3 For the meaning of references to the height of a building see PARA 266 note 7 ante.

4 For the meaning of 'building' see PARA 255 note 10 ante.

5 For these purposes, 'rooftop structure' means any apparatus or structure which is reasonably required to be located on and attached to the roof, being an apparatus or structure which is (1) so located for the provision of heating, ventilation, air conditioning, water, gas or electricity; (2) lift machinery; or (3) reasonably required for safety purposes: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 30 para A.3.

6 For the meaning of 'floor space' see PARA 288 note 3 ante.

7 For these purposes, 'ground level' means the level of the surface of the ground immediately adjacent to the building or group of buildings in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 30 para A.3.

8 For these purposes, 'toll collection area' means an area of land where tolls are collected in pursuance of a toll order, and includes any facilities for the collection of tolls: *ibid* Sch 2 Pt 30 para A.3. For the meanings of 'facilities for the collection of tolls' and 'toll' see PARA 409 note 1 ante.

9 For these purposes, 'toll collection booth' means any building or structure designed or adapted for the purposes of collecting tolls in pursuance of a toll order: *ibid* Sch 2 Pt 30 para A.3.

10 *Ibid* Sch 2 Pt 30 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order

1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZE) Part 31: Demolition of Buildings/412. Class A; permitted development and special conditions to which it is subject.

(ZE) PART 31: DEMOLITION OF BUILDINGS

412. Class A; permitted development and special conditions to which it is subject.

Any building operation consisting of the demolition of a building¹ is permitted development². Development is, however, so permitted subject to the following conditions:

1519 (1) where demolition is urgently necessary in the interests of safety or health and the measures immediately necessary in such interests are the demolition of the building, the developer must, as soon as reasonably practicable, give the local planning authority³ a written justification of the demolition;

1520 (2) where the demolition does not fall within head (1) above and is not excluded demolition⁴:

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334. (a) the developer must, before beginning the development, apply to the local planning authority for a determination as to whether the prior approval of the authority will be required to the method of demolition and any proposed restoration of the site;

335. (b) the application must be accompanied by a written description of the proposed development, a statement that a notice has been posted in accordance with head (c) below and any fee required to be paid⁵;

336. (c) the applicant must display a site notice⁶ by site display⁷ on or near the land on which the building to be demolished is sited and must leave the notice in place for not less than 21 days in the period of 28 days beginning with the date on which the application was submitted to the local planning authority⁸;

337. (d) the development may not be begun before the occurrence of one of the specified events⁹;

338. (e) the development must, except to the extent that the local planning authority otherwise agrees in writing, be carried out either, where prior approval is required, in accordance with the details approved, or, where prior approval is not required, in accordance with the details submitted with the application; and

339. (f) the development must be carried out either, where approval has been given by the local planning authority, within a period of five years from the date on which approval was given, or, in any other case, within a period of five years from the date on which the local planning authority was given the information referred to in head (b) above¹⁰.

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1 For these purposes, 'building' does not include part of a building: see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 2(2); and PARA 255 note 10 ante.

2 Ibid Sch 2 Pt 31, Class A. As to development not permitted by Sch 2 Pt 31, Class A see PARA 413 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to directions restricting permitted development see PARA 258 et seq ante; and as to planning controls over demolition generally see PARA 218 ante. As to the authorisation of works affecting listed buildings see PARA 1109 et seq post; and as to control of demolition in conservation areas see PARA 1174 et seq post.

3 As to local planning authorities see PARA 28 et seq ante; and as to the use of electronic communications see PARA 257 ante.

4 For these purposes, 'excluded demolition' means demolition (1) on land which is the subject of a planning permission for the redevelopment of the land granted on an application or deemed to be granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, PARA 419 et seq post); (2) required or permitted to be carried out by or under any enactment; or (3) required to be carried out by virtue of a relevant obligation; and 'relevant obligation' means (a) an obligation arising under an agreement made under the Town and Country Planning Act 1990 s 106 (as originally enacted) (agreements regulating development or use of land); (b) a planning obligation entered into under s 106 (as substituted and prospectively repealed) (planning obligations: see PARA 244 et seq ante) or under s 299A (as added and prospectively repealed) (Crown planning obligations: see PARA 251 ante); (c) an obligation arising under or under an agreement made under any provision corresponding to s 106 (as originally enacted or as substituted) or to s 299A (as added): Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 31 para A.3.

5 As to the fee payable see PARA 465 post.

6 For these purposes, 'site notice' means a notice containing (1) the name of the applicant; (2) a description, including the address, of the building or buildings which it is proposed be demolished; (3) a statement that the applicant has applied to the local planning authority for a determination as to whether the prior approval of the authority will be required to the method of the proposed development and any proposed restoration of the site; (4) the date on which the applicant proposes to carry out the demolition; and (5) the name and address of the local planning authority, and which is signed and dated by or on behalf of the applicant: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 31 para A.3.

7 For the meaning of 'by site display' see PARA 303 note 16 ante.

8 Where the site notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of 21 days referred to in head (2)(c) in the text has elapsed, he is to be treated as having complied with the requirements of that head if he has taken reasonable steps for protection of the notice and, if need be, its replacement: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 31 para A.2(b)(iv).

9 The events referred to in the text are: (1) the receipt by the applicant from the local planning authority of a written notice of its determination that such prior approval is not required; (2) where the local planning authority gives the applicant notice within 28 days following the date of receiving his application of the authority's determination that such prior approval is required, the giving of such approval; or (3) the expiry of 28 days following the date on which the application was received by the local planning authority without the local planning authority making any determination as to whether such approval is required or notifying the applicant of its determination: ibid Sch 2 Pt 31 para A.2(b)(v).

10 Ibid Sch 2 Pt 31 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZE) Part 31: Demolition of Buildings/413. Development not permitted by Class A.

413. Development not permitted by Class A.

Development is not permitted by Class A¹ where:

- 1521 (1) a building² has been rendered unsafe or otherwise uninhabitable by the action or inaction of any person having an interest in the land on which the building stands; and
- 1522 (2) it is practicable to secure safety or health by works of repair or works for affording temporary support³.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 31, Class A: see PARA 412 ante.

² For the meaning of 'building' for these purposes see PARA 412 note 1 ante.

³ Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 Sch 2 Pt 31 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZE) Part 31: Demolition of Buildings/414. Class B; permitted development.

414. Class B; permitted development.

Any building operation consisting of the demolition of the whole or any part of any gate, fence, wall or other means of inclosure is permitted development¹. No specific provision is made with regard to development not permitted by Class B.

1 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 31, Class B. As to the general conditions subject to which such development is permitted see PARA 255 ante; as to directions restricting permitted development see PARA 258 et seq ante; and as to planning controls over demolition generally see PARA 218 ante. As to the authorisation of works affecting listed buildings see PARA 1109 et seq post; and as to control of demolition in conservation areas see PARA 1174 et seq post.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZF) Part 32: Schools, Colleges, Universities and Hospitals/415. Class A; permitted development and special condition to which it is subject.

(ZF) PART 32: SCHOOLS, COLLEGES, UNIVERSITIES AND HOSPITALS

415. Class A; permitted development and special condition to which it is subject.

The erection on the site of any school, college, university or hospital of any building¹ required for use as part of, or for a purpose incidental to the use of, the school, college, university or hospital as such, as the case may be, is permitted development². Such development is, however, so permitted subject to the condition that, in the case of any article 1(5) land³, any materials used must be of a similar appearance to those used for the original school, college, university or hospital buildings⁴.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 32, Class A. As to development not permitted by Sch 2 Pt 32, Class A see PARA 416 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; and as to directions restricting permitted development see PARA 258 et seq ante.

3 For the meaning of 'article 1(5) land' see PARA 256 ante.

4 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 32 para A.2. For these purposes, 'original school, college, university or hospital buildings' means any school, college, university or hospital buildings, as the case may be, other than any buildings erected at any time under Sch 2 Pt 32, Class A: Sch 2 Pt 32 para A.3.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZF) Part 32: Schools, Colleges, Universities and Hospitals/416. Development not permitted by Class A.

416. Development not permitted by Class A.

Development is not permitted by Class A¹:

1523 (1) unless:
239

340. (a) in the case of school, college or university buildings², the predominant use of the existing³ buildings on the site is for the provision of education; or

341. (b) in the case of hospital buildings, the predominant use of the existing buildings on the site is for the provision of any medical or health services;

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1524 (2) where the cumulative total floor space⁴ of any buildings erected on a particular site, other than the original school, college, university or hospital buildings⁵, would exceed 10% of the total floor space of the original school, college, university or hospital buildings on that site;

1525 (3) where the cumulative total cubic content⁶ of buildings erected on a particular site, other than the original school, college, university or hospital buildings, would exceed 250 cubic metres;

1526 (4) where any part of a building erected would be within 20 metres of the boundary of the site;

1527 (5) where, as a result of the development, any land used as a playing field immediately before the development took place could no longer be so used⁷.

¹ le by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 32, Class A: see PARA 415 ante.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ For the meaning of 'existing' see PARA 255 note 10 ante.

⁴ For these purposes, 'cumulative total floor space' of buildings erected includes the total floor space of any existing buildings previously erected at any time under the Town and Country Planning (General Permitted

Development) Order 1995, SI 1995/418, Sch 2 Pt 32, Class A: Sch 2 Pt 32 para A.3. For the meaning of 'floor space' see PARA 288 note 3 ante.

5 For the meaning of 'original school, college, university or hospital buildings' see PARA 415 note 4 ante.

6 For these purposes, 'cumulative total cubic content' of buildings erected includes the total cubic content of any existing buildings previously erected at any time under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 32, Class A: Sch 2 Pt 32 para A.3. For the meaning of 'cubic content' see PARA 265 note 1 ante.

7 Ibid Sch 2 Pt 32 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZG) Part 33: Closed Circuit Television Cameras/417. Class A; permitted development and special conditions to which it is subject.

(ZG) PART 33: CLOSED CIRCUIT TELEVISION CAMERAS

417. Class A; permitted development and special conditions to which it is subject.

The installation, alteration or replacement on a building¹ of a closed circuit television camera² to be used for security purposes is permitted development³. Such development is, however, so permitted subject to the following conditions:

1528 (1) the camera must, so far as practicable, be sited so as to minimise its effect on the external appearance of the building on which it is situated;

1529 (2) the camera must be removed as soon as reasonably practicable after it is no longer required for security purposes⁴.

1 For the meaning of 'building' see PARA 255 note 10 ante.

2 For these purposes, 'camera', except in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 33 para A.1(b) (see PARA 418 post at head (2) in the text), includes its housing, pan and tilt mechanism, infra-red illuminator, receiver, mountings and bracket: Sch 2 Pt 33 para A.3.

3 Ibid Sch 2 Pt 33, Class A. As to development not permitted by Sch 2 Pt 33, Class A see PARA 418 post; as to the general conditions subject to which such development is permitted see PARA 255 ante; as to the special conditions subject to which such development is permitted see heads (1)-(2) in the text and note 4 infra; and as to directions restricting permitted development see PARA 258 et seq ante.

4 Ibid Sch 2 Pt 33 para A.2.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(i) General and Special Development Orders/C. CLASSES OF PERMITTED DEVELOPMENT/(ZG) Part 33: Closed Circuit Television Cameras/418. Development not permitted by Class A.

418. Development not permitted by Class A.

Development is not permitted by Class A¹ if:

- 1530 (1) the building² on which the camera³ would be installed, altered or replaced is a listed building⁴ or a scheduled monument⁵;
- 1531 (2) the dimensions of the camera including its housing exceed 75 centimetres by 25 centimetres by 25 centimetres;
- 1532 (3) any part of the camera would, when installed, altered or replaced, be less than 250 centimetres above ground level⁶;
- 1533 (4) any part of the camera would, when installed, altered or replaced, protrude from the surface of the building by more than one metre when measured from the surface of the building;
- 1534 (5) any part of the camera would, when installed, altered or replaced, be in contact with the surface of the building at a point which is more than one metre from any other point of contact;
- 1535 (6) any part of the camera would be less than 10 metres from any part of another camera installed on a building;
- 1536 (7) the development would result in the presence of more than four cameras on the same side of the building; or
- 1537 (8) the development would result in the presence of more than 16 cameras on the building⁷.

¹ ie by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 33, Class A: see PARA 417 ante.

² For the meaning of 'building' see PARA 255 note 10 ante.

³ For the meaning of 'camera' see PARA 417 note 2 ante.

4 For the meaning of 'listed building' see PARA 259 note 11 ante, PARA 1091 post.

5 For the meaning of 'scheduled monument' see PARA 396 note 11 ante.

6 For these purposes, 'ground level' means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground is not uniform, the level of the highest part of the surface of the ground adjacent to it: Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pt 33 para A.3.

7 Ibid Sch 2 Pt 33 para A.1.

UPDATE

265-418 Classes of Permitted Development

In relation to Wales, as to classes of permitted development in respect of development by the crown, aviation development by the crown, crown railways, dockyards and lighthouses, emergency development by the crown and development for national security purposes, see the Town and Country (General Permitted Development) Order 1995, SI 1995/418, Sch 2 Pts 34-38 (added by SI 2006/1386). As to the erection of buildings for the purposes of housing poultry or other captive birds to protect them from avian influenza, see SI 1995/418 Sch 2 Pt 39 (added by SI 2006/765 (England), SI 2007/952 (Wales), and amended by SI 2008/502 (Wales)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/419. Power to make local development order.

(ii) Local Development Orders

419. Power to make local development order.

A local planning authority¹ may by order ('a local development order') make provision to implement policies:

- 1538 (1) in one or more development plan documents²;
- 1539 (2) in a local development plan³.

A local development order may:

- 1540 (a) grant planning permission⁴:
241
 - 342. (i) for development specified in the order;
 - 343. (ii) for development of any class so specified⁵;
- 242 1541 (b) relate to:
243
 - 344. (i) all land⁶ in the area of the relevant authority;
 - 345. (ii) any part of that land;
 - 346. (iii) a site specified in the order⁷;
- 244

1542 (c) make different provision for different descriptions of land⁸.

A development order⁹ may, however, specify any area or class of development in respect of which a local development order must not be made¹⁰.

A local planning authority may revoke a local development order at any time¹¹.

A local development order is of no effect unless it is adopted by resolution of the local planning authority¹².

1 As to local planning authorities see PARA 28 et seq ante.

2 The development plan documents within the meaning of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (local development in England): see PARA 89 et seq ante.

3 Town and Country Planning Act 1990 s 61A(1) (s 61A, Sch 4A added by the Planning and Compulsory Purchase Act 2004 s 40(1), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). The local development plan referred to in head (2) in the text is a local development plan within the meaning of the Planning and Compulsory Purchase Act 2004 Pt 6 (ss 60-78) (development in Wales: see PARA 133 et seq ante); Town and Country Planning Act 1990 s 61A(1)(b) (as so added).

4 For the meaning of 'planning permission' see para 43 note 6 ante.

5 Town and Country Planning Act 1990 s 61A(2) (as added: see note 3 supra).

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 Town and Country Planning Act 1990 s 61A(3) (as added: see note 3 supra).

8 Ibid s 61A(4) (as added: see note 3 supra).

9 For the meaning of 'development order' see PARA 252 ante.

10 Town and Country Planning Act 1990 s 61A(5) (as added: see note 3 supra). The power to make such order is exercisable by statutory instrument: s 333(4) (s 333(4), (5) amended by the Planning and Compulsory Purchase Act 2004 s 40(3)). Any statutory instrument which contains such an order is, unless it is made by the National Assembly for Wales, subject to annulment in pursuance of a resolution of either House of Parliament: Town and Country Planning Act 1990 s 333(5)(b) (as so amended). As to the Assembly see PARA 20 ante.

11 Ibid s 61A(6) (as added: see note 3 supra).

12 Ibid s 61A(7), Sch 4A para 3 (as added: see note 3 supra).

UPDATE

419 Power to make local development order

TEXT AND NOTES 1-3--Town and Country Planning Act 1990 s 61A(1) omitted: Planning Act 2008 s 188(1), (2) (in force in relation to England).

TEXT AND NOTES 4, 5--Town and Country Planning Act 1990 s 61A(2) amended: Planning Act 2008 s 188(1), (3) (in force in relation to England).

NOTE 3--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/420. Preparation of local development order.

420. Preparation of local development order.

A local development order¹ must be prepared in accordance with such procedure as is prescribed by a development order². A development order may include provision as to:

- 1543 (1) the preparation, submission, approval, adoption, revision and withdrawal of a local development order;
- 1544 (2) notice, publicity, and inspection by the public;
- 1545 (3) consultation with and consideration of views of such persons and for such purposes as are prescribed;
- 1546 (4) the making and consideration of representations³.

1 For the meaning of 'local development order' see PARA 419 ante.

2 Town and Country Planning Act 1990 s 61A(7), Sch 4A para 1(1) (s 61A(7), Sch 4A added by the Planning and Compulsory Purchase Act 2004 s 40(1), (4), Sch 1). For the meaning of 'prescribed' see PARA 16 note 5 ante; and for the meaning of 'development order' see PARA 252 ante. Regulations under the Town and Country Planning Act 1990 Sch 4A para 1 (as so added) may include provision as to the matters relating to a local development order to be included in the report to be made by a local planning authority under the Planning and Compulsory Purchase Act 2004 s 35 (local planning authorities in England: see PARA 93 ante) or s 76 (local planning authorities in Wales: see PARA 134 ante): Town and Country Planning Act 1990 Sch 4A para 1(3) (as so added).

3 Ibid Sch 4A para 1(2) (as added: see note 2 supra).

UPDATE

420 Preparation of local development order

NOTE 2--In relation to England, for the preparation and revocation of a local development order by a local planning authority and the type of development for which a local development order cannot grant permission, see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 art 2B (added by SI 2006/1062; and amended by SI 2007/1844, SI 2009/1304).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/421. Intervention by the Secretary of State or the Assembly.

421. Intervention by the Secretary of State or the Assembly.

At any time before a local development order¹ is adopted by a local planning authority² the appropriate authority³ may direct that the order, or any part of it, is submitted to it for its approval⁴. If the appropriate authority gives such a direction:

- 1547 (1) the local planning authority must not take any step in connection with the adoption of the order until the appropriate authority gives its decision;

1548 (2) the order has no effect unless it, or, if the direction relates to only part of an order, the part, has been approved by the appropriate authority⁵.

In considering an order or part of an order submitted under these provisions the appropriate authority may take account of any matter which it thinks is relevant⁶; and it is immaterial whether any such matter was taken account of by the local planning authority⁷. The appropriate authority may approve or reject an order or part of an order so submitted to it⁸ and must give reasons for its decision⁹.

If the appropriate authority thinks that a local development order is unsatisfactory it may at any time before the order is adopted by the local planning authority direct that authority to modify it in accordance with the direction¹⁰. The local planning authority must comply with the direction¹¹ and must not adopt the order unless the appropriate authority gives notice that it is satisfied that that authority has so complied¹².

The appropriate authority may at any time by order revoke a local development order if it thinks it is expedient to do so¹³ but must, if it revokes a local development order, state its reasons for doing so¹⁴.

1 For the meaning of 'local development order' see PARA 419 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For these purposes, the appropriate authority is: (1) the Secretary of State in relation to England; (2) the National Assembly for Wales in relation to Wales: Town and Country Planning Act 1990 s 61B(10) (s 61B added by the Planning and Compulsory Purchase Act 2004 s 40(1), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

4 Town and Country Planning Act 1990 s 61B(1) (as added: see note 3 supra).

5 Ibid s 61B(2) (as added: see note 3 supra).

6 Ibid s 61B(3) (as added: see note 3 supra).

7 Ibid s 61B(4) (as added: see note 3 supra).

8 Ibid s 61B(5)(a) (as added: see note 3 supra).

9 Ibid s 61B(5)(b) (as added: see note 3 supra).

10 Ibid s 61B(6)(a) (as added: see note 3 supra). If the appropriate authority gives such a direction it must state its reasons for doing so: s 61B(6)(b) (as so added).

11 Ibid s 61B(7)(a) (as added: see note 3 supra).

12 Ibid s 61B(7)(b) (as added: see note 3 supra).

13 Ibid s 61B(8)(a) (as added: see note 3 supra). Section 100(3)-(6) (consultation and notice requirements: see PARA 544 post) applies to an order under s 61B(8) (as so added) as it applies to an order under s 100(1) and for that purpose references to the Secretary of State must be construed as references to the appropriate authority: s 61B(9) (as so added).

14 Ibid s 61B(8)(b) (as added: see note 3 supra).

UPDATE

421 Intervention by the Secretary of State or the Assembly

NOTE 3--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/422. Permission granted by local development order.

422. Permission granted by local development order.

Planning permission¹ granted by a local development order² may be granted either unconditionally or subject to such conditions or limitations as are specified in the order³. If the permission is granted for development⁴ of a specified description the order may enable the local planning authority⁵ to direct that the permission does not apply in relation to (1) development in a particular area; or (2) any particular development⁶.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'local development order' see PARA 419 ante.

3 Town and Country Planning Act 1990 s 61C(1) (s 61C added by the Planning and Compulsory Purchase Act 2004 s 40(1), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante).

4 For the meaning of 'development' see PARA 217 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 61C(2) (as added: see note 3 supra).

UPDATE

422 Permission granted by local development order

NOTE 3--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/423. Revision of local development order.

423. Revision of local development order.

The local planning authority¹ may at any time prepare a revision of a local development order². An authority in England must prepare a revision of a local development order if the Secretary of State³ directs it to do so, and in accordance with such timetable as he directs⁴. Similarly, an authority in Wales must prepare a revision of a local development order if the National Assembly for Wales⁵ directs it to do so and in accordance with such timetable as the Assembly directs⁶.

If a development plan document or a local development plan the policies in which are implemented by the order⁷ is revised⁸ or revoked⁹ a local development order made to implement the policies in the document or plan must be revised accordingly¹⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 Town and Country Planning Act 1990 s 61A(7), Sch 4A para 2(1) (s 61A, Sch 4A added by the Planning and Compulsory Purchase Act 2004 s 40(1), (4), Sch 1, partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). For the meaning of 'local development order' see PARA 419 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Town and Country Planning Act 1990 Sch 4A para 2(2) (as added: see note 2 supra).

5 As to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 Sch 4A para 2(3) (as added: see note 2 supra).

7 Ie a development plan document or a local development plan mentioned in ibid s 61A(1) (as added): see PARA 419 ante.

8 Ie revised under the Planning and Compulsory Purchase Act 2004 s 26 (revision of development plan documents in England: see PARA 123 ante) or under s 70 (revision of local development plan in Wales: see PARA 145 ante).

9 Ie revoked under ibid s 25 (revocation of development plan documents in England by the Secretary of State: see PARA 124 ante) or under s 68 (revocation of local development plan in Wales by the Assembly: see PARA 146 ante).

10 See the Town and Country Planning Act 1990 Sch 4A para 2(4), (5) (as added: see note 2 supra). Schedule 4A (as so added) (see PARAS 419-420 ante, 424 post) applies to the revision of a local development order as it applies to the preparation of the order: Sch 4A para 2(6) (as so added).

UPDATE

423 Revision of local development order

NOTE 2--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

TEXT AND NOTES 7-10--Town and Country Planning Act 1990 Sch 4A para 2(4), (5) omitted: Planning Act 2008 s 188(4) (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(ii) Local Development Orders/424. Annual report.

424. Annual report.

In England, the annual monitoring report made¹ by every local planning authority² must include a report as to the extent to which the local development order³ is achieving its purposes⁴. The Secretary of State⁵ may prescribe⁶ the form and content of the report as it relates to the local development order⁷.

Similarly, in Wales, the annual monitoring report made⁸ by every local planning authority must include a report as to the extent to which the local development order is achieving its

purposes⁹ and the National Assembly for Wales¹⁰ may prescribe the form and content of the report as it relates to the local development order¹¹.

- 1 le the report made under the Planning and Compulsory Purchase Act 2004 s 35: see PARA 93 ante.
- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 For the meaning of 'local development order' see PARA 419 ante.
- 4 Town and Country Planning Act 1990 s 61A(7), Sch 4A para 4(1) (s 61A, Sch 4A added by the Planning and Compulsory Purchase Act 2004 s 40(1), (4), Sch 1, partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante).
- 5 As to the Secretary of State see PARA 19 ante.
- 6 For the meaning of 'prescribe' see PARA 16 note 5 ante.
- 7 Town and Country Planning Act 1990 Sch 4A para 4(2) (as added: see note 4 supra).
- 8 le the report made under the Planning and Compulsory Purchase Act 2004 s 76: see PARA 134 ante.
- 9 Town and Country Planning Act 1990 Sch 4A para 5(1) (as added: see note 4 supra).
- 10 As to the Assembly see PARA 20 ante.
- 11 Town and Country Planning Act 1990 Sch 4A para 5(2) (as added: see note 4 supra).

UPDATE

424 Annual report

NOTE 4--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(4) PERMISSION GRANTED BY DEVELOPMENT ORDER/(iii) Completion of Incomplete Development/425. Effect of revision or revocation of development order on incomplete development.

(iii) Completion of Incomplete Development

425. Effect of revision or revocation of development order on incomplete development.

A development order¹ or local development order² may include provision permitting the completion of development³ if:

- 1549 (1) planning permission⁴ is granted by the order in respect of the development; and
- 1550 (2) the planning permission is withdrawn⁵ at a time after the development is started but before it is completed⁶.

This power to include provision in a development order or a local development order may be exercised differently for different purposes⁷.

1 For the meaning of 'development order' see PARA 252 ante.

2 For the meaning of 'local development order' see PARA 419 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 Planning permission granted by a development order is withdrawn (1) if the order is revoked; (2) if the order is amended so that it ceases to grant planning permission in respect of the development or materially changes any condition or limitation to which the grant of permission is subject; (3) by the issue of a direction under powers conferred by the order: Town and Country Planning Act 1990 s 61D(2) (s 61D added by the Planning and Compulsory Purchase Act 2004 s 41, partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante).

Planning permission granted by a local development order is withdrawn (a) if the order is revoked under the Town and Country Planning Act 1990 s 61A(6) or 61B(8) (each as added) (see PARAS 419, 421 ante); (b) if the order is revised in pursuance of Sch 4A para 2 (as added) (see PARA 423 ante) so that it ceases to grant planning permission in respect of the development or materially changes any condition or limitation to which the grant of permission is subject; (c) by the issue of a direction under powers conferred by the order: s 61D(3) (as so added).

6 Ibid s 61D(1) (as added: see note 5 supra).

7 Ibid s 61D(4) (as added: see note 5 supra).

UPDATE

425 Effect of revision or revocation of development order on incomplete development

NOTE 5--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/426. Simplified planning zones.

(5) SIMPLIFIED PLANNING ZONES

(i) In general

426. Simplified planning zones.

A simplified planning zone is an area in respect of which a simplified planning zone scheme is in force¹.

The adoption or approval of a simplified planning zone scheme has effect to grant in relation to the zone, or any part of it specified in the scheme, planning permission²:

1551 (1) for development³ specified in the scheme; or

1552 (2) for development of any class so specified⁴.

Planning permission under a simplified planning zone scheme may be unconditional or subject to such conditions, limitations or exceptions as may be specified in the scheme⁵. However, no adoption or approval of a simplified planning zone scheme after 14 March 1999 grants planning permission for EIA development⁶ or grants planning permission for Schedule 2 development (within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999)⁷ unless that grant is made subject to the prior adoption of a screening opinion⁸ or prior making of a screening direction⁹ that the particular proposed development is not EIA development¹⁰.

1 Town and Country Planning Act 1990 s 82(1). Except in so far as the context otherwise requires, 'simplified planning zone' is to be construed in accordance with s 82: s 336(1). For the meaning of 'simplified planning zone scheme' see PARA 428 post.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 Town and Country Planning Act 1990 s 82(2).

5 Ibid s 82(3).

6 For the meaning of 'EIA development' see PARA 488 post.

7 Ie within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 487 et seq post. As to 'Schedule 2 development' see PARA 490 post.

8 As to screening opinions see PARA 493 post.

9 As to screening directions see PARA 494 post.

10 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 24; and PARA 511 post. As to the position where a simplified planning zone scheme has been adopted or approved prior to 14 March 1999 see reg 23; and PARA 510 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/427. Exclusion of certain descriptions of land.

427. Exclusion of certain descriptions of land.

The following descriptions of land¹ may not be included in a simplified planning zone²:

- 1553 (1) land in a National Park³;
- 1554 (2) land in a conservation area⁴;
- 1555 (3) land within the Broads⁵;
- 1556 (4) land in an area designated⁶ as an area of outstanding natural beauty;
- 1557 (5) land identified in the development plan⁷ for the district as part of a Green Belt⁸;
- 1558 (6) land within a site⁹ of special scientific interest¹⁰.

Where land included in a simplified planning zone becomes land of a description mentioned in heads (1) to (6) above, the above provisions do not, however, operate to exclude it from the zone¹¹.

The Secretary of State¹² or, in relation to Wales, the National Assembly for Wales¹³ may by order provide that no simplified planning zone scheme shall have effect to grant planning permission¹⁴:

- 1559 (a) in relation to an area of land specified in the order or to areas of land of a description so specified; or
- 1560 (b) for development¹⁵ of a description specified in the order¹⁶.

Such an order has effect to withdraw such planning permission under a simplified planning zone scheme already in force with effect from the date on which the order comes into force, except in a case where the development authorised by the permission has been begun¹⁷.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'simplified planning zone' see PARA 426 ante.

3 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

4 For these purposes, except in so far as the context otherwise requires, 'conservation area' means an area designated under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 69 (see PARA 1169 post): Town and Country Planning Act 1990 s 336(1).

5 As to the Broads see **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

6 I.e. under the Countryside and Rights of Way Act 2000 s 82: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658.

7 For the meaning of 'development plan' see PARA 91 ante.

8 There is no statutory definition of 'Green Belt' for these purposes. As to the Green Belt see PARA 938 et seq.

9 I.e. a site of special scientific interest within the meaning of the Wildlife and Countryside Act 1981: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 674 et seq.

10 Town and Country Planning Act 1990 s 87(1) (amended by the Countryside and Rights of Way Act 2000 ss 76(1), 93, Sch 10 Pt II para 7, Sch 15 Pt I para 10).

11 Town and Country Planning Act 1990 s 87(2).

12 As to the Secretary of State see PARA 19 ante.

13 As to the transfer of functions under the Town and Country Planning Act 1990 s 87 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 For the meaning of 'planning permission' see PARA 43 note 6 ante.

15 For the meaning of 'development' see PARA 217 ante.

16 Town and Country Planning Act 1990 s 87(3). At the date at which this title states the law no such order had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Simplified Planning Zones) (Excluded Development) Order 1987, SI 1987/1849 (as amended), which came into force on 20 November 1987 (art 1) has effect as if so made. A simplified planning zone scheme does not have effect in England to grant planning permission for development of any of the descriptions which is a county matter; nor does it have effect in Wales to grant planning permission for development of any of the descriptions which would constitute a county matter in England: art 2(1), (2) (amended by SI 1996/525). For the meaning of 'county matter' see PARA 38 ante.

17 Town and Country Planning Act 1990 s 87(4). As to when development has been begun for these purposes see PARA 221 ante.

UPDATE

427 Exclusion of certain descriptions of land

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/428. Making of simplified planning zone schemes.

428. Making of simplified planning zone schemes.

Every local planning authority¹ had to consider, as soon as practicable after 2 November 1987, the question for which part or parts of its area a simplified planning zone scheme was desirable². Under the provisions of the Town and Country Planning Act 1990 as originally enacted, it was then to keep that question under review³ and provision was made for the preparation, making and alteration of such a scheme⁴.

As from a day to be appointed⁵, if:

- 1561 (1) the regional spatial strategy for the region⁶ in which the area of a local planning authority in England is situated identifies the need for a simplified planning zone⁷ in that area, or any part of it;
- 1562 (2) the criteria prescribed⁸ by the National Assembly for Wales for the need for a simplified planning zone are satisfied in relation to the area, or any part of the area, of a local planning authority in Wales,

the local planning authority must consider the question for which part or parts of its area a simplified planning zone scheme is desirable⁹. The local planning authority must keep this question under review¹⁰.

As from that day, a local planning authority must make a simplified planning zone scheme for all or any part of its area:

- 1563 (a) if as a result of the consideration¹¹ or the review¹² mentioned above it decides that it is desirable to do so;
- 1564 (b) if it is directed to do so by the Secretary of State or the Assembly, as the case may be¹³.

A local planning authority may at any time as from that day:

- 1565 (i) alter a scheme adopted by it;
- 1566 (ii) with the consent of the Secretary of State alter a scheme made or altered by him¹⁴ or approved by him¹⁵;

1567 (iii) with the consent of the Assembly, alter a scheme made or altered by it¹⁶ or approved¹⁷ by it¹⁸.

A simplified planning zone scheme for an area in England must be in conformity with the regional spatial strategy¹⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 See the Town and Country Planning Act 1990 s 83(1) (prospectively repealed by the Planning and Compulsory Purchase Act 2004 s 45(1), 120, Sch 9, as from a day to be appointed under s 121; at the date at which this title states the law, that repeal was not in force). Except in so far as the context otherwise requires, 'simplified planning zone scheme' is to be construed in accordance with the Town and Country Planning Act 1990 s 83 (as prospectively amended): s 336(1).

3 See ibid s 83(1) (prospectively repealed: see note 2 supra).

4 See ibid s 83(2) (as originally enacted). If, as a result of its original consideration or of any such review, a local planning authority decides that it is desirable to prepare a scheme for any part of its area, it must do so; and a local planning authority may at any time decide: (1) to make a simplified planning zone scheme; or (2) to alter a scheme adopted by it; or (3) with the consent of the Secretary of State or, in relation to Wales, of the National Assembly for Wales, to alter a scheme approved by him or by the Assembly: s 83(2) (as originally enacted). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

5 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

6 For these purposes, and the purposes of the Town and Country Planning Act 1990 s 83(3), Sch 7 (as prospectively amended), a reference to the regional spatial strategy must be construed in relation to any area in Greater London as a reference to the spatial development strategy; and a reference to a region must be construed in relation to such an area as a reference to Greater London: s 83(4) (s 83(1A)-(1C), (4) added, and s 83(2), (2A), (2B) substituted, by the Planning and Compulsory Purchase Act 2004 s 45(2), (3), (4), as from a day to be appointed: see note 5 supra). As to the regional spatial strategy see PARA 72 ante; as to the spatial development strategy for Greater London see PARA 86 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 For the meaning of 'simplified planning zone' see PARA 426 ante.

8 For the meaning of 'prescribed' see PARA 16 note 5 ante.

9 Town and Country Planning Act 1990 s 83(1A), (1B) (as added: see note 6 supra).

10 Ibid s 83(1C) (as added: see note 6 supra).

11 Ie the consideration mentioned in ibid s 83(1B) (as added: see note 6 supra): see the text to note 9 supra.

12 Ie the review mentioned in ibid s 83(1C) (as added: see note 6 supra): see the text to note 10 supra.

13 Town and Country Planning Act 1990 s 83(2) (as substituted: see note 6 supra). As to simplified planning zone directions under Sch 7 paras 3, 4 (as amended and as prospectively repealed) see PARA 429 post.

14 Ie under ibid Sch 7 para 12 (as amended): see PARA 446 post.

15 Ie under ibid Sch 7 para 11 (as amended): see PARA 445 post.

16 See note 14 supra.

17 See note 15 supra.

18 Town and Country Planning Act 1990 s 83(2A) (as added: see note 6 supra).

19 Ibid s 83(2B) (as added: see note 6 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/429. Regulations and directions.

429. Regulations and directions.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may³ make regulations with respect to:

- 1568 (1) the form and content of simplified planning zone schemes⁴; and
- 1569 (2) the procedure to be followed in connection with their preparation, withdrawal, adoption, submission, approval, making or alteration⁵.

Any such regulations may in particular:

- 1570 (a) provide for the notice to be given of, or the publicity to be given to:
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 - 1. (i) matters included or proposed to be included in a simplified planning zone scheme; and
 - 2. (ii) the adoption or approval of such a scheme, or of any alteration of it, or any other prescribed⁶ procedural step,
- 141 1571 and for publicity to be given to the procedure to be followed in these respects;
- 1572 (b) make provision with respect to the making and consideration of representations as to matters to be included in, or objections to, any such scheme or proposals for its alteration;
- 1573 (c) make provision with respect to the circumstances in which representations with respect to the matters to be included in such a scheme or proposals for its alteration are to be treated⁷ as being objections made in accordance with regulations;
- 1574 (d) without prejudice to head (a) above, provide for notice to be given to particular persons of the adoption or approval of a simplified planning zone scheme, or an alteration to such a scheme, if they have objected to the proposals and have notified the local planning authority⁸ of their wish to receive notice, subject, if the regulations so provide, to the payment of a reasonable charge;
- 1575 (e) require or authorise a local planning authority to consult⁹ with, or consider the views of, other persons before taking any prescribed procedural step;
- 1576 (f) require a local planning authority, in such cases as may be prescribed or in such particular cases as the Secretary of State or the Assembly may direct, to provide persons making a request with copies of any document which has been made public, subject, if the regulations so provide, to the payment of a reasonable charge;
- 1577 (g) provide for the publication and inspection of a simplified planning zone scheme which has been adopted or approved, or any document adopted or approved altering such a scheme, and for copies of any such scheme or document to be made available on sale¹⁰.

Regulations so made may extend throughout England or Wales or to specified areas only and may make different provision for different cases¹¹.

The Secretary of State or the Assembly may¹² give directions to any local planning authority or to local planning authorities generally:

1578 (A) for formulating the procedure for the carrying out of its or their statutory functions¹³;

1579 (B) for requiring it or them to give him or the Assembly such information as he or it may require for carrying out any of his or the Assembly's statutory functions¹⁴.

Furthermore, at the date at which this title states the law the Secretary of State or the Assembly has power in certain circumstances to give a local planning authority a simplified planning zone direction requiring it to make or alter a simplified planning zone scheme¹⁵. The relevant statutory provisions are, however, prospectively repealed by the Planning and Compulsory Purchase Act 2004¹⁶. The new powers to direct the making of a simplified planning zone scheme have already been discussed¹⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie without prejudice to the Town and Country Planning Act 1990 s 83(3), Sch 7 paras 1-12 (as amended): see PARA 430 et seq post.

4 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

5 Town and Country Planning Act 1990 Sch 7 para 13(1). In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly, the Secretary of State made the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended) (see note 10 infra; and PARAS 430, 436 et seq post) which came into force on 9 November 1992 (reg 1(1)) and extend throughout England and Wales (reg 1(2)). As to the making of regulations generally see PARA 3 ante.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 Ie for the purposes of the Town and Country Planning Act 1990 Sch 7 (as amended).

8 As to local planning authorities see PARA 28 et seq ante.

9 For the meaning of 'consult' see PARA 2 note 1 ante.

10 Town and Country Planning Act 1990 Sch 7 para 13(2) (amended by the Planning and Compensation Act 1991 ss 28(b), 84(6), Sch 5 paras 4, 10, Sch 19 Pt I). On payment of a reasonable charge, a local planning authority must provide a person making a request, as soon as practicable, with a copy of any document made available for inspection pursuant to the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, 447 et seq post) or the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended): reg 21(1).

11 Town and Country Planning Act 1990 Sch 7 para 13(3).

12 Ie subject to ibid Sch 7 paras 1-12 (as amended) and to any regulations under Sch 7 para 13 (as amended).

13 Ie its or their functions under ibid Sch 7 (as amended). For the meaning of 'functions' see PARA 2 note 1 ante.

14 Ibid Sch 7 para 13(4).

15 See ibid Sch 7 paras 3, 4 (Sch 7 para 4 amended by the Planning and Compensation Act 1991 s 28(b), Sch 5 paras 4, 5) which provide as follows. If a person requests a local planning authority to make or alter a simplified planning zone scheme but the authority either refuses to do so or does not, within the period of three months from the date of the request, decide to do so, he may require the authority to refer the matter to the Secretary of State or to the Assembly: Town and Country Planning Act 1990 Sch 7 para 3(1). A person may not, however, require such reference of the matter if: (1) in the case of a request to make a scheme, a simplified

planning zone scheme relating to the whole or part of the land specified in the request has been adopted or approved within the 12 months preceding his request; (2) in the case of a request to alter the scheme, the scheme to which the request relates was adopted or approved, or any alteration to it has been adopted or approved, within that period: Sch 7 para 3(2). The Secretary of State or the Assembly must, as soon as practicable after a matter is referred to him or to it, send the authority a copy of any representations made to him or to the Assembly by the applicant which have not been made to the authority and notify the authority that, if it wishes to make any representations in the matter, it should do so in writing within 28 days: Sch 7 para 3(3). After the Secretary of State or the Assembly has considered the matter and any written representations made by the applicant or the authority and has carried out such consultations with such persons as he or the Assembly thinks fit, he or it may give the authority a simplified planning zone direction: Sch 7 para 3(4). The Secretary of State or the Assembly must notify the applicant and the authority of his or its decision and of the reasons for it: Sch 7 para 3(5). A simplified planning zone direction is: (a) if the request was for the making of a simplified planning zone scheme, a direction to make a scheme which the Secretary of State or the Assembly considers appropriate; and (b) if the request was for the alteration of a scheme, a direction to alter it in such manner as he or it considers appropriate; and, in either case, requires the local planning authority to take all the steps required by Sch 7 (as amended) for the adoption of proposals for the making or, as the case may be, alteration of a scheme: Sch 7 para 4(1) (as so amended). A direction under head (a) or head (b) supra may extend: (i) to the land specified in the request to the authority; (ii) to any part of the land so specified; or (iii) to land which includes the whole or part of the land so specified; and accordingly may direct that land shall be added to or excluded from an existing simplified planning zone: Sch 7 para 4(2).

Where a local planning authority is directed under Sch 7 para 3 to make a simplified planning zone scheme which the Secretary of State or the Assembly considers appropriate or to alter such a scheme in such manner as he or it considers appropriate, and the Secretary of State or the Assembly is satisfied, after holding a local inquiry or other hearing, that the authority is not taking within a reasonable period the steps required by Sch 7 (as amended) for the adoption of proposals for the making or, as the case may be, alteration of a scheme, he may himself, or the Assembly may itself, make a scheme or, as the case may be, the alterations: Sch 7 para 12(1) (as originally enacted). As to the prospective substitution of Sch 7 para 12(1), and the provision made by Sch 7 para 12(2), (3) for the exercise of such default powers, see PARA 446 post.

16 See the Planning and Compulsory Purchase Act 2004 ss 45(8), 120, Sch 9, repealing the Town and Country Planning Act 1990 Sch 7 paras 3, 4 as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121; at the date at which this title states the law, no such day had been appointed.

17 See *ibid* s 45(3) (prospectively substituting the Town and Country Planning Act 1990 s 83(2)); and PARA 428 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/430. Contents of scheme.

430. Contents of scheme.

A simplified planning zone scheme¹ must consist of a map and a written statement, and such diagrams, illustrations and descriptive matter as the local planning authority² thinks appropriate for explaining or illustrating the provisions of the scheme³.

A simplified planning zone scheme must specify:

- 1580 (1) the development⁴ or classes of development permitted by the scheme;
- 1581 (2) the land⁵ in relation to which permission is granted; and
- 1582 (3) any conditions, limitations or restrictions subject to which it is granted;

and must contain such other matters as may be prescribed⁶.

1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Town and Country Planning Act 1990 s 83(3), Sch 7 para 1(1).

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning Act 1990 Sch 7 para 1(2). For the meaning of 'prescribed' see PARA 16 note 5 ante; and as to the making of regulations for this purpose see PARA 429 ante. At the date at which this title states the law, no regulations had been made prescribing such other matters and no regulations had effect as if so made.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/431. Conditions and limitations on planning permission.

431. Conditions and limitations on planning permission.

The conditions and limitations on planning permission¹ which may be specified in a simplified planning zone scheme² may include:

- 1583 (1) conditions or limitations in respect of all development³ permitted by the scheme or in respect of particular descriptions of development so permitted; and
- 1584 (2) conditions or limitations requiring the consent, agreement or approval of the local planning authority⁴ in relation to particular descriptions of permitted development⁵.

Different conditions or limitations may be specified in a simplified planning zone scheme for different cases or classes of case⁶.

Nothing in a simplified planning zone scheme affects the right of any person:

- 1585 (a) to do anything not amounting to development; or
- 1586 (b) to carry out development for which planning permission is not required or for which permission has been granted otherwise than by the scheme⁷.

No limitation or restriction subject to which planning permission has been granted otherwise than under the scheme affects the right of any person to carry out development for which permission has been granted under the scheme⁸.

The statutory restrictions affecting planning permission for development where an environmental impact assessment is required have already been mentioned⁹ and are discussed in more detail below¹⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning Act 1990 s 84(1).

6 Ibid s 84(2).

7 Ibid s 84(3).

8 Ibid s 84(4).

9 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 24; and PARA 426 the text and note 10 ante.

10 See PARA 511 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(i) In general/432. Duration of simplified planning zone scheme.

432. Duration of simplified planning zone scheme.

A simplified planning zone scheme¹ takes effect on the date of its adoption² or approval³ and ceases to have effect at the end of the specified period⁴. When the scheme ceases to have effect, planning permission⁵ under it also ceases to have effect except in a case where the development⁶ authorised by it has been begun⁷.

1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

2 Ie under the Town and Country Planning Act 1990 s 83(3), Sch 7 para 9 (as amended): see PARA 441 post.

3 Ie under ibid Sch 7 para 11 (as amended): see PARA 445 post.

4 Ibid s 85(1) (s 85(1) prospectively amended, and s 85(1A) prospectively added, by the Planning and Compulsory Purchase Act 2004 s 45(5), (6), as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). The specified period is the period not exceeding ten years (1) beginning with the date when the scheme is adopted or approved; and (2) which is specified in the scheme: Town and Country Planning Act 1990 s 85(1A) (as so added). Section 85(1) (as originally enacted) reads: 'A simplified planning zone scheme shall take effect on the date of its adoption or approval and shall cease to have effect at the end of the period of ten years beginning with that date'.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning Act 1990 s 85(2). As to when development has been begun for these purposes see PARA 221 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/433. Steps to be taken before depositing proposals.

(ii) Procedure for Making Scheme

433. Steps to be taken before depositing proposals.

An authority which decides to make or alter¹ a simplified planning zone scheme² or which, as from a day to be appointed³, is required to make⁴ or decides to alter⁵ such a scheme, must:

- 1587 (1) notify the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ of its decision as soon as practicable; and
 1588 (2) determine the date on which it will begin to prepare the scheme or the alterations⁸.

Before determining the content of its proposals, a local planning authority⁹ proposing to make or alter a simplified planning zone scheme must comply with the following provisions¹⁰.

The authority must:

- 1589 (a) consult¹¹ the Secretary of State having responsibility for highways¹² or, in Wales, the Assembly, as to the effect any proposals it may make might have on existing or future highways;
 1590 (b) in England, if it is the district planning authority¹³, consult the county council:
 142 3. (i) as county planning authority¹⁴; and
 4. (ii) as to the effect which any matters the district planning authority is considering including in the proposals might have on existing or future highways; and
 143 1591 (c) consult or notify such persons as regulations may require it to consult or, as the case may be, to notify¹⁵.

The authority must take such steps as may be prescribed¹⁶ or as the Secretary of State or the Assembly may, in a particular case, direct to publicise:

- 1592 (A) the fact that it proposes to make or alter a simplified planning zone scheme; and
 1593 (B) the matters which it is considering including in the proposals¹⁷.

The authority must consider any representations which are made in accordance with regulations¹⁸.

- 1 le under the Town and Country Planning Act 1990 s 83(2) (as originally enacted): see PARA 428 ante.
 2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.
 3 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.
 4 le under the Town and Country Planning Act 1990 s 83(2) (as prospectively substituted): see PARA 428 ante.
 5 le under ibid s 83(2A) (as prospectively substituted): see PARA 428 ante.
 6 As to the Secretary of State see PARA 19 ante.
 7 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
 8 Town and Country Planning Act 1990 s 83(3), Sch 7 para 2 (prospectively amended by the Planning and Compulsory Purchase Act 2004 s 45(7), as from a day to be appointed: see note 3 supra).
 9 As to local planning authorities see PARA 28 et seq ante.

10 Town and Country Planning Act 1990 Sch 7 para 5(1) (Sch 7 para 5 substituted by the Planning and Compensation Act 1991 s 28(a), Sch 5 para 1).

11 For the meaning of 'consult' see PARA 2 note 1 ante.

12 For the meaning of 'highway' see PARA 50 note 5 ante.

13 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

14 As to county planning authorities see PARA 28 ante.

15 Town and Country Planning Act 1990 Sch 7 para 5(2) (as substituted: see note 10 supra).

16 For the meaning of 'prescribed' see PARA 16 note 5 ante.

17 Town and Country Planning Act 1990 Sch 7 para 5(3) (as substituted: see note 10 supra). See further PARAS 434-435 post

18 Ibid Sch 7 para 5(4) (as substituted: see note 10 supra). As to the making of representations see PARA 436 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/434. Consultation and notification before depositing proposals.

434. Consultation and notification before depositing proposals.

Where a local planning authority¹ proposes to make or alter a simplified planning zone scheme², it must consult³:

- 1594 (1) where its proposals would permit any specified development⁴, the person named⁵ as consultee in relation to that development;
- 1595 (2) the council of any parish⁶ or community⁷ within whose area falls any land⁸ proposed to be included in the scheme;
- 1596 (3) the owners⁹ of the land proposed to be included in the scheme, except where the authority has failed to ascertain their names and addresses after taking all reasonable steps to that end;
- 1597 (4) any urban development corporation¹⁰ in respect of an urban development area which is likely to be affected by the scheme; and
- 1598 (5) the Urban Regeneration Agency¹¹ in respect of any designated area¹² which is likely to be affected by the scheme¹³.

The local planning authority must consider any representations made by the consultees before finally determining the content of the proposals¹⁴.

When the local planning authority begins such consultations, it must at the same time notify the Secretary of State¹⁵ or, in relation to Wales, the National Assembly for Wales¹⁶ that it is proposing to make or alter a scheme and of the content of its proposals¹⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 For the meaning of 'consult' see PARA 2 note 1 ante.

- 4 le any development which in the authority's opinion falls within a description mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(1), Table (as amended): see PARA 475 post.
- 5 le the person named in ibid art 10(1), Table (as amended).
- 6 As to parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.
- 7 As to community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.
- 8 For the meaning of 'land' see PARA 2 note 10 ante.
- 9 For these purposes, 'owner' means, in relation to any land, any person who (1) is the estate owner in respect of the fee simple; or (2) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 2.
- 10 As to urban development corporations see PARA 1428 et seq post.
- 11 As to the Urban Regeneration Agency (now operating as part of English Partnerships) see PARA 1306 post.
- 12 For these purposes, 'designated area' has the meaning given by the Leasehold Reform, Housing and Urban Development Act 1993 s 170(2) (see PARA 1306 note 11 post): Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 2 (definition added by SI 1994/267).
- 13 Town and Country Planning (Simplified Planning Zones) Regulations 1992, 1992/2414, reg 3(1); Interpretation Act 1978 s 17(2).
- 14 Town and Country Planning (Simplified Planning Zones) Regulations 1992, 1992/2414, reg 3(2).
- 15 As to the Secretary of State see PARA 19 ante.
- 16 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 17 Town and Country Planning (Simplified Planning Zones) Regulations 1992, 1992/2414, reg 3(3).

UPDATE

434 Consultation and notification before depositing proposals

TEXT AND NOTE 11--Reference to Urban Regeneration Agency is now to the Homes and Communities Agency (see PARA 1308A): SI 1992/2414 reg 3(1) (amended by SI 2009/801).

NOTE 12--Definition of 'designated area' amended: SI 2009/801.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/435. Procedure after deposit of proposals.

435. Procedure after deposit of proposals.

Where a local planning authority¹ has prepared a proposed simplified planning zone scheme², or proposed alterations to a simplified planning zone scheme, it must:

- 1599 (1) make copies of the proposed scheme or alterations available for inspection at such places as may be prescribed³;

- 1600 (2) take such steps as may be prescribed for the purpose of advertising the fact that the proposed scheme or alterations are so available and the places at which, and times during which, they may be inspected;
- 1601 (3) take such steps as may be prescribed for inviting objections to be made within such period as may be prescribed; and
- 1602 (4) in England, send a copy of the proposed scheme or alterations to the Secretary of State⁴ and to the Secretary of State having responsibility for highways⁵ and, if it is the district planning authority⁶, to the county council⁷;
- 1603 (5) in Wales, send a copy of the proposed scheme or alterations to the National Assembly for Wales⁸.

The authority must:

- 1604 (a) make copies available for inspection⁹ at its principal office and such other places within its area as it considers appropriate;
- 1605 (b) give notice by advertisement¹⁰ in the prescribed form¹¹;
- 1606 (c) serve a notice to the same effect on the persons consulted¹² by the authority, and on any other persons whom the authority considers should be given notice; and
- 1607 (d) display a notice to the same effect, on or near the land¹³ proposed to be included in the scheme, for a period of at least six weeks beginning with the date on which the notice given pursuant to head (b) above is first published in a local newspaper¹⁴.

Proposals for a scheme or for the alteration of a scheme may not be adopted by a local planning authority until the period given by the authority in its notice of intention to adopt¹⁵ or, as the case may be¹⁶, the period in the last such notice to be given by the authority, has expired¹⁷.

If a local planning authority decides not to proceed with a proposal to make or alter a scheme, it must give notice by advertisement in the prescribed form¹⁸ and must also notify any person who has duly made¹⁹ and not withdrawn an objection or representation with respect to the proposal and any other person whom the authority considers should be notified²⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 For the meaning of 'prescribed' see PARA 16 note 5 ante.

4 As to the Secretary of State see PARA 19 ante.

5 For the meaning of 'highway' see PARA 50 note 5 ante.

6 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

7 As to the counties of councils see PARA 28 ante.

8 Town and Country Planning Act 1990 s 83(3), Sch 7 para 6 (substituted by the Planning and Compensation Act 1991 s 28(a), Sch 5 para 1). As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 In accordance with the Town and Country Planning Act 1990 Sch 7 para 6 (as substituted): see the text and notes 1-8 supra.

10 For these purposes, 'by advertisement' means by publication in the London Gazette and by local advertisement; and 'by local advertisement' means by publication on at least one occasion in two successive weeks in a local newspaper circulating in the area of the local planning authority: Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 2.

11 For the prescribed form of notice see *ibid* regs 2, 4(b), Schedule, Form 1.

12 *Ie* consulted in accordance with *ibid* reg 3(1) (as amended): see PARA 434 ante.

13 For the meaning of 'land' see PARA 2 note 10 ante.

14 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 4. A local planning authority must send to the Secretary of State or to the Assembly a copy of every notice published by the authority in accordance with the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended), at the same time as the notice is first published together with copies of the specified documents: reg 18(1). The documents so specified are (1) in the case of documents made available for inspection pursuant to reg 4(a) (see head (a) in the text) or reg 15(2) (see PARA 442 post), four copies of each; and (2) in all other cases, one copy of each document made available for inspection: reg 18(2).

15 *Ie* the notice of intention to adopt in *ibid* Schedule, Form 1.

16 *Ie* where the authority has also given notice of its intention to adopt in *ibid* Schedule, Form 3 or Form 4.

17 *Ibid* reg 14.

18 For the prescribed form of notice see *ibid* regs 2, 6, Schedule, Form 2.

19 For these purposes, 'duly made' means made in accordance with the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended). As to the making of objections and representations see PARA 436 post.

20 *Ibid* reg 6.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/436. Objections and representations.

436. Objections and representations.

Objections to a proposed simplified planning zone scheme¹ or to proposed alterations of an existing scheme and representations about such a scheme or alterations must be made in writing and sent to the principal office of the local planning authority² in accordance with the details given in the notice by advertisement³ within a period of six weeks beginning with the date on which the notice given⁴ is first published in a local newspaper⁵.

1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 *Ie* the notice by advertisement given in the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 4(b), Schedule, Form 1. For the meaning of 'by advertisement' see PARA 435 note 10 ante.

4 *Ie* pursuant to *ibid* reg 4(b): see PARA 435 ante at head (b) in the text.

5 *Ibid* reg 5(1). As to the documents to be sent to the Secretary of State or to the National Assembly for Wales see PARA 435 note 14 ante; and as to the Secretary of State and the Assembly see PARAS 19-20 ante.

Representations complying with reg 5(1) which indicate that matters relating to those specified in the Town and Country Planning Act 1990 s 83(3), Sch 7 para 1(2) (see PARA 430 ante) are not included in the proposed

scheme and ought to have been so included are treated for all purposes of Sch 7 (as amended) as objections made in accordance with the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended): reg 5(2). The local planning authority must also consider all representations not falling within reg 5(2) which comply with reg 5(1) and have not been withdrawn: reg 5(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/437. Dealing with objections; in general.

437. Dealing with objections; in general.

Where objections to the proposed simplified planning zone scheme¹ or alterations are made, the local planning authority² may:

- 1608 (1) for the purpose of considering the objections, cause a local inquiry³ or other hearing to be held by a person appointed by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵ or, in such cases as may be prescribed⁶, appointed by the authority; or
- 1609 (2) require the objections to be considered by a person appointed by the Secretary of State or the Assembly⁷.

A local planning authority must exercise the above power⁸ if directed to do so by the Secretary of State or the Assembly⁹.

Regulations may:

- 1610 (a) make provision with respect to the appointment, and qualifications for appointment, of persons to hold a local inquiry for these purposes;
- 1611 (b) include provision enabling the Secretary of State or the Assembly to direct a local planning authority to appoint a particular person, or one of a specified list or class of persons;
- 1612 (c) make provision with respect to the remuneration and allowances of the person appointed¹⁰.

1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 As to local inquiries see PARA 438 post.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 Town and Country Planning Act 1990 s 83(3), Sch 7 para 8(1) (Sch 7 para 8(1), (2) substituted by the Planning and Compensation Act 1991 s 28(a), Sch 5 para 2(1)). The Local Government Act 1972 s 250(2), (3) (as amended) (power to summon and examine witnesses: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held under the Town and Country Planning Act 1990 Sch 7 para 8(1) (as so substituted): Sch 7 para 8(5). The Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held under the Town and Country Planning Act 1990 Sch 7 para 8(1) (as so substituted) as it applies to a statutory inquiry held by the Secretary of State or the Assembly, with the substitution in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decision: see JUDICIAL REVIEW vol 61 (2010) PARA 646) for the references to a decision

taken by the Secretary of State or the Assembly of references to a decision taken by a local authority: Town and Country Planning Act 1990 Sch 7 para 8(6) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 29).

8 le the power under the Town and Country Planning Act 1990 Sch 7 para 8(1) (as substituted: see note 7 supra) or Sch 7 para 8(1)(a) or (b) (as so substituted).

9 Ibid Sch 7 para 8(2) (as substituted: see note 7 supra).

10 Town and Country Planning Act 1990 Sch 7 para 8(4) (amended by the Planning and Compensation Act 1991 s 28(b), Sch 5 paras 4, 6). As to the costs of the inquiry or hearing see further PARA 658 post.

UPDATE

437 Dealing with objections; in general

TEXT AND NOTES--A local inquiry or other hearing held under the 1990 Act Sch 7 para 8 will be a statutory inquiry for the purposes of the Tribunals, Courts and Enforcement Act 2007 Sch 7 (functions etc of Administrative Justice and Tribunals Council): 1990 Act Sch 7 para 8(7) (added by 2007 Act Sch 8 para 11).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/438. Procedure for consideration of objections.

438. Procedure for consideration of objections.

Where the local planning authority¹ decides to consider objections to its proposed simplified planning zone scheme² or to proposed alterations to an existing scheme, without causing a local inquiry or other hearing to be held, it must give notice to this effect to every person who has duly made³, and has not withdrawn, an objection or representation⁴.

Where the local planning authority decides to cause a local inquiry or other hearing to be held to consider objections to its proposed scheme or to proposed alterations to an existing scheme, it must, at least six weeks before the inquiry or hearing is due to open:

- 1613 (1) give written notice of its purpose and of the time and place at which it is to be held, and of the name of the person appointed to hold it, to every person who has duly made, and has not withdrawn, an objection or representation; and
- 1614 (2) in the case of a local inquiry, also give notice of the matters mentioned in head (1) above by local advertisement⁵.

A local inquiry for these purposes must be held in public⁶. Following a local inquiry or other hearing so held, the local planning authority must, after considering the report of the person appointed to hold the inquiry or hearing, prepare a statement of:

- 1615 (a) the decisions it has reached in the light of the report and any recommendations as to action to be taken, or not to be taken, contained in the report; and
- 1616 (b) the reasons for those decisions⁷.

Where objections to proposals to make or alter a scheme have been considered by a person appointed for that purpose⁸, the local planning authority must, after considering his report, prepare⁹ such a statement¹⁰.

Where the local planning authority itself considers such objections, it must prepare a statement of the decisions it has reached with respect to every objection made and not withdrawn and of its reasons for those decisions¹¹.

A copy of the report and of the statement of decisions and reasons¹² or a copy of the statement of decisions and reasons¹³, as the case may be, must be made available by the local planning authority for inspection together with, where applicable, a list¹⁴ of proposed modifications and reasons¹⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 For the meaning of 'duly made' see PARA 435 note 19 ante.

4 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 7(1).

5 Ibid reg 7(2). For the meaning of 'by local advertisement' see PARA 435 note 10 ante.

6 Ibid reg 7(3). As to the costs of the inquiry see further PARA 658 post.

7 Ibid reg 8.

8 I.e. pursuant to the Town and Country Planning Act 1990 s 83(3), Sch 7 para 8(1)(b) (as substituted): see PARA 437 ante at head (2) in the text.

9 I.e. must prepare a statement as mentioned in the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 8: see the text and note 7 supra.

10 Ibid reg 9(1).

11 Ibid reg 9(2).

12 I.e. mentioned in ibid reg 8 or reg 9(1): see the text and notes 7-10 supra.

13 I.e. mentioned in ibid reg 9(2): see the text to note 11 supra.

14 I.e. a list of proposed modifications and reasons as mentioned in ibid reg 12(1)(a): see PARA 440 post at head (1) in the text.

15 Ibid reg 10(1). In cases where the local planning authority intends to adopt proposals without material modifications, it must make the documents specified in reg 10(1) available for inspection from the date on which notice by local advertisement in regs 2, 10(2), Schedule, Form 3 is given pursuant to reg 11 (see PARA 439 post) and at any place where the proposals were made available for inspection pursuant to reg 4(a) (see PARA 435 ante at head (a) in the text): reg 10(2). In cases where the local planning authority intends to adopt proposals with material modifications, it must make the documents specified in reg 10(1) available for inspection from the date on which and at the places at which the list of proposed modifications is made available for inspection pursuant to reg 12(1) (see PARA 440 post): reg 10(3).

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439. Notice of intention to adopt without material modifications.

Where, after considering all objections and representations duly made¹ and not withdrawn, a local planning authority² intends to adopt proposals to make or alter a simplified planning zone scheme³ without material modifications, when it makes the required documents available for inspection⁴, it must at the same time:

- 1617 (1) give notice by local advertisement⁵ in the prescribed form⁶ that it intends to adopt its proposals; and
- 1618 (2) serve a notice to the same effect on any person who has duly made and not withdrawn an objection or representation with respect to the proposals, and on any other person whom the authority considers should be notified⁷.

1 For the meaning of 'duly made' see PARA 435 note 19 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

4 Ie when the local planning authority complies with the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 10: see PARA 438 ante.

5 For the meaning of 'by local advertisement' see PARA 435 note 10 ante.

6 For the prescribed form of notice see the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 11(a), Schedule, Form 3.

7 Ibid reg 11.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/440. Procedure for modification of proposals.

440. Procedure for modification of proposals.

Where, after considering objections and representations with respect to its proposals, the local planning authority¹ proposes to modify its proposals to make or alter a simplified planning zone scheme², whether to comply with a direction³ by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵ or on its own initiative, unless it is satisfied that the proposed modifications will not materially affect the content of the scheme or the alterations, the authority must:

- 1619 (1) prepare a list of the proposed modifications, which must include its reasons for proposing them;
- 1620 (2) make copies of that list available for inspection at all places where the original proposals were made available⁶;
- 1621 (3) give notice by local advertisement⁷ in the prescribed form⁸; and
- 1622 (4) serve a notice to the same effect on any person who has duly made⁹ objections or representations with respect to the proposed scheme or alterations, and not withdrawn them, and on any other person whom the authority considers should be notified¹⁰.

Objections or representations with respect to proposed modifications considered by the local planning authority or, as the case may be, by the Secretary of State or the Assembly¹¹, materially to affect the content of the scheme or alterations as earlier proposed, must be made

in writing and sent to the principal office of the local planning authority in accordance with the details given in the notice by local advertisement¹² within a period of six weeks beginning with the date on which the notice mentioned in head (3) above is first published in a local newspaper¹³. The local planning authority must consider all objections or representations with respect to proposed modifications so made which have not been withdrawn¹⁴.

The local planning authority must make a copy of every direction given by the Secretary of State or by the Assembly¹⁵ available for inspection at the places mentioned in head (2) above, together with the list there mentioned, if any; and, where there is such a list, it must identify the modifications proposed in response to the direction and, if the authority does not comply with the direction in any respect, the list must include a statement of the authority's reasons for not proposing full compliance¹⁶.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 Ie under the Town and Country Planning Act 1990 s 83(3), Sch 7 para 9(3) (as amended): see PARA 441 post.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie pursuant to the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 4(a): see PARA 435 ante at head (a) in the text.

7 For the meaning of 'by local advertisement' see PARA 435 note 10 ante.

8 For the prescribed form of notice see the Town and Country Planning (Simplified Planning Zones) Regulations 1992 regs 2, 12(1)(c), Schedule, Form 4.

9 For the meaning of 'duly made' see PARA 435 note 19 ante.

10 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 12(1). Regulations 7-10 (see PARA 438 ante) apply in relation to objections to proposals to modify a proposed scheme or proposed alterations of an existing scheme as they applied in relation to objections to the proposed scheme or alterations: reg 13.

11 Ie in a case to which *ibid* reg 16(1) applies: see PARA 444 post.

12 Ie in *ibid* Schedule, Form 4.

13 *Ibid* reg 12(2). As to the documents to be sent to the Secretary of State or the Assembly see PARA 435 note 14 ante.

14 *Ibid* reg 12(3).

15 See note 3 *supra*.

16 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 12(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/441. Adoption of proposals by local planning authority.

441. Adoption of proposals by local planning authority.

After the expiry of the period for making objections or, if objections have been made in accordance with the regulations, after considering those objections and the views of any person holding an inquiry or hearing or considering the objections¹, the local planning authority² may³ by resolution adopt the proposals⁴.

The authority may adopt the proposals as originally prepared or as modified so as to take account of:

- 1623 (1) any such objections as are mentioned above⁵ or any other objections to the proposals; or
- 1624 (2) any other considerations which appear to the authority to be material⁶.

If, before the proposals have been adopted by the local planning authority, it appears to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ that they are unsatisfactory, he or the Assembly may direct the authority to modify the proposals in such respects as are indicated in the direction⁹.

An authority to which such a direction is given may not adopt the proposals unless:

- 1625 (a) the authority satisfies the Secretary of State or the Assembly that it has made the modifications necessary to conform with the direction; or
- 1626 (b) the direction is withdrawn¹⁰.

As soon as practicable after proposals for a scheme or for the alteration of a scheme have been adopted or approved, the local planning authority which prepared the proposals must secure that printed copies of the adopted or approved scheme are made available for inspection at every place at which a copy of the adopted or approved scheme or alterations was made¹¹ available¹².

A local planning authority must continue to make copies of any scheme adopted or approved and made available for inspection or purchase¹³ so available until the scheme is altered or revoked¹⁴.

1 Ie under the Town and Country Planning Act 1990 s 83(3), Sch 7 para 8 (as amended): see PARA 437 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Ie subject to the provisions of the Town and Country Planning Act 1990 Sch 7 para 9(2)-(4) (as amended) (see the text and notes 5-10 infra) and Sch 7 para 10 (as amended) (see PARA 444 post).

4 Ibid Sch 7 para 9(1) (substituted by the Planning and Compensation Act 1991 s 28(b), Sch 5 paras 4, 7(1)).

5 Ie any such objections as are mentioned in the Town and Country Planning Act 1990 Sch 7 para 9(1) (as substituted): see the text and notes 1-4 supra.

6 Ibid Sch 7 para 9(2).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 Sch 7 para 9(3) (amended by the Planning and Compensation Act 1991 Sch 5 paras 4, 7(2)).

10 Town and Country Planning Act 1990 Sch 7 para 9(4).

11 Ie made available pursuant to the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 15(2) (see PARA 442 post) or reg 16(4)(c) (see PARA 444 post).

12 Ibid reg 20(2).

13 Ie under the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended).

14 Ibid regs 2, 21(2). As to the availability of documents for purchase see PARA 429 note 10 ante.

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442. Notice of adoption of scheme or alterations.

Where a local planning authority¹ adopts proposals for the making or alteration of a simplified planning zone scheme², it must give notice by advertisement³ in the prescribed form⁴ and serve notice to the same effect on any person who has asked the authority to notify him⁵. A copy of such notice and of the adopted scheme or alterations must be made available for inspection for at least six weeks beginning with the date of first publication of the notice at every place at which a copy of the proposed scheme or alterations was made⁶ available⁷.

Where the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ has given a direction to the local planning authority to modify its proposals¹⁰, any notice of adoption of the proposals so given¹¹ must state that the local planning authority has satisfied the Secretary of State or the Assembly that the authority has made the modifications necessary to conform with the direction to modify or that the direction has been withdrawn, as the case may be¹².

A copy of any notification by the Secretary of State or the Assembly that he or it is satisfied with the modifications made or that the direction is withdrawn must be made available for inspection from the date on which and at the places at which the adopted proposals are made available for inspection¹³.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

3 For the meaning of 'by advertisement' see PARA 435 note 10 ante.

4 For the prescribed form of notice see the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 15(1), Schedule, Form 5.

5 Ibid regs 2, 15(1).

6 Ie made available pursuant to ibid reg 4(a): see PARA 435 ante at head (a) in the text.

7 Ibid reg 15(2). As to the documents to be sent to the Secretary of State or to the National Assembly for Wales see PARA 435 note 14 ante. Adopted proposals made available for inspection under reg 15(2) must remain so available until printed copies of the proposals are made available for inspection under reg 20(2) (see PARA 441 ante): reg 20(1).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 le a direction under the Town and Country Planning Act 1990 s 83(3), Sch 7 para 9(3) (as amended): see PARA 441 ante.

11 le pursuant to the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 15(1): see the text and notes 1-5 supra.

12 Ibid reg 15(3).

13 Ibid reg 15(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(5) SIMPLIFIED PLANNING ZONES/(ii) Procedure for Making Scheme/443. Alteration of simplified planning zone scheme.

443. Alteration of simplified planning zone scheme.

The following provisions apply where alterations to a simplified planning zone scheme¹ are adopted or approved².

The adoption or approval of alterations providing for the inclusion of land³ in the simplified planning zone⁴ has effect to grant in relation to that land, or such part of it as is specified in the scheme, planning permission⁵ for development⁶ so specified or of any class so specified⁷.

The adoption or approval of alterations providing for the grant of planning permission has effect to grant such permission in relation to the simplified planning zone, or such part of it as is specified in the scheme, for development so specified or development of any class so specified⁸.

The adoption or approval of alterations providing for the withdrawal or relaxation of conditions, limitations or restrictions to which planning permission under the scheme is subject has effect to withdraw or relax the conditions, limitations or restrictions immediately⁹.

The adoption or approval of alterations providing for:

- 1627 (1) the exclusion of land from the simplified planning zone;
- 1628 (2) the withdrawal of planning permission; or
- 1629 (3) the imposition of new or more stringent conditions, limitations or restrictions to which planning permission under the scheme is subject,

has effect to withdraw permission, or to impose the conditions, limitations or restrictions, with effect from the end of the period of 12 months beginning with the date of the adoption or approval¹⁰.

The adoption or approval of alterations to a scheme does not affect planning permission under the scheme in any case where the development authorised by it has been begun¹¹.

1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

2 Town and Country Planning Act 1990 s 86(1).

3 For the meaning of 'land' see PARA 2 note 10 ante.

- 4 For the meaning of 'simplified planning zone' see PARA 426 ante.
- 5 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 6 For the meaning of 'development' see PARA 217 ante.
- 7 Town and Country Planning Act 1990 s 86(2).
- 8 Ibid s 86(3).
- 9 Ibid s 86(4).
- 10 Ibid s 86(5).
- 11 Ibid s 86(6). As to when development has been begun for these purposes see PARA 221 ante.

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(iii) Calling in of Proposals and Default Powers

444. Calling in of proposals for approval by the Secretary of State of the Assembly.

Before the proposals for the making or alteration of a simplified planning zone scheme¹ have been adopted by the local planning authority², the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may direct that they are to be submitted to him or to the Assembly for approval⁵. If, before the local planning authority has adopted proposals for the making or alteration of a scheme, the Secretary of State or the Assembly directs the authority not to adopt those proposals until he or it has decided whether to give the authority such a direction in relation to the proposals, the authority must not adopt the proposals until the Secretary of State or the Assembly has notified the authority of his or its decision⁶.

If the Secretary of State or the Assembly gives such a direction:

- 1630 (1) the authority may not take any further steps for the adoption of the proposals, and in particular may not hold or proceed with a local inquiry or other hearing or any consideration of objections⁷ in respect of the proposals; and
- 1631 (2) the proposals do not have effect unless approved by the Secretary of State or the Assembly and do not require adoption by the authority⁸.

The Secretary of State or the Assembly must send to the local planning authority a list of any modifications he or it may propose to a proposed scheme or alterations so submitted for approval⁹ unless he or the Assembly is satisfied that his or its proposed modifications will not materially affect the content of the authority's proposals¹⁰.

- 1 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.
- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Town and Country Planning Act 1990 s 83(3), Sch 7 para 10(1).

6 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 17.

7 le under the Town and Country Planning Act 1990 Sch 7 para 8 (as amended): see PARA 437 ante.

8 Ibid Sch 7 para 10(2) (amended by the Planning and Compensation Act 1991 s 28(b), Sch 5 paras 4, 8).

9 le by virtue of the Town and Country Planning Act 1990 Sch 7 para 10 (as amended): see the text and notes 1-8 supra.

10 Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 16(1). The authority must comply with reg 12(1)(a)-(d) (see PARA 440 ante at heads (1)-(4) in the text) as if it were proposing the modifications itself, except that the notice to be published by local advertisement must be in regs 2, 16(1), Schedule, Form 6: regs 2, 16(1). For the meaning of 'by local advertisement' see PARA 435 note 10 ante. As to the documents to be sent to the Secretary of State or the Assembly see PARA 435 note 14 ante.

Regulations 8-10 (see PARA 438 ante) apply, with any necessary modifications, in relation to proposals submitted to the Secretary of State or the Assembly as mentioned in reg 16(1) as they apply in relation to proposals being dealt with by the local planning authority: reg 16(3).

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445. Approval of proposals by the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may, after considering proposals for the making or alteration of a simplified planning zone scheme³ submitted⁴ for approval, either approve them, in whole or in part and with or without modifications, or reject them⁵. In considering the proposals the Secretary of State or the Assembly may take into account any matters he or it thinks are relevant, whether or not they were taken into account in the proposals as submitted⁶.

Where, on taking the proposals into consideration, the Secretary of State or the Assembly does not determine then to reject them, he or it must, before determining whether or not to approve them, consider any objections made in accordance with regulations, and not withdrawn, except objections which have already been considered:

1632 (1) by the local planning authority⁷ or by a person appointed by the Secretary of State or the Assembly; or

1633 (2) at a local inquiry or other hearing⁸.

The Secretary of State or the Assembly may:

1634 (a) for the purpose of considering any objections and the views of the local planning authority and of such other persons as he or it thinks fit, cause a local inquiry or other hearing to be held by a person appointed by him or by the Assembly; or

1635 (b) require such objections and views to be considered by a person so appointed⁹.

In considering the proposals the Secretary of State or the Assembly may consult¹⁰ with, or consider the views of, any local planning authority or any other person, but need not do so, or give an opportunity for the making or consideration of representations or objections, except so far as required¹¹ to do so under the above provisions¹².

The local planning authority must, on being notified by the Secretary of State or the Assembly of his or its decision on proposals submitted for approval:

- 1636 (i) give notice by advertisement¹³ in the prescribed form¹⁴;
- 1637 (ii) serve a notice in similar form on any person who has asked to be notified of the decision reached on the proposals and on any other person on whom the Secretary of State or the Assembly directs the authority to serve such a notice; and
- 1638 (iii) make a copy of the Secretary of State's or Assembly's notification and of the approved or rejected proposals available for inspection at any place at which the proposals were made available¹⁵ for inspection¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

4 Ie under the Town and Country Planning Act 1990 s 83(3), Sch 7 para 10 (as amended): see PARA 444 ante.

5 Ibid Sch 7 para 11(1).

6 Ibid Sch 7 para 11(2).

7 As to local planning authorities see PARA 28 et seq ante.

8 Town and Country Planning Act 1990 Sch 7 para 11(3) (Sch 7 para 11(3)-(5) substituted by the Planning and Compensation Act 1991 s 28(a), Sch 5 para 2(2)).

9 Town and Country Planning Act 1990 Sch 7 para 11(4) (as substituted: see note 8 supra). Where, under Sch 7 para 11(4)(a) (as so substituted) (see head (a) in the text), the Secretary of State or the Assembly causes a local inquiry or other hearing to be held for the purpose of considering objections to proposals submitted as mentioned in the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, reg 16(1) (see PARA 444 ante), or to modifications he or it proposes, and the views of the local planning authority and of such other persons as he or it thinks fit, he or it must give such notice and notification as is mentioned in reg 7(2)(a), (b) (see PARA 438 ante at heads (1)-(2) in the text), as appropriate: reg 16(2).

10 For the meaning of 'consult' see PARA 2 note 1 ante.

11 Ie by the Town and Country Planning Act 1990 Sch 7 para 11(3) (as substituted): see the text to notes 7-8 supra.

12 Ibid Sch 7 para 11(5) (as substituted see note 8 supra).

13 For the meaning of 'by advertisement' see PARA 435 note 10 ante.

14 For the prescribed form of notice see the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414, regs 2, 16(4)(a), Schedule, Form 7.

15 Ie made available pursuant to ibid reg 4(a): see PARA 435 ante at head (a) in the text.

16 Ibid reg 16(4). Approved proposals made available for inspection under reg 16(4)(c) (see head (iii) in the text) must remain so available until printed copies of the proposals are made available for inspection under reg 20(2) (see PARA 441 ante): see 20(1).

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446. Default powers.

As from a day to be appointed¹, the following provisions apply if each of the statutory conditions is satisfied². The first condition is that:

- 1639 (1) the regional spatial strategy for the region³ in which the area of a local planning authority⁴ is situated identifies the need for a simplified planning zone⁵ in any part of its area; or
- 1640 (2) the criteria prescribed by the National Assembly for Wales⁶ for the need for a simplified planning zone are satisfied in relation to the area of a local planning authority in Wales⁷.

The second condition is that the Secretary of State⁸ or the Assembly, as the case may be, is satisfied after holding a local inquiry⁹ or other hearing that the authority is not taking within a reasonable period the steps required¹⁰ for the adoption of proposals for the making or alteration of a scheme¹¹.

Where these provisions apply, the Secretary of State or the Assembly, as the case may be, may make or alter the scheme¹².

Where, under these provisions, anything which ought to have been done by a local planning authority is done by the Secretary of State or the Assembly, the statutory provisions relating to the making and alteration of simplified planning zone schemes¹³ apply, so far as practicable, with any necessary modifications, in relation to the doing of that thing by the Secretary of State or the Assembly and the thing so done¹⁴.

Where the Secretary of State or the Assembly incurs expenses under these provisions in connection with the doing of anything which should have been done by a local planning authority, so much of those expenses as may be certified by the Secretary of State or the Assembly to have been incurred in the performance of functions¹⁵ of that authority must on demand be repaid by the authority to the Secretary of State or the Assembly¹⁶.

1 As from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2 Town and Country Planning Act 1990 s 83(3), Sch 7 para 12(1) (Sch 7 para 12(1), (1A)-(1C) prospectively substituted by the Planning and Compulsory Purchase Act 2004 s 45(9), as from a day to be appointed: see note 1 supra).

3 For the meaning of 'regional spatial strategy' and 'region' for these purposes see PARA 428 note 6 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 For the meaning of 'simplified planning zone' see PARA 426 ante.

6 For the meaning of 'prescribed' see PARA 16 note 5 ante. As to the transfer of functions under the Town and Country Planning Act 1990 Sch 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 Sch 7 para 12(1A) (as added: see note 2 supra).

- 8 As to the Secretary of State see PARA 19 ante.
- 9 As to local inquiries see PARA 651 et seq post.
- 10 Ie required by the Town and Country Planning Act 1990 Sch 7 (as amended): see PARA 429 et seq ante.
- 11 Ibid Sch 7 para 12(1B) (as added: see note 2 supra).
- 12 Ibid Sch 7 para 12(1C) (as added: see note 2 supra). As to default powers under Sch 7 para 12(1) (as originally enacted) see PARA 429 note 15 ante.
The Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended) (see PARAS 429, 430, 435 et seq ante) apply, so far as practicable and with any necessary modifications, to action taken by the Secretary of State or the Assembly in connection with the making or alteration of a simplified planning zone scheme by him or by it under the Town and Country Planning Act 1990 Sch 7 para 12 (as amended) as they apply to the making or alteration of a scheme by a local planning authority: Town and Country Planning (Simplified Planning Zones) Regulations 1992 regs 2, 19(1). The Secretary of State or the Assembly may require the local planning authority concerned to give, in relation to any proposals by him or by the Assembly to make or alter a simplified planning zone scheme, or in relation to any scheme or alterations made by him or by it, any notice or notification required to be given by the Town and Country Planning (Simplified Planning Zones) Regulations 1992, SI 1992/2414 (as amended) in their application by virtue of reg 19(1): reg 19(2) (as so modified).
- 13 Ie the Town and Country Planning Act 1990 Sch 7 paras 1-11 (as amended): see PARA 430 et seq ante.
- 14 Ibid Sch 7 para 12(2).
- 15 For the meaning of 'functions' see PARA 2 note 1 ante.
- 16 Town and Country Planning Act 1990 Sch 7 para 12(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(6) ENTERPRISE ZONE SCHEMES/447. In general.

(6) ENTERPRISE ZONE SCHEMES

447. In general.

The extent to which an order¹ designating an enterprise zone or the approval of a modified enterprise zone scheme² grants planning permission³ for specified development⁴ is discussed in a later part of this title⁵.

- 1 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see PARA 1491 et seq post.
- 2 Ie under the Local Government, Planning and Land Act 1980 Sch 32 para 11 (as amended): see PARA 1499 post.
- 3 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 4 For the meaning of 'development' see PARA 217 ante.
- 5 See the Town and Country Planning Act 1990 s 88 (as amended); and PARA 1502 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/A. IN GENERAL/448. Applications for planning permission; in general.

(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT

(i) Application for Planning Permission

A. IN GENERAL

448. Applications for planning permission; in general.

A development order¹ may make provision as to applications for planning permission² made to a local planning authority³. Such provision includes provision as to:

- 1641 (1) the form and manner in which the application must be made;
- 1642 (2) particulars of such matters as are to be included in the application;
- 1643 (3) documents or other materials as are to accompany the application⁴.

The local planning authority may⁵ require that an application for planning permission must include:

- 1644 (a) such particulars as it thinks necessary;
- 1645 (b) such evidence in support of anything in or relating to the application as it thinks necessary⁶;

but such a requirement must not be inconsistent with provision made⁷ by the development order⁸.

A development order must require that an application for planning permission of such description as is specified in the order must be accompanied by such of the following as is so specified:

- 1646 (i) a statement⁹ about the design principles and concepts that have been applied to the development;
- 1647 (ii) a statement about how issues relating to access to the development have been dealt with¹⁰.

It has been held that a landowner is entitled to make as many applications for planning permission as he wishes, each containing different proposals relating to the same piece of land, and that the local planning authority must deal with each application on its merits¹¹; however a local planning authority now has power in certain circumstances to refuse to determine an application¹².

Where outline planning permission has been granted¹³, the detailed application for planning permission with regard to the reserved matters¹⁴ must be within the scope of the outline permission¹⁵.

The opinion of a county planning officer cannot reasonably be taken as a binding representation that no planning permission is required¹⁶.

¹ For the meaning of 'development order' see PARA 252 ante.

- 2 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 3 Town and Country Planning Act 1990 s 62(1) (s 62 substituted by the Planning and Compulsory Purchase Act 2004 s 42(1), partly as from a day to be appointed under s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). As to local planning authorities see PARA 28 et seq ante.
- 4 Town and Country Planning Act 1990 s 62(2) (as substituted: see note 3 supra).
- 5 le partly as from a day to be appointed: see note 3 supra.
- 6 Town and Country Planning Act 1990 s 62(3) (as substituted: see note 3 supra).
- 7 le made under ibid s 62(1) (as substituted): see the text and notes 1-3 supra.
- 8 Ibid s 62(4) (as substituted: see note 3 supra). Prior to such substitution, s 62 (as originally enacted) provides that any application to a local planning authority for planning permission must be made in such manner as may be prescribed by regulations and must include such particulars and be verified by such evidence as may be required by the regulations or by directions given by the local planning authority under them. At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812 (as amended), had effect as if so made. As to the manner of making an application for planning permission, the forms to be used and the use of electronic communications see regs 3, 5 (respectively amended and added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156). The local planning authority which is to determine an application may direct an applicant in writing to supply any further information and, except in the case of outline applications, plans and drawings necessary to enable the authority to determine the application, or to provide one of its officers with any evidence in respect of the application as is reasonable for it to call for to verify any particulars of information given to it: Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 4.
- 9 The form and content of a statement mentioned in the Town and Country Planning Act 1990 s 62(5) (as added) (see heads (i)-(ii) in the text) is such as is required by the development order: s 62(6) (as added: see note 3 supra).
- 10 Ibid s 62(5) (as added: see note 4 supra).
- 11 *Pilkington v Secretary of State for the Environment* [1974] 1 All ER 283, [1973] 1 WLR 1527, DC.
- 12 See the Town and Country Planning Act 1990 ss 70A, 70B (as substituted); and PARAS 516-517 post.
- 13 le under ibid s 92 (as amended): see PARA 519 post.
- 14 For the meaning of 'reserved matters' see PARA 520 post.
- 15 See PARA 521 post.
- 16 See *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8 at [32], [2002] 4 All ER 58, [2003] 1 WLR 348 per Lord Hoffmann. As to the concept of legitimate expectation in the context of the enforcement of planning controls see PARA 561 post. As to whether a local planning authority may be liable in negligence for a misstatement by one of its senior planning officers see *Lambert v West Devon Borough Council* (1997) 75 P & CR 282, [1997] 1 PLR 103.

UPDATE

448 Applications for planning permission; in general

TEXT AND NOTES--As to the scheme under which development consent is required for nationally significant infrastructure projects see the Planning Act 2008 Pts 1-8 (ss 1-173); and PARA 448A.

NOTE 3--Day now appointed for remaining purposes: SI 2006/1061 (England), SI 2007/1369 (Wales).

NOTE 9--In relation to England, an application for planning permission must be accompanied by a design and access statement specifying (1) the design principles

and concepts that have been applied to the development; and (2) how issues relating to access to the development have been dealt with: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4C(2) (added by SI 2006/1062). SI 1995/419 art 4C applies to an application for planning permission which is not an application for planning permission for (a) engineering or mining operations; (b) development of an existing dwelling-house; (c) a material change in the use of land or buildings; or (d) development that is the subject of an application referred to in art 10B(1)(b): art 4C(1) (amended by SI 2009/2261).

In relation to Wales, an application for planning permission must be accompanied by a design and access statement explaining the design principles and concepts that have been applied to the development and how issues relating to access to the development have been dealt with: SI 1995/419 art 4D(3) (art 4D substituted by SI 2009/1024). SI 1995/419 art 4D applies to an application for planning permission which is not an application for planning permission for (i) engineering or mining operations; (ii) development of an existing dwelling house, or development within the cartilage of such a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such; or (iii) a material change in the use of land or buildings provided that if the new use will necessitate access by an employee or involves the provision of services to the public or to a section of the public, with or without payment then art 4D applies to the application as if in art 4D(3), for 'a design and access statement' there were substituted 'an access statement', in art 4D(5), for 'a design and access statement must, in relation to access,' there were substituted 'an access statement must' and art 4D(3)(a), (4), (6) were omitted: art 4D(1). For the purposes of head (iii) 'the provision of services' includes the provision of any goods or facilities: art 4D(2). A design and access statement must, in relation to design (A) explain the design principles and concepts that have been applied to the following aspects of the development: environmental sustainability, movement to, from and within the development, character and community safety; and (B) demonstrate the steps taken to appraise the context of the development and how the design of the development takes that context into account in relation to its proposed use and each of the aspects specified in head (A): art 4D(4). A design and access statement must, in relation to access, explain the policy or approach adopted as to access and how policies relating to access in the development plan have been taken into account, how any specific issues which might affect access to the development have been addressed and how features which ensure access to the development will be maintained: art 4D(5). 'Amount' means, in relation to residential development, the number of proposed units for residential use and in relation to all other forms of development, the proposed floor space for each proposed use forming part of the development; 'character' includes any landscaping comprised in the development and the amount, layout, scale and appearance of the development; and 'context' means the physical, social, economic and policy context of the development: art 4D(6).

See further in relation to England art 4E (added by SI 2008/550; and amended by SI 2009/2261), which makes various provision in relation to applications for planning permission; and SI 1995/419 art 4F (added by SI 2009/2261), which makes provision in relation to applications for non-material changes to planning permission.

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448A. Development consent for nationally significant infrastructure projects.

1. The Infrastructure Planning Commission

There is to be a body corporate called the Infrastructure Planning Commission, which has functions conferred on it by or under the Planning Act 2008 or any other Act: Planning Act 2008 s 1(1), (2). As to provision for the constitution and procedure of the Commission see the Planning Act 2008 Sch 1. Provision is also made for the issuing of a code of conduct about the conduct expected of Commissioners (see the Planning Act 2008 s 2), for the registration of financial and other interests of the Commissioners (see the Planning Act 2008 s 3), and for charging of fees by the Commissioners (see the Planning Act 2008 s 4). In exercise of the power conferred by s 4, the Secretary of State has made the Infrastructure Planning (Fees) Regulations 2010, SI 2010/106.

2. National policy statements

The Secretary of State may designate a statement as a national policy statement for the purposes of the Planning Act 2008 if the statement is issued by the Secretary of State and it sets out national policy in relation to one or more specified descriptions of development: Planning Act 2008 s 5(1). The policy set out in a national policy statement may in particular (1) set out, in relation to a specified description of development, the amount, type or size of development of that description which is appropriate nationally or for a specified area; (2) set out criteria to be applied in deciding whether a location is suitable (or potentially suitable) for a specified description of development; (3) set out the relative weight to be given to specified criteria; (4) identify one or more locations as suitable (or potentially suitable) or unsuitable for a specified description of development; (5) identify one or more statutory undertakers as appropriate persons to carry out a specified description of development; and (6) set out circumstances in which it is appropriate for a specified type of action to be taken to mitigate the impact of a specified description of development: Planning Act 2008 s 5(5). If a national policy statement sets out policy in relation to a particular description of development, the statement must set out criteria to be taken into account in the design of that description of development: Planning Act 2008 s 5(6). A national policy statement must give reasons for the policy set out in the statement: Planning Act 2008 s 5(7). Provision is also made for (a) the Secretary of State to review each national policy statement when appropriate (see the Planning Act 2008 s 6); (b) consultation and publicity requirements (see the Planning Act 2008 ss 7, 8; and the Infrastructure Planning (National Policy Statement Consultation) Regulations 2009, SI 2009/1302); (c) the laying of a proposal before Parliament (see the Planning Act 2008 s 9); (d) the duty of the Secretary of State to exercise such functions with the objective of contributing to the achievement of sustainable development (see the Planning Act 2008 s 10); (e) the suspension of a national policy statement following a change in circumstances (see the Planning Act 2008 s 11); (f) the designation of pre-commencement national policy statements (see the Planning Act 2008 s 12); and (g) legal challenges relating to national policy statements (see the Planning Act 2008 s 13).

3. Requirement for development consent

Consent under the Planning Act 2008 is required for development to the extent that it is or forms part of a nationally significant infrastructure project: Planning Act 2008 s 31. For this purpose, 'development' has the same meaning as it has in the Town and Country Planning Act 1990 (see PARA 217), subject to specified modifications and exceptions: see the Planning Act 2008 s 32. 'Nationally significant infrastructure project' means a project which consists of any of the following: (1) the construction or extension of a generating station; (2) the installation of

an electric line above ground; (3) development relating to underground gas storage facilities; (4) the construction or alteration of a liquid natural gas ('LNG') facility; (5) the construction or alteration of a gas reception facility; (6) the construction of a pipe-line by a gas transporter; (7) the construction of a pipe-line other than by a gas transporter; (8) highway-related development; (9) airport-related development; (10) the construction or alteration of harbour facilities; (11) the construction or alteration of a railway; (12) the construction or alteration of a rail freight interchange; (13) the construction or alteration of a dam or reservoir; (14) development relating to the transfer of water resources; (15) the construction or alteration of a waste water treatment plant; and (16) the construction or alteration of a hazardous waste facility: Planning Act 2008 s 14(1) (in force in part). The Secretary of State may add a new type of project to the list in s 14(1) if the project is one for the carrying out of works in one or more of the following fields: energy, transport, water, waste water and waste (Planning Act 2008 s 14(3), (5), (6)). Section 14 is subject to ss 15-30, which make particular provision in relation to (a) generating stations (see the Planning Act 2008 s 15); (b) electric lines (see the Planning Act 2008 s 16 (amended by SI 2010/277)); (c) underground gas storage facilities (see the Planning Act 2008 s 17); (d) LNG facilities (see the Planning Act 2008 s 18); (e) gas reception facilities (see the Planning Act 2008 s 19); (f) gas transporter pipe-lines (see the Planning Act 2008 s 20); (g) other pipe-lines (see the Planning Act 2008 s 21); (h) highways (see the Planning Act 2008 s 22); (i) airports (see the Planning Act 2008 s 23); (j) harbour facilities (see the Planning Act 2008 s 24); (k) railways (see the Planning Act 2008 s 25); (l) rail freight interchanges (see the Planning Act 2008 s 26); (m) dams and reservoirs (see the Planning Act 2008 s 27 (not yet in force)); (n) the transfer of water resources (see the Planning Act 2008 s 28 (not yet in force)); (o) waste water treatment plants (see the Planning Act 2008 s 29 (not yet in force)); and (p) hazardous waste facilities (see the Planning Act 2008 s 30 (not yet in force)). As to the requirement to carry out an environmental impact assessment in relation to such development see the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009, SI 2009/2263.

4. Effect of requirement for development consent on other consent regimes

To the extent that development consent under the Planning Act 2008 (see PARA 448A.3) is required for development, none of the following is required to be obtained for the development or given in relation to it: (1) planning permission; (2) consent under the Green Belt (London and Home Counties) Act 1938 s 10(1), 11(1) or 12(1) (erection of buildings and construction of sewer main pipes, watercourses and electric lines on Green Belt land); (3) a pipe-line construction authorisation under the Pipe-lines Act 1962 s 1(1) (authorisation for construction of cross-country pipe-lines); (4) authorisation by an order under the Gas Act 1965 s 4(1) (storage of gas in underground strata); (5) notice under the Energy Act 1976 s 14(1) (conversion of generating station from one fuel to another); (6) to the extent that the development relates to land in England, consent under the Ancient Monuments and Archaeological Areas Act 1979 s 2(3) or 3; (7) to the extent that the development relates to land in England, notice under the Ancient Monuments and Archaeological Areas Act 1979 s 35; (8) consent under the Electricity Act 1989 s 36 or 37 (construction etc of generating stations and installation of overhead lines); (9) to the extent that the development relates to land in England, consent under the Listed Buildings Act s 8(1), (2) or (3); and (10) to the extent that the development relates to land in England, consent under the Listed Buildings Act s 74(1): Planning Act 2008 s 33(1).

To the extent that development consent is required for development, the development may not be authorised by any of the following: (a) an order under the Harbours Act 1964 s 14 or 16 (orders in relation to harbours, docks and wharves); (b) an order under the Gas Act 1965 s 4(1) (order authorising storage of gas in underground strata); and (c) an order under the Transport and Works Act 1992 s 1 or 3 (orders as to railways, tramways, inland waterways etc): Planning

Act 2008 s 33(2). Section 33(2) is subject to the Planning Act 2008 s 34, which makes particular provision in relation to Welsh offshore generating stations.

If development consent is required for the construction, improvement or alteration of a highway, none of the following may be made or confirmed in relation to the highway or in connection with the construction, improvement or alteration of the highway: (i) an order under the Highways Act 1980 s 10 (general provisions as to trunk roads) directing that the highway should become a trunk road; (ii) an order under s 14 (supplementary orders relating to trunk roads and classified roads); (iii) a scheme under s 16 (schemes authorising the provision of special roads); (iv) an order under s 18 (supplementary orders relating to special roads); (v) an order or scheme under s 106 (orders and schemes providing for construction of bridges over or tunnels under navigable waters); (vi) an order under s 108 or 110 (orders authorising the diversion of navigable and non-navigable watercourses); and (vii) an order under the New Roads and Street Works Act 1991 s 6 (toll orders): Planning Act 2008 s 33(4). As to provision for directions in relation to projects of national significance see the Planning Act 2008 s 35.

5. Applications for orders granting development consent

An order granting development consent under the Planning Act 2008 (see PARA 448A.3) may be made only if an application for it is made to the Infrastructure Planning Commission: Planning Act 2008 s 37(1), (2). The Secretary of State is authorised to prescribe model provisions that developers may use if required to prepare a draft order to accompany an application for an order granting development consent: Planning Act 2008 s 38. In exercise of the power under s 38 the Secretary of State has made the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009, SI 2009/2265. The Commission has a duty to maintain a register of applications for orders granting development consent and to publish this register or make arrangements for its inspection by the public: Planning Act 2008 s 39. The Secretary of State may make regulations modifying or excluding certain statutory provisions in relation to applications made by the Crown for an order granting development consent: Planning Act 2008 s 40.

Where a person proposes to make an application for an order granting development consent, he is required to consult certain local authorities, persons with rights over the land and other prescribed persons: see the Planning Act 2008 ss 41-44 (s 42 amended by Marine and Coastal Access Act 2009 s 23 to make provision for the Marine Management Organisation); and the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, SI 2009/2264. The applicant must give each consultee a deadline for responding to the consultation: Planning Act 2008 s 45. The applicant must give the Commission a copy of the consultation documents on or before commencing consultation: Planning Act 2008 s 46. The applicant must also prepare and publish a statement setting out how he proposes to consult local people about the proposed application (Planning Act 2008 s 47), and publicise the proposed application in the prescribed manner (Planning Act 2008 s 48; SI 2009/2264). The applicant must consider any relevant responses he has received to the consultation and publicity, and take these into account before submitting an actual application to the Commission: Planning Act 2008 s 49. The Commission and the Secretary of State have the power to give guidance on how to comply with the requirements of the pre-application procedures: Planning Act 2008 s 50.

The Commission may give advice to an applicant, a potential applicant or others about applying for an order granting development consent or making representations about an application or proposed application: Planning Act 2008 s 51. The Commission may authorise an applicant or proposed applicant to serve a notice on specified persons, requiring them to give to the applicant the names and addresses of persons who have an interest in the land to which the application relates: Planning Act 2008 s 52. The Commission may authorise a person to enter a particular piece of land in order to survey or take levels in connection with various

prescribed matters: Planning Act 2008 s 53 (amended by SI 2009/1307). Modified provision is made relating to rights of entry over Crown land: see the Planning Act 2008 s 54.

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6. Deciding applications: handling of application by the Infrastructure Planning Commission

An application for an order granting development consent under the Planning Act 2008 (see PARA 448A.3) can be accepted by the Infrastructure Planning Commission only if it complies with the requirements of s 37 (see PARA 448A.5): Planning Act 2008 s 55 (amended by Marine and Coastal Access Act 2009 s 23(4)). Certain specified persons must be notified where the Commission accepts an order granting development consent: Planning Act 2008 ss 56 and 57; Marine and Coastal Access Act 2009 s 23(5); Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009, SI 2009/2264. The applicant must certify to the Commission that he has complied with the notification requirements: Planning Act 2008 s 58. Where the Commission has accepted an application for an order granting development consent that includes a request for authorisation of the compulsory acquisition of land or an interest in or right over land, the applicant must give the Commission names and other prescribed information in relation to persons with an interest in the land: Planning Act 2009 s 59. See also SI 2009/2264. The Commission is required to notify relevant local authorities of the acceptance of an application for development consent and to invite them to submit a report giving details of the likely impact of the proposed development on their area: Planning Act 2008 s 60. Where a Commissioner accepts an application for an order granting development consent, the chair must decide whether the application should be handled by a panel or by a single Commissioner: Planning Act 2008 s 61. Where an application for an order granting development consent is being handled by a single Commissioner, the chair can decide that it should instead be handled by a panel: Planning Act 2008 s 62. The chair has the power to delegate any of his functions under Pt 6 (ss 55-119) to one of the deputy chairs, subject to certain specified restrictions: Planning Act 2008 s 63.

7. Deciding applications: the panel procedure

A panel is to handle an application for an order granting development consent under the Planning Act 2008 (see PARA 488A.3) where the Infrastructure Planning Commission accepts the application and it is decided pursuant to s 61(2) or 62(2) that the application is to be handled in that manner: Planning Act 2008 s 64. Provision is made for the appointment of the panel (see the Planning Act 2008 s 65), for when a person ceases to be a member, or the lead member, of a panel (see the Planning Act 2008 s 66), for when a panel member ceases to be a Commissioner (see the Planning Act 2008 s 67), for additional appointments to be made to a panel where the panel has fewer than three members (see the Planning Act 2008 s 68), and for the replacement of the lead member of a panel if the lead member ceases to hold that office (see the Planning Act 2008 s 69). A panel that considers an application relating to land in Wales must include, if reasonably practicable, a Commissioner who was nominated for appointment as a Commissioner by the Welsh Ministers or any other Commissioner notified to the Commission by the Welsh Ministers as being a Commissioner who should be treated as a Welsh Commissioner nominated by them: Planning Act 2008 s 70. If the chair of the Commission

decides that an application that was being considered by a single Commissioner should instead be considered by a panel, the single Commissioner who has considered the case may become a member of the panel: Planning Act 2008 s 71. If the panel ceases to have any members, a new panel must be constituted: Planning Act 2008 s 72. The identity of the panel is not affected by changes to the membership of the panel or the lead member, or any vacancies: Planning Act 2008 s 73. Provision is made for the panel's role in relation to applications: see the Planning Act 2008 s 74. A decision of the panel requires the agreement of a majority of its members, with the lead member having the casting vote: Planning Act 2008 s 75. During the examination of an application the panel may allocate part of the examination to any one or more of its members: Planning Act 2008 s 76. The procedural powers of the panel may, unless the panel decides otherwise, be exercised by any one or more of the panel's members: Planning Act 2008 s 77.

8. Deciding applications: the single-Commissioner procedure

A single Commissioner is to handle an application for an order granting development consent under the Planning Act 2008 (see PARA 488A.3) where the Infrastructure Planning Commission accepts the application and it is decided pursuant to s 61(2) that the application is to be handled in that manner: Planning Act 2008 s 78. In that situation, the chair or a deputy chair to the Commission must appoint a Commissioner to handle the application: Planning Act 2008 s 79. Provision is made for where a person ceases to be the single Commissioner: see the Planning Act 2008 s 80. A person can in certain circumstances continue to act as a single Commissioner although he is no longer a Commissioner: Planning Act 2008 s 81. When a person ceases to be a single Commissioner, a replacement Commissioner must be appointed: Planning Act 2008 s 82. The single Commissioner is responsible for examining the application and making a report to the authority responsible for determining the application: Planning Act 2008 ss 83, 84. At least five members of the Commission's Council (see Sch 1) must participate in any decision that requires majority agreement: Planning Act 2008 s 85.

9. Deciding applications: examination

The following provisions apply in relation to the examination of an application for an order granting development consent under the Planning Act 2008 (see PARA 488A.3) by (1) a panel, under Pt 6 Ch 2 (ss 64-77) (see PARA 448A.7); and (2) a single Commissioner, under Pt 6 Ch 3 (ss 78-85) (see PARA 447A.8): Planning Act 2008 s 86(1). For this purpose the panel or the single Commissioner, as the case may be, is referred to as the 'examining authority': Planning Act 2008 s 86(2), (3). It is for the examining authority to decide how to examine an application: Planning Act 2008 s 87. The examining authority must make an initial assessment of the principal issues arising on an application, before holding a preliminary meeting with the applicant and any interested parties: Planning Act 2008 s 88. The examining authority must, in the light of the discussion at the preliminary meeting, make procedural decisions in respect of the examination of the application: Planning Act 2008 s 89. The examining authority's examination of the application should take the form of the consideration of written representations subject to any requirements in ss 91-93 and to any decision of the examining authority that it should take a different form: Planning Act 2008 s 90. The examining authority must arrange a hearing when it decides that it is necessary for its examination of a specific issue to receive oral representations, either to ensure the adequate examination of the issue or so that an interested party has a fair chance to put its case: Planning Act 2008 s 91. Where an application for a development consent order includes a request for authorisation of compulsory acquisition of land or an interest in or right over land, the examining authority must inform affected parties of a deadline by which they must notify the Commission that they require a compulsory acquisition hearing to take place: Planning Act 2008 s 92. The examining authority must also arrange an open floor hearing if at least one interested party informs the examining

authority of a wish to be heard within the specified deadline: Planning Act 2008 s 93. General provision with regard to hearings is made: see the Planning Act 2008 s 94. The examining authority is empowered to exclude a person from a hearing if he behaves in a disruptive manner: Planning Act 2008 s 95. Where a person has asked to make an oral representation at a hearing, but has not done so, he can make a written representation, which the examining authority must consider as part of its examination of an application: Planning Act 2008 s 96. The Lord Chancellor or, in certain cases, the Secretary of State, may make procedural rules for the examination of applications: Planning Act 2008 s 97. The examining authority has a duty to complete its examination of an application within six months of the last day of the preliminary meeting held pursuant to s 88: Planning Act 2008 s 98. The examining authority must inform each interested party once it has completed its examination of the application: Planning Act 2008 s 99. The chair or a deputy chair of the Commission may, at the examining authority's request, appoint a suitably qualified assessor to help it examine an application: Planning Act 2008 s 100. The chair of the Commission may appoint a barrister, solicitor or advocate to provide legal advice and assistance to the examining authority: Planning Act 2008 s 101.

10. Deciding applications: the decision

The Secretary of State must decide an application for an order granting development consent under the Planning Act 2008 (see PARA 448A.3) where he receives a report from the panel or a single Commissioner: Planning Act 2008 s 103. Where a panel or the Commission's Council (see Sch 1) is responsible for deciding an application for an order granting development consent, it must have regard to various specified matters, including any relevant national policy statement (see PARA 448A.2), the appropriate marine policy documents (if any), determined in accordance the Marine and Coastal Access Act 2009 s 59 (see WATER AND WATERWAYS) and any local impact report submitted by a relevant local authority: Planning Act 2008 s 104 (amended by Marine and Coastal Access Act 2009 s 58(5)). In deciding an application for an order granting development consent, the Secretary of State must have regard to certain prescribed matters: Planning Act 2008 s 105. The matters to which a panel, the Commission's Council and the Secretary of State must have regard when deciding applications for development consent are prescribed by Infrastructure Planning (Decisions) Regulations 2010, SI 2010/305. A person deciding an application for an order granting development consent may disregard representations that are vexatious or frivolous or relate to the merits of policy set out in a national policy statement or to compensation payable on the compulsory acquisition of land or of an interest in or right over land: Planning Act 2008 s 106. The decision-maker is under a duty to decide an application for a development consent order within a period of three months: Planning Act 2008 s 107. If the Secretary of State considers it necessary to review all or part of a relevant national policy statement before an application is decided, he may direct that the examination and decision of the application is suspended by the panel or Commission's Council until the review of the national policy statement has been completed: Planning Act 2008 s 108. In various circumstances the Secretary of State may intervene and decide an application in place of the Commission: see the Planning Act 2008 ss 109-112. Provision is made for the effect of such an intervention: see the Planning Act 2008 s 113, Sch 3.

At the conclusion of consideration of an application for an order granting development consent, the decision-maker must either make an order granting development consent or refuse development consent: Planning Act 2008 s 114. An order may grant development consent not only for development for which consent is required but also for associated development (as defined): Planning Act 2008 s 115. A statement of reasons for deciding to make an order granting development consent or to refuse development consent must be given to interested parties and published (see the Planning Act 2008 s 116), and certain formalities must be observed in relation to the order (see the Planning Act 2008 s 117). Specified decisions in connection with applications for development consent can be challenged only by way of judicial review: Planning Act 2008 s 118. Provision is also made for mechanisms by which the decision-

maker can correct errors in decision documents relating to an application for an order granting development consent: see the Planning Act 2008 Sch 4.

11. Orders granting development consent: content of orders

An order granting development consent under the Planning Act 2008 (see PARA 448A.3) may impose requirements in connection with the development for which consent is granted: Planning Act 2008 s 120(1). The requirements may in particular include requirements corresponding to conditions which could have been imposed on the grant of any permission, consent or authorisation, or the giving of any notice, which, but for s 33(1) (see PARA 448A.4), would have been required for the development: Planning Act 2008 s 120(2). An order granting development consent may make provision relating to, or to matters ancillary to, the development for which consent is granted (Planning Act 2008 s 120(3)), and such provision includes in particular provision for or relating to any of the matters listed in the Planning Act 2008 Sch 5 Pt 1 (Planning Act 2008 s 120(4)). The panel or the Infrastructure Planning Commission's Council (see Sch 1) must send to the Secretary of State a draft of any proposed order that affects the application of statutory provisions: Planning Act 2008 s 121. As to provision for where an order granting development consent includes provision authorising the compulsory acquisition of land, see the Planning Act 2008 ss 122-135; and COMPULSORY ACQUISITION OF LAND VOL 18 (2009) PARAS 535-544.

12. Orders granting development consent: particular cases

No order granting development consent under the Planning Act 2008 (see PARA 448A.3) can be made that extinguishes any public right of way over land unless the authority making it is satisfied that an alternative right of way has been or will be provided, or that such an alternative right of way is not required: Planning Act 2008 s 136. An order granting development consent may provide for the acquisition of land and authorise the extinguishment or diversion of a public right of way for non-vehicular traffic over land on which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed only if the relevant undertaker or operator of the network has given its consent: Planning Act 2008 s 137. Provision is made for orders granting development consent that authorise the acquisition of land on, under or over which a statutory undertaker has erected apparatus or where electronic communications apparatus is kept installed: see the Planning Act 2008 s 138. An order granting development consent cannot include provisions that exclude or modify the application of a provision of, or made under, the Commons Act 2006, or authorise the suspension of, or extinguishment or interference with, registered rights of common: Planning Act 2008 s 139. An order granting development consent that authorises the operation of a generating station can be made only if the development to which the order relates is or includes the construction or extension of the generating station: Planning Act 2008 s 140. An order granting development consent may authorise overhead electric lines to be kept installed only if the development to which the order relates is or includes the installation of such lines: Planning Act 2008 s 141. An order granting development consent that authorises the use of underground gas storage facilities can be made only if the order authorises the development of such facilities: Planning Act 2008 s 142. An order granting development consent that authorises the diversion of a navigable watercourse can be made only if the new length of watercourse is conveniently navigable by vessels of a kind accustomed to using that part of the watercourse: Planning Act 2008 s 143. An order granting development consent may authorise the charging of tolls in relation to a highway only if a request for such provision was included in the application for the order: Planning Act 2008 s 144. In certain specified circumstances an order granting development consent may provide for the creation of a harbour authority, the modification of the powers or duties of an existing harbour authority or the transfer of property, rights or liabilities from one harbour authority to another: Planning Act 2008 s 145. Where an

order granting development consent authorises the discharge of water into inland waters or underground strata, the person to whom the order is granted does not acquire the power to take water or require discharges to be made from the source of water mentioned in the order: Planning Act 2008 s 146. Where an order granting development consent includes certain prescribed provisions in relation to Green Belt land, the panel, the Commission's Council or the Secretary of State, as the case may be, must notify the relevant local authorities of the provision made by the order: Planning Act 2008 s 147. An order granting development consent may deem a consent under the Coast Protection Act 1949 s 34 to have been given in relation to operations in specified areas: Planning Act 2008 s 148. An order granting development consent may deem a licence under the Food and Environment Protection Act 1985 Pt 2 (ss 5-15) to have been issued for operations in specified areas: Planning Act 2008 s 149.

13. Orders granting development consent: general

An order granting development consent under the Planning Act 2008 (see PARA 448A.3) may include provision removing a requirement for a prescribed consent or authorisation to be granted only if the relevant body consents: Planning Act 2008 s 150. An order granting development consent may not exclude or modify liability under any of certain specified statutory regimes: Planning Act 2008 s 151. A right to compensation arises in cases where, as a result of s 158 or the terms of a development consent order, a person would not be able to succeed in a claim for nuisance in respect of works authorised by a development consent order: Planning Act 2008 s 152 (amended by SI 2009/1307). Provision is made for mechanisms by which subsequent modifications or revocations can be made to orders granting development consent: see the Planning Act 2008 Sch 6 (amended by SI 2009/1307). After a development consent order is granted, the development must begin before the end of the period prescribed by the Secretary of State or such other period as is specified in the order: Planning Act 2008 s 154. Development is taken to begin as soon as any material operation comprised in or carried out for the purposes of the development begins to be carried out: Planning Act 2008 s 155. While a development consent order generally has effect for the benefit of the land mentioned in the order and all those for the time being interested in it, it is possible for the order to make provision to the contrary: Planning Act 2008 s 156. Where an order granting development consent grants consent for the erection, extension, alteration or re-erection of a building, the order may specify the purposes for which the building may be used: Planning Act 2008 s 157. Where nuisance proceedings arise out of the carrying out of a development for which consent is granted by an order granting development consent, a defence of statutory authority is provided for: see the Planning Act 2008 s 158.

14. Enforcement

A person commits an offence if he (1) carries out development for which development consent under the Planning Act 2008 (see PARA 448A.3) is required without such consent (Planning Act 2008 s 160(1)); (2) carries out development in breach of the terms of an order granting development consent (Planning Act 2008 s 161(1)(a); or (3) fails to comply with the terms of such a consent without reasonable excuse (Planning Act 2008 s 161(1)(b)). It is a defence for a person charged with an offence under head (2) or (3) to prove that the breach or failure to comply occurred only because of an error or omission in the order, and a correction notice specifying the correction of the error or omission has been issued under Sch 4 para 2: Planning Act 2008 s 161(3). As to the time limits for bringing charges in relation to the offences created by ss 160 and 161 see the Planning Act 2008 s 162. Local planning authorities and justices of the peace may authorise a person to enter land if he has reasonable grounds to suspect an offence is being or has been committed under s 160 or 161: Planning Act 2008 ss 163, 164. A person so authorised must produce evidence, if requested, of the authority and state the

purpose for entry before entering the land: Planning Act 2008 s 165 (amended by SI 2009/1307). The rights of entry do not apply to Crown land: Planning Act 2008 s 166.

The relevant local planning authority may serve an information notice on the owner or occupier of land or anyone carrying out work on land or using it for any purpose: Planning Act 2008 s 167. A person commits an offence if, without reasonable excuse, he fails to comply with any requirement of an information notice within a period of 21 days beginning on the day the notice is served: Planning Act 2008 s 168. Where a person has been found guilty of an offence under s 160, the relevant local planning authority may serve a notice requiring the person to remove the unauthorised development and return the land to its previous condition: Planning Act 2008 s 169. Where steps have not been taken to comply with a notice of unauthorised development within the stipulated period for compliance, the relevant local planning authority may enter the land and carry out the works required in the notice and recover any expenses reasonably incurred in doing so from the owner of the land: Planning Act 2008 s 170. The relevant local planning authority may apply to the county court or the High Court for an injunction where it considers it necessary or expedient to prevent an actual or anticipated offence under s 160 or 161: Planning Act 2008 s 171. As to the application of the enforcement provisions to the Isles of Scilly see the Planning Act 2008 s 172.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/A. IN GENERAL/449. Combined applications.

449. Combined applications.

Regulations¹ may provide for the combination in a single document, made in such form and transmitted to such authority as may be prescribed², of:

- 1648 (1) an application³ for planning permission⁴ in respect of any development⁵;
and
- 1649 (2) an application required, under any enactment⁶ specified in the regulations, to be made to a local authority⁷ in respect of that development⁸.

Before making any such regulations, the Secretary of State⁹ or, in relation to Wales, the National Assembly for Wales¹⁰ must consult¹¹ with such local authorities or associations of local authorities as appear to him or to the Assembly to be concerned¹².

Different provision may be made by any such regulations in relation to areas in which different enactments are in force¹³.

If an application required to be made to a local authority under an enactment specified in any such regulations is made in accordance with the provisions of the regulations, it is valid notwithstanding anything in that enactment prescribing, or enabling any authority to prescribe, the form in which, or the manner in which, such an application is to be made¹⁴.

1 Ie regulations made under the Town and Country Planning Act 1990.

2 For the meaning of 'prescribed' see PARA 16 note 5 ante.

3 For these purposes, 'application' includes a submission: Town and Country Planning Act 1990 s 332(6).

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

- 5 For the meaning of 'development' see PARA 217 ante.
- 6 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 7 For the meaning of 'local authority' see PARA 3 note 3 ante.
- 8 Town and Country Planning Act 1990 332(1). At the date at which this title states the law, no such regulations had been made and none had effect as if so made. As to the making of regulations generally see PARA 3 ante.
- 9 As to the Secretary of State see PARA 19 ante.
- 10 As to the transfer of functions under the Town and Country Planning Act 1990 s 332, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 11 For the meaning of 'consult' see PARA 2 note 1 ante.
- 12 Town and Country Planning Act 1990 s 332(2).
- 13 Ibid s 332(3).
- 14 Ibid s 332(4). Section 332(4) has effect without prejudice to (1) the validity of any application made in accordance with the enactment in question; or (2) any provision of that enactment enabling a local authority to require further particulars of the matters to which the application relates: s 332(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/A. IN GENERAL/450. Lodging the application.

450. Lodging the application.

Any application for planning permission¹ or for the approval of reserved matters² must be made³:

- 1650 (1) where the application relates to land⁴ in Greater London⁵ or a metropolitan county⁶ or to land in Wales, to the local planning authority⁷;
- 1651 (2) where the application relates to land in England which is in neither Greater London nor a metropolitan county and that land is in a National Park⁸ or the application relates to a county matter⁹, to the county planning authority¹⁰;
- 1652 (3) in any other case, to the district planning authority¹¹.

When the local planning authority with which an application has to be lodged receives the required documents and information¹² and the fee¹³, if any, required to be paid in respect of the application, the authority must as soon as is reasonably practicable send to the applicant an acknowledgement of the application in the prescribed terms¹⁴, or substantially in those terms¹⁵. Where, after sending such an acknowledgement, the local planning authority considers that the application is invalid by reason of a failure to comply with a statutory requirement¹⁶, it must as soon as reasonably practicable notify the applicant that his application is invalid¹⁷.

Where an application is made to a county planning authority¹⁸, that authority must, as soon as practicable, send a copy of the application and of any accompanying plans and drawings to the district planning authority, if any¹⁹.

Any application for planning permission which (a) is made to a local planning authority in Wales; and (b) relates to development²⁰ which involves the construction or installation of one or more antennas for the purpose of operating a telecommunications system²¹, must be accompanied by a written declaration²² that the equipment and installation to which the application relates is so designed that it will, when constructed or installed, operate, having regard to its location and the manner in which it has been constructed or installed, in full compliance with the requirements of the radio frequency public exposure guidelines²³ of the International Commission on Non-ionising Radiation Protection²⁴.

1 Ie any application under the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 3 (as amended): see PARA 448 note 8 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 Ie an application under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4 (as amended): see PARA 521 post.

3 A planning application is made when it is received because it has to be made to a recipient: *Camden London Borough Council v ADC Estates Ltd* (1990) 61 P & CR 48, [1990] 3 PLR 121, CA.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

6 As to metropolitan counties see PARA 28 note 1 ante.

7 As to local planning authorities see PARA 28 et seq ante.

8 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

9 For these purposes, 'county matter' has the meaning given by the Town and Country Planning Act 1990 s 1(5), Sch 1 para 1(1) (as amended) (see PARA 38 ante): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5(5).

10 As to county planning authorities see PARA 28 ante.

11 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5(1) (amended by SI 1996/525). As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

12 Ie (1) in the case of an application made under the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 3(1) (see PARA 448 note 8 ante), the form of application required by reg 3(1), together with the certificate or other documents required by the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 7 (see PARA 470 post); (2) in the case of an application made under the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 3(3) (see PARA 448 note 8 ante), sufficient information to enable the authority to identify the previous grant of planning permission, together with the certificate or other documents referred to in head (1) supra; (3) in the case of an application made under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4 (as amended), the documents and information required by art 4 (as amended) (see PARA 521 post): art 5(2).

13 As to the required fee see PARA 459 et seq post.

14 For the prescribed form of terms of the acknowledgment see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5(2), Sch 1 Pt 1 (amended in relation to England only by SI 2005/2087).

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5(2).

16 Ie a failure to comply with the requirements of the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 3 or the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4 (as amended) or any other statutory requirement: art 5(4).

17 Ibid art 5(4).

18 Ie in accordance with ibid art 5(1): see heads (1)-(3) in the text.

19 Ibid art 5(3).

20 For the meaning of 'development' see PARA 217 ante.

21 For these purposes, 'telecommunications system' has the meaning assigned to that term by the Telecommunications Act 1984 s 4(1) (repealed) (meaning of 'telecommunications system' and related expressions): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5A(2) (art 5A added, in relation to Wales, by SI 2002/1877).

22 As to the use of electronic communications see PARA 451 post.

23 See as expressed in EU Council recommendation of 12 July 1999 on the limitation of exposure of the general public to electromagnetic fields (0 Hz to 300 GHz): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5A(3) (as added: see note 4 supra).

24 Ibid art 5A(1), (3) (as added: see note 21 supra).

UPDATE

450 Lodging the application

TEXT AND NOTES 1-19--SI 1995/419 art 5 substituted in relation to England: SI 2008/550.

NOTE 14--SI 1995/419 Sch 1 Pt 1 further amended in relation to England: SI 2006/1062.

NOTE 16--See *R (on the application of Park Pharmacy Trust) v Plymouth City Council* [2008] EWHC 445 (Admin), [2008] P & CR 200, [2008] All ER (D) 281 (Feb) (identification of correct applicant regarded as irrelevant because in reality task of authority is to consider merits of application).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/A. IN GENERAL/451. Use of electronic communications.

451. Use of electronic communications.

The following provisions apply where an electronic communication¹ is used by a person for the following purposes:

- 1653 (1) fulfilling any requirement in the Town and Country Planning (General Development Procedure) Order 1995² to give or send any application, notice or other document to any other person; or
- 1654 (2) lodging an application, certificate or other document³ with a specified⁴ authority⁵.

That requirement is not to be taken to be fulfilled, or, as the case may be, the application or other document is not taken to have been lodged, unless the document transmitted by the electronic communication is:

- 1655 (a) capable of being accessed by the recipient⁶;
- 1656 (b) legible in all material respects⁷; and
- 1657 (c) sufficiently permanent to be used for subsequent reference⁸.

Where the electronic communication is received by the recipient outside the recipient's business hours, it is taken to have been received on the next working day⁹.

A requirement in the 1995 Order that any application, notice or other document should be in writing is fulfilled where the document meets the criteria set out in heads (a) to (c) above¹⁰.

Where a person is no longer willing to accept the use of electronic communications for any purpose of the 1995 Order which is capable of being carried out electronically, he must give notice in writing:

- 1658 (i) withdrawing any address¹¹ notified to the Secretary of State¹² or, in relation to Wales, to the National Assembly for Wales¹³ or to a local planning authority¹⁴ for that purpose; or
- 1659 (ii) revoking any agreement entered into or deemed to have been entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose¹⁵.

1 For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2) (definition added, in relation to England, by SI 2003/956 and in relation to Wales by SI 2004/3156).

2 In any requirement of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended): see PARA 450 ante, PARA 453 et seq post.

3 In under ibid art 20(3): see PARA 532 post.

4 In an authority mentioned in ibid art 20(3): see PARA 532 post.

5 Ibid art 1(4) (arts 1(3)-(8), 27A added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156).

6 For these purposes, 'the recipient' means the person mentioned in head (1) in the text, or the authority mentioned in head (2) in the text, as the case may be: ibid art 1(4) (as added: see note 5 supra).

7 'Legible in all material respects' means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: ibid art 1(6) (as added: see note 5 supra).

8 Ibid art 1(5) (as added: see note 5 supra).

9 Ibid art 1(6) (as added: see note 5 supra). For these purposes, 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: art 1(6) (as so added).

10 Ibid art 1(8) (as added: see note 5 supra). 'Written' and cognate expressions are to be construed accordingly: art 1(8) (as so added). In relation to the use of electronic communications or electronic storage for any purpose of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended) which is capable of being carried out electronically, references to documents, maps, plans, drawings, certificates or other documents or to copies of such things, include references to such documents or copies of them in electronic form: art 1(3)(b) (as so added).

11 In relation to the use of electronic communications or electronic storage for any purpose of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended) which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purpose of such communications or storage, except that where the 1995 Order imposes any obligation on any person to provide a name and address to any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address: art 1(3)(a) (as added: see note 5 supra).

12 As to the Secretary of State see PARA 19 ante.

13 In the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/41 (as amended), and unless the context otherwise requires, 'Secretary of State' is to be construed, in relation to Wales, as meaning the National Assembly for Wales: art 1(2) (definition added by SI 2004/1434). As to the

transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 As to local planning authorities see PARA 28 et seq ante.

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 27A (as added: see note 5 supra). Such withdrawal or revocation is final and takes effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: art 27A (as so added).

As to the similar provision made with regard to electronic communications for the purposes of the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812 (as amended), see PARA 448 note 8 ante.

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452. Directions etc as to method of dealing with applications.

Provision may be made by a development order¹ for regulating the manner in which applications for planning permission² to develop³ land⁴ are to be dealt with by local planning authorities⁵, and in particular:

- 1660 (1) for enabling the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ to give directions restricting the grant of planning permission by the local planning authority, either indefinitely or during such period as may be specified in the directions, in respect of any such development, or in respect of development of any such class, as may be so specified⁸;
- 1661 (2) for authorising the local planning authority, in such cases and subject to such conditions as may be prescribed by the order or by directions given by the Secretary of State or the Assembly under it, to grant planning permission for development which does not accord with the provisions of the development plan⁹;
- 1662 (3) for requiring that, before planning permission for any development is granted or refused, local planning authorities prescribed by the order or by directions given by the Secretary of State or the Assembly under it shall consult¹⁰ with such authorities or persons as may be so prescribed¹¹;
- 1663 (4) for requiring the local planning authority to give to any applicant for planning permission, within such time as may be prescribed by the order, such notice as may be so prescribed as to the manner in which his application has been dealt with¹²;
- 1664 (5) for requiring the local planning authority to give any applicant for any consent, agreement or approval required by a condition imposed on a grant of planning permission notice of its decision on his application, within such time as may be so prescribed¹³;
- 1665 (6) for requiring the local planning authority to give to the Secretary of State or the Assembly, and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to applications for planning permission made to the authority, including information as to the manner in which any such application has been dealt with¹⁴.
- 1666 Provision may also be made by a development order:

1667 (a) for determining the persons to whom applications are to be sent and for requiring persons to whom such applications are sent to send copies to other interested persons¹⁵;

1668 (b) for:

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5. (i) enabling the Mayor of London¹⁶ in prescribed¹⁷ circumstances, and subject to such conditions as may be prescribed, to direct the local planning authority for a London borough to refuse an application for planning permission of a prescribed description in any particular case¹⁸;
6. (ii) prohibiting a local planning authority to which any such direction is given from implementing the direction in prescribed circumstances or during prescribed periods¹⁹; and
7. (iii) modifying any provision of the Town and Country Planning Act 1990 relating to an appeal against a refusal of planning permission²⁰ and, in particular, any such provision concerning parties or costs in its application in relation to a refusal in compliance with such a direction²¹.

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1 For the meaning of 'development order' see PARA 252 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'develop' see PARA 217 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 74 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

8 As to the exercise of this power see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 14 (as amended); and PARA 480 post.

9 As to the exercise of this power see *ibid* art 17; and PARA 526 post. For the meaning of 'development plan' see PARA 91 ante.

10 For the meaning of 'consult' see PARA 2 note 1 ante.

11 As to the exercise of this power see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 (as amended); and PARA 475 post.

12 As to the exercise of this power see *ibid* art 22 (as amended); and PARA 534 post.

13 As to the exercise of this power see *ibid* art 21; and PARA 533 post.

14 Town and Country Planning Act 1990 s 74(1). Section 74(1) is expressed to be subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 67(7) and s 73(1) (see the Town and Country Planning Act 1990 s 74(2) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 17, Sch 19 Pt I) but those provisions are now substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 23, 24 and there is no Planning (Listed Buildings and Conservation Areas) Act 1990 s 67(7).

15 Town and Country Planning Act 1990 s 74(1A) (added by the Planning and Compensation Act 1991 s 19(1)). As to the exercise of this power see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5 (as amended); and PARA 450 ante.

16 As to the Mayor of London see PARA 26 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

17 For these purposes, 'prescribed' means prescribed by, or by directions made under, a development order: Town and Country Planning Act 1990 s 74(1B) (s 74(1B), (1C) added by the Greater London Authority Act 1999 s 344(1), (9)).

18 Town and Country Planning Act 1990 s 74(1B)(a) (as added: see note 17 supra). In determining whether to exercise any such power to direct a local planning authority to refuse an application, the Mayor of London must have regard to (1) the development plan; and (2) the spatial development strategy prepared and published under the Greater London Authority Act 1999 Pt VIII (ss 334-350) (as amended) (see PARA 86 ante; and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 189 et seq), so far as material to the application: Town and Country Planning Act 1990 s 74(1C) (as added: see note 17 supra). As to the exercise of this power see the Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(1)-(7); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 386.

19 Town and Country Planning Act 1990 s 74(1B)(b) (as added: see note 17 supra). As to the exercise of this power see the Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(8), (9); and LONDON GOVERNMENT vol 29(2) (Reissue) PARA 386.

20 As to appeals against the refusal of planning permission see PARA 598 et seq post.

21 Town and Country Planning Act 1990 s 74(1B)(c) (as added: see note 13 supra).

UPDATE

452 Directions etc as to method of dealing with applications

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 18--SI 2000/1493 art 5(1)-(7) replaced: Town and Country Planning (Mayor of London) Order 2008, SI 2008/580, art 6(1)-(7).

NOTE 19--SI 2000/1493 art 5(8), (9) replaced: SI 2008/580 art 6(8), (9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/A. IN GENERAL/453. Development affecting certain existing and proposed highways.

453. Development affecting certain existing and proposed highways.

Where an application is made to a local planning authority¹ for planning permission² for development³ which consists of or includes:

- 1669 (1) the formation, laying out or alteration of any access to or from any part of a trunk road⁴ which is either a special road⁵ or, if not a special road, a road subject to a speed limit exceeding 40 miles per hour; or
- 1670 (2) any development of land⁶ within 67 metres⁷, or such other distance as may be specified in a direction given by the Secretary of State⁸ or, in relation to Wales, by the National Assembly for Wales⁹, from the middle of:

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8. (a) any highway, other than a trunk road, which the Secretary of State or the Assembly has provided, or is authorised to provide¹⁰ and which has not for the time being been transferred to any other highway authority;

9. (b) any highway which he or the Assembly proposes to improve¹¹ and in respect of which notice has been given to the local planning authority;
10. (c) any highway to which he or the Assembly proposes to carry out improvements¹²; or
11. (d) any highway which he or the Assembly proposes to construct, the route of which is shown on the development plan¹³ or in respect of which he or the Assembly has given notice in writing to the local planning authority together with maps or plans¹⁴ sufficient to identify the route of the highway,

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the local planning authority must notify the Secretary of State or the Assembly by sending him or it a copy of the application and any accompanying plans and drawings¹⁵.

Such an application may not be determined unless:

- 1671 (i) the local planning authority receives a direction¹⁶ from the Secretary of State or the Assembly, and in accordance with the terms of that direction;
- 1672 (ii) it receives notification by or on behalf of the Secretary of State or the Assembly that he or the Assembly does not propose to give any such direction in respect of the development to which the application relates; or
- 1673 (iii) a period of 28 days, or such longer period as may be agreed in writing¹⁷ between the local planning authority and the Secretary of State or the Assembly, from the date when notification was given to the Secretary of State or the Assembly has elapsed without receipt of such a direction¹⁸.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For these purposes, 'trunk road' means a highway or proposed highway which is a trunk road by virtue of the Highways Act 1980 s 10(1) or s 19 (as amended) (general provisions as to trunk roads, and certain special roads and other highways to become trunk roads) or any other enactment or any instrument made under any enactment; and 'proposed highway' has the same meaning as in s 329 (as amended) (further provision as to interpretation): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2). See further HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 703, 705.

5 For these purposes, 'special road' means a highway or proposed highway which is a special road in accordance with the Highways Act 1980 s 16 (see HIGHWAYS, STREETS AND BRIDGES (2004 Reissue) PARA 732 et seq): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2).

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 The Secretary of State or the National Assembly for Wales may, in respect of any case or any class or description of cases, give a direction specifying a different distance for these purposes: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 15(3).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

10 Ie in pursuance of an order under the Highways Act 1980 Pt II (ss 10-23) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 710, 745.

11 Ie under ibid Pt V (ss 62-105) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 484 et seq.

12 See note 10 supra.

- 13 For the meaning of 'development plan' see PARA 91 ante.
- 14 As to the use of electronic communications in England, and the construction of references to maps or plans etc for those purposes, see PARA 451 ante.
- 15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 15(1).
- 16 In a direction given under ibid art 14: see PARA 480 post.
- 17 As to the use of electronic communications, and the meaning of 'in writing' for those purposes, see PARA 451 ante.
- 18 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 15(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/B. CROWN LAND/(A) Provisions before Amendment by the 2004 Act/454. Application for planning permission etc in anticipation of disposal of Crown land.

B. CROWN LAND

(A) PROVISIONS BEFORE AMENDMENT BY THE 2004 ACT

454. Application for planning permission etc in anticipation of disposal of Crown land.

At the date at which this title states the law, the following provisions have effect for the purpose of enabling Crown land¹, or an interest in Crown land², to be disposed of with the benefit of planning permission³ or a certificate⁴ of lawfulness of proposed use or development⁵.

Notwithstanding the interest of the Crown in the land in question, an application for any such permission or certificate may be made by:

- 1674 (1) the appropriate authority⁶; or
- 1675 (2) any person authorised by that authority in writing;

and all the statutory provisions⁷ relating to the making and determination of any such application accordingly apply⁸ as if the land were not Crown land⁹.

Any planning permission so granted applies only:

- 1676 (a) to development¹⁰ carried out after the land in question has ceased to be Crown land; and
- 1677 (b) so long as that land continues to be Crown land, to development carried out by virtue of a private interest in the land¹¹.

The Secretary of State¹² or, in relation to Wales, the National Assembly for Wales¹³ may by regulations:

- 1678 (i) modify or exclude any of the statutory provisions relating to the making and determination of any such application¹⁴ and any other statutory provisions in their application to permissions or certificates so granted or made;

- 1679 (ii) make provision for requiring a local planning authority¹⁵ to be notified of any disposal¹⁶ of, or of an interest in, any Crown land in respect of which an application has been so made¹⁷; and
- 1680 (iii) make such other provision in relation to the making and determination of such applications¹⁸ as he or the Assembly thinks necessary or expedient¹⁹.

As from a day to be appointed²⁰, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004²¹; but this does not affect any requirement made in pursuance of regulations made under head (ii) above²². The new arrangements for applications for planning permission by the Crown are set out below²³.

1 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of references to the disposal of an interest in Crown land, and to a private interest in such land, for these purposes see the Town and Country Planning Act 1990 s 293(4) (prospectively repealed); and PARA 11 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 I.e. a certificate under the Town and Country Planning Act 1990 s 192 (as substituted): see PARA 587 post. Any application so made for a certificate under s 192 (as substituted) must be determined as if the land were not Crown land: s 299(4) (s 299(1), (2), (5), (6) amended; and s 299(4) substituted, by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 46).

5 Town and Country Planning Act 1990 s 299(1) (as amended: see note 4 supra). Section 299 (as so amended) is not, however, to be construed as affecting any right to apply for any such permission or certificate as is mentioned in s 299(1) (as so amended) in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land: s 299(6) (as so amended). For the meaning of 'private interest' see PARA 11 note 19 ante; and see also note 2 supra.

6 For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.

7 For these purposes, 'statutory provisions' means provisions contained in or having effect under any enactment: Town and Country Planning Act 1990 s 299(7). For the meaning of 'enactment' see PARA 2 note 11 ante.

8 I.e. subject to *ibid* s 299(3)-(5) (as amended): see note 4 supra; and the text and notes 11-19 *infra*.

9 *Ibid* s 299(2) (as amended: see note 4 supra). An application for planning permission made by virtue of s 299(2) (as so amended) must be accompanied by (1) a statement that the application is made, by virtue of s 299(2) (as so amended), in respect of Crown land; and (2) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4A (added by SI 1995/1139).

The use of the procedure under the Town and Country Planning Act 1990 s 299 (as amended) is not mandatory: see *R (on the application of Cherwell District Council) v First Secretary of State* [2004] EWCA Civ 1420, [2005] 1 WLR 1128, [2004] All ER (D) 414 (Oct).

10 For the meaning of 'development' see PARA 217 ante.

11 Town and Country Planning Act 1990 s 299(3).

12 As to the Secretary of State see PARA 19 ante.

13 As to the transfer of functions under the Town and Country Planning Act 1990 s 299 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 I.e. the statutory provisions referred to in *ibid* s 299(2) (as amended): see note 7 supra.

15 As to local planning authorities see PARA 28 *et seq* ante.

16 For the meaning of 'disposal' see PARA 38 note 6 ante.

17 It is granted or made by virtue of the Town and Country Planning Act 1990 s 299 (as amended). The appropriate authority must, as soon as practicable after disposing of, or disposing of any interest in, any Crown land in respect of which planning permission has been granted or a certificate has been issued under section 192(2) (as substituted) on an application made by virtue of section 299(2) (as amended: see note 4 supra), give notice of the disposal in writing to the local planning authority to which the application was made: Town and Country Planning (Crown Land Applications) Regulations 1995, SI 1995/1139, reg 3.

18 It is by virtue of the Town and Country Planning Act 1990 s 299 (as amended).

19 Ibid s 299(5) (as amended: see note 4 supra). In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly, the Secretary of State made the Town and Country Planning (Crown Land Applications) Regulations 1995, SI 1995/1139, which came into force on 3 June 1995: reg 1(1). As to the provision made by the 1995 Regulations see notes 9, 17 supra: and PARAS 469 note 4, 522 note 8, 589 note 14 post (modifications of the Town and Country Planning Act 1990 s 72(1)(a) and of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6 (as amended) and art 24). As to the making of regulations generally see PARA 3 ante.

20 It is as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 21 infra.

21 See *ibid* ss 79(4), 120, Sch 3 para 10(2), Sch 9. In so far as it confers on the Secretary of State or the National Assembly for Wales a power or imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty, Sch 3 para 10 came into force on 6 August 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 note 8 ante.

22 Planning and Compulsory Purchase Act 2004 Sch 3 para 10(3).

23 See PARA 455 et seq post.

UPDATE

454 Application for planning permission etc in anticipation of disposal of Crown land

NOTE 9--In relation to Wales, an application for planning permission in respect of Crown land must be accompanied by (1) a statement that the application is made in respect of Crown land; and (2) where the application is made by a person authorised in writing by the appropriate authority, a copy of that authorisation: SI 1995/419 art 4A (substituted by SI 2006/1386).

TEXT AND NOTES 20, 21--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/B. CROWN LAND/(B) Provisions introduced by the 2004 Act/455. Applications for planning permission by the Crown; in general.

(B) PROVISIONS INTRODUCED BY THE 2004 ACT

455. Applications for planning permission by the Crown; in general.

Partly as from a day to be appointed¹, the following provisions apply to an application for planning permission² or for a certificate of lawfulness of a proposed use or development³ made by or on behalf of the Crown⁴. The Secretary of State⁵ or, in relation to Wales, the National

Assembly for Wales⁶ may by regulations⁷ modify or exclude any statutory provision⁸ relating to the making and determination of such applications⁹.

1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 4 infra.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 le a certificate under the Town and Country Planning Act 1990 s 192 (as substituted): see PARA 587 post.

4 Town and Country Planning Act 1990 s 298A(1) (s 298A added by the Planning and Compulsory Purchase Act 2004 s 79(4) Sch 3 para 10(1), partly as from a day to be appointed: see note 1 supra). In so far as it confers on the Secretary of State or the National Assembly for Wales a power or imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty, Sch 3 para 10 came into force on 6 August 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 note 8 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 298A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 As to the making of regulations generally see PARA 3 ante.

8 A statutory provision is a provision contained in or having effect under any enactment: Town and Country Planning Act 1990 s 298A(3) (as added: see note 4 supra). For the meaning of 'enactment' see PARA 2 note 11 ante.

9 Ibid s 298A(2) (as added: see note 4 supra). As to applications with regard to urgent Crown development see PARA 456 post; and for transitional provisions see PARA 457 post.

UPDATE

455 Applications for planning permission by the Crown; in general

TEXT AND NOTE 1--Day now appointed: SI 2006/1281.

NOTE 4--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 298A: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(e).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/B. CROWN LAND/(B) Provisions introduced by the 2004 Act/456. Urgent Crown development; application for planning permission.

456. Urgent Crown development; application for planning permission.

Partly as from a day to be appointed¹, the following provisions apply to a development² if the appropriate authority³ certifies:

1681 (1) that the development is of national importance; and

1682 (2) that it is necessary that the development is carried out as a matter of urgency⁴.

The appropriate authority may, instead of making an application for planning permission⁵ to the local planning authority⁶ in accordance with the normal statutory provisions⁷, make an application for planning permission to the Secretary of State⁸ or, in relation to Wales, to the National Assembly for Wales⁹ under the provisions set out below¹⁰. If the appropriate authority proposes to make the application to the Secretary of State or the Assembly it must publish in one or more newspapers circulating in the locality of the proposed development a notice describing the proposed development and stating that the authority proposes to make the application to the Secretary of State or the Assembly¹¹. For the purposes of such an application the appropriate authority must provide to the Secretary of State or the Assembly:

1683 (a) any matter required to be provided by an applicant for planning permission in pursuance of regulations providing for consideration to be given to the likely environmental effects of the proposed development¹²;

1684 (b) a statement of the authority's grounds for making the application¹³.

If the appropriate authority makes such an application, the Secretary of State or the Assembly may require the authority to provide him or it with such further information as he or the Assembly thinks necessary to enable him or it to determine the application¹⁴. As soon as practicable after he or it is provided with any document or other matter¹⁵ the Secretary of State or the Assembly must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development¹⁶, except to the extent that the document or other matter is subject to a direction¹⁷ relating to national security¹⁸. The Secretary of State or the Assembly must in accordance with such requirements as are contained in a development order¹⁹ publish notice of the application and of the fact that such documents and other material are available for inspection²⁰. He or the Assembly must consult:

1685 (i) the local planning authority for the area to which the proposed development relates; and

1686 (ii) such other persons as are specified or described in a development order,

about the application²¹.

Before determining such an application the Secretary of State or the Assembly must, if either the applicant or the local planning authority wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose²²; but this does not apply to an application for planning permission referred²³ to a planning inquiry commission²⁴.

The decision of the Secretary of State or the Assembly on any such application is final²⁵. Its validity may, however, be challenged on an application to the High Court²⁶ under the relevant statutory provisions²⁷.

1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 4 infra.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'the appropriate authority' for these purposes see PARA 14 note 15 ante.

4 Town and Country Planning Act 1990 s 293A(1) (s 293A added by the Planning and Compulsory Purchase Act 2004 s 82(1), partly as from a day to be appointed: see note 1 supra). In so far as it confers on the

Secretary of State or the National Assembly for Wales a power or imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty, s 82(1) came into force on 6 August 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 note 8 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 Ie in accordance with the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 466 et seq post.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990 s 293A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 Town and Country Planning Act 1990 s 293A(2) (as added: see note 4 supra).

11 Ibid s 293A(3) (as added: see note 4 supra).

12 Ie in pursuance of regulations made under ibid s 71A (as added): see PARA 487 post.

13 Ibid s 293A(4) (as added: see note 4 supra).

14 Ibid s 293A(5), (6) (as added: see note 4 supra).

15 Ie in pursuance of ibid s 293A(4) or (6) (as added): see the text to notes 13-15 supra.

16 Ibid s 293A(5), (7) (as added: see note 4 supra).

17 Ie a direction under ibid s 321(3): see PARA 652 post.

18 Ibid s 293A(10) (as added: see note 4 supra).

19 For the meaning of 'development order' see PARA 252 ante.

20 Town and Country Planning Act 1990 s 293A(5), (8) (as added: see note 4 supra).

21 Ibid s 293A(5), (9) (as added: see note 4 supra). Subject to s 77(5) (as applied: see the text and note 22 infra), where an application for planning permission is referred to the Secretary of State or the Assembly under these provisions, ss 70, 72(1), (5), 73 and 73A (as amended) (see PARAS 484, 486, 522, 524-525 post) apply, with any necessary modifications, as they apply to such an application which falls to be determined by the local planning authority and a development order may apply, with or without modifications, to an application so referred any requirements imposed by such an order by virtue of s 65 (as substituted and amended: see PARA 468 post) or s 71 (as amended) (see PARA 473 post): s 77(4) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 para 18; the Town and Country Planning Act 1990 s 77(4)-(7) (as amended) applied for these purposes by s 293A(11) (as added: see note 4 supra).

22 Ibid s 77(5) (as applied: see note 21 supra).

23 Ie under ibid s 101 (as amended): see PARA 704 post.

24 Ibid s 77(6) (as applied: see note 21 supra).

25 Ibid s 77(7) (as applied: see note 21 supra).

26 Ie under ibid s 288 (as amended): see PARA 46 ante.

27 See ibid s 284(3)(i) (as added), s 288(4); and PARA 46 ante. As to the availability of judicial review see PARA 650 post.

UPDATE

456 Urgent Crown development; application for planning permission

TEXT AND NOTE 1--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/B. CROWN LAND/(B) Provisions introduced by the 2004 Act/457. Transitional provisions.

457. Transitional provisions.

Schedule 4 to Planning and Compulsory Purchase Act 2004 makes transitional provision with regard to the application of planning legislation to the Crown. Part 1 of that Schedule¹ applies to a development² if:

- 1687 (1) it is a development for which before the relevant date³ no planning permission⁴ is required;
- 1688 (2) it is not a development or of a description of development for which planning permission is granted by virtue of a development order⁵; and
- 1689 (3) before the relevant date, proposed development notice⁶ had been given to the local planning authority⁷.

If before the relevant date in pursuance of the arrangements made in relation to the development⁸ either the local planning authority or the Secretary of State⁹ has given notice to the developer that it or he, as the case may be, finds the proposed development acceptable, then the notice must be treated as if it is planning permission granted¹⁰ under the Town and Country Planning Act 1990¹¹; and if the notice is subject to conditions the conditions have effect as if they are conditions attached to the planning permission¹².

If before the relevant date the local planning authority has in pursuance of the arrangements kept a register of proposed development notices, the register must be treated as if it is part of the register kept by the authority in pursuance of the relevant provisions¹³ of the Town and Country Planning Act 1990¹⁴.

If either:

- 1690 (a) before the relevant date the local planning authority has notified the developer in pursuance of the arrangements that it does not find the development acceptable, and the matter has been referred to but not decided by the Secretary of State; or
- 1691 (b) before the relevant date the local planning authority has notified the developer in pursuance of the arrangements that it finds the development acceptable subject to conditions, and the matter has been referred to but not decided by the Secretary of State,

then the Secretary of State must deal with the proposal as if it is an appeal¹⁵ by an applicant for planning permission¹⁶.

If before the relevant date proposed development notice has been given, but the local planning authority has not given notice to the developer as mentioned above¹⁷, then the Town and Country Planning Act 1990 applies as if the proposal is an application for planning permission duly made under the relevant provisions¹⁸ of that Act¹⁹.

At the date at which this title states the law, however, these transitional provisions were not in force²⁰.

- 1 Ie the Planning and Compulsory Purchase Act 2004 s 89, Sch 4 Pt 1 (paras 1-6): see the text and notes 2-19 infra.
- 2 For the meaning of 'development' see PARA 217 ante.
- 3 For these purposes, 'the relevant date' is the date of commencement of the Planning and Compulsory Purchase Act 2004 s 79(1) (see PARA 13 ante): Sch 4 para 2(a). At the date at which this title states the law, s 79 was in force for limited purposes only (see PARA 13 note 8 ante) and s 89, Sch 4 were not in force.
- 4 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 5 For the meaning of 'development order' see PARA 252 ante.
- 6 For these purposes, 'proposed development notice' is notice of a proposal for development given by the developer in pursuance of arrangements made by the Secretary of State in relation to development by or on behalf of the Crown; and the developer is the Crown or a person acting on behalf of the Crown: Planning and Compulsory Purchase Act 2004 Sch 4 para 2(b), (c). As to the Secretary of State see PARA 19 ante.
- 7 Ibid Sch 4 para 1.
- 8 Ie the arrangements mentioned in note 6 supra.
- 9 Note that the powers set out in the text do not appear to be devolved to the National Assembly for Wales. As to the Assembly see PARA 20 ante.
- 10 Ie granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante, PARA 466 et seq post.
- 11 Planning and Compulsory Purchase Act 2004 Sch 4 para 3(1), (2).
- 12 Ibid Sch 4 para 3(3).
- 13 Ie in pursuance of the Town and Country Planning Act 1990 s 69 (as substituted): see PARA 466 post.
- 14 Planning and Compulsory Purchase Act 2004 Sch 4 para 4(1), (2).
- 15 Ie an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 613 post.
- 16 Planning and Compulsory Purchase Act 2004 Sch 4 para 5(1)-(3).
- 17 Ie as mentioned in ibid Sch 4 para 3 (see the text to notes 8-12 supra) or Sch 4 para 5 (see the text to notes 15-16 supra).
- 18 Ie under the Town and Country Planning Act 1990 Pt III (as amended): see PARA 217 et seq ante, PARA 466 et seq post.
- 19 Planning and Compulsory Purchase Act 2004 Sch 4 para 6(1), (2).
- 20 See note 3 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/458. Power to make regulations.

C. FEES

458. Power to make regulations.

The appropriate authority¹ may by regulations make provision for the payment of a charge or fee to a local planning authority² in respect of:

- 1692 (1) the performance by the local planning authority of any function³ it has;
- 1693 (2) anything done by the local planning authority which is calculated to facilitate or is conducive or incidental to the performance of any such function⁴.

The regulations may prescribe:

- 1694 (a) the person by whom the charge or fee is payable;
- 1695 (b) provision as to the calculation of the charge or fee (including the person by whom it is to be calculated)⁵;
- 1696 (c) circumstances in which no charge or fee is to be paid;
- 1697 (d) circumstances in which a charge or fee is to be transferred from one local planning authority to another⁶.

The Secretary of State or the National Assembly for Wales may by regulations make such provision as he or it thinks fit for the payment:

- 1698 (i) of fees of prescribed amounts to him or to it and to the local planning authority in respect of any application for planning permission⁷ deemed to be made on an appeal against an enforcement notice⁸; and
- 1699 (ii) of a fee of the prescribed amount to him or to the Assembly in respect of any other application for planning permission which is deemed to be made⁹ to him or to it¹⁰.

No such regulations may be made unless a draft of the regulations has been laid before and approved by a resolution of each House of Parliament¹¹.

1 The appropriate authority is: (1) the Secretary of State in relation to England; (2) the National Assembly for Wales in relation to Wales; and in the case of regulations made by the National Assembly for Wales, the Town and Country Planning Act 1990 s 333(3) (see PARA 3 ante) must be ignored: s 303(2A) (s 303(1), (2), (2A) substituted, s 303(4) amended, s 303(5A), (5B) added, and s 303(6) repealed, by the Planning and Compulsory Purchase Act 2004 ss 53(1)-(5), 120, Sch 9). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'function' see PARA 2 note 1 ante.

4 Town and Country Planning Act 1990 s 303(1) (as substituted: see note 1 supra). Regulations made under s 303(1) (as so substituted) may, it appears, reverse the decision in *McCarthy & Stone (Developments) Ltd v Richmond upon Thames London Borough Council* [1992] 2 AC 48, [1991] 4 All ER 897, HL (a local authority may not impose a charge for pre-application planning consultations (decided under the Local Government Act 1972 s 111: see LOCAL GOVERNMENT vol 69 (2009) PARA 462)). Regulations under the Town and Country Planning Act 1990 s 303(1) (as so substituted) and s 303(3) (as amended) (see heads (i)-(ii) in the text) may provide for the remission or refunding of a prescribed charge or fee, in whole or in part, in prescribed circumstances: s 303(4) (as amended: see note 1 supra).

5 If the local planning authority calculates the amount of fees or charges in pursuance of provision made by regulations under *ibid* s 303(1) (as substituted) the authority must secure that, taking one financial year with another, the income from the fees or charges does not exceed the cost of the performance of the function or doing of the thing, as the case may be: s 303(5A) (as added: see note 1 supra). A financial year is the period of 12 months beginning with 1 April: s 303(5B) (as so added).

6 *Ibid* s 303(2) (as substituted: see note 1 supra).

At the date at which this title states the law no regulations had been made under s 303 (as amended) but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193 (as amended) had effect as if so made: see PARA 459 et seq post. As to the making of regulations generally see PARA 3 ante.

7 For the meaning of 'planning permission' see PARA 43 note 6 ante.

8 Ie deemed to be made under the Town and Country Planning Act 1990 s 177(5) (as amended): see PARA 610 post.

9 Ie under the Town and Country Planning Act 1990 or any order or regulations made thereunder.

10 Ibid s 303(3) (amended by the Planning and Compensation Act 1991 s 6(6)). See also note 6 supra.

11 Town and Country Planning Act 1990 s 303(5). In relation to regulations made by the Assembly, however, see PARA 20 ante; see also note 1 supra.

UPDATE

458 Power to make regulations

TEXT AND NOTES--Town and Country Planning Act 1990 s 303 substituted: Planning Act 2008 s 199 (in force in relation to England). As to provision for fees for appeals see the Town and Country Planning Act 1990 s 303ZA (added by the Planning Act 2008 s 200 (in force in relation to England)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/459. Fees for planning applications.

459. Fees for planning applications.

Subject to a number of exceptions¹, where an application is made to a local planning authority² for planning permission³ for the development⁴ of land⁵ or for the approval of reserved matters⁶, a fee is payable to that authority⁷.

Where a fee is due in respect of an application, the fee must be paid to the local planning authority with which the application is lodged and must accompany the application⁸.

Where the local planning authority which so receives the fee is not the local planning authority which has to determine the application, it must remit the fee to that authority at the same time as it forwards the application to that authority⁹.

Any fee so paid must be refunded if the application is rejected as invalidly made¹⁰.

1 Ie subject to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, regs 4-9 (as amended): see PARA 460 post. Regulation 3(1) (as amended) is also subject to Sch 1 para 8(2) (as amended) (calculation of fees for certain applications in respect of reserved matters).

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 For these purposes, 'reserved matters' has the same meaning as in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended) (see PARA 467 note 4 post): Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 2(1) (definition amended by SI 1997/37).

7 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 3(1) (amended by SI 1990/2473). The fee so payable in respect of the application must be calculated in accordance with the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 3(2), Sch 1 (as amended). For the scale of fees in respect of applications made or deemed to be made in England on or after 1 April 2005 see Sch 1 Pt II (substituted in relation to England by SI 2005/843); and for the scale of fees in respect of applications made or deemed to be made in Wales on or after 8 November 2004 see the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, Sch 1 Pt II (substituted in relation to Wales by SI 2004/2736).

8 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 3(3) (substituted by SI 1990/2473).

9 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 3(4).

10 Ibid reg 3(5).

UPDATE

459 Fees for planning applications

NOTE 7--SI 1989/193 Sch 1 Pt II further substituted: SI 2008/958 (England), SI 2009/851 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/460. Exceptions where fees for planning applications do not apply.

460. Exceptions where fees for planning applications do not apply.

The statutory provisions relating to fees for planning applications¹ do not apply:

1700 (1) where the local planning authority² to which the application is made is satisfied that it relates solely to:

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12. (a) the carrying out of operations for the alteration or extension of an existing dwelling house³; or

13. (b) the carrying out of operations, other than the erection of a dwelling house, in the curtilage of an existing dwelling house,

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1701 for the purpose, in either case, of providing means of access to or within the dwelling house for a disabled person⁴ who is resident in, or is proposing to take up residence in, that dwelling house, or of providing facilities designed to secure his greater safety, health or comfort⁵;

1702 (2) where that authority is satisfied that it relates solely to the carrying out of operations for the purpose of providing means of access for disabled persons to or within a building or premises to which members of the public are admitted, whether on payment or otherwise⁶;

1703 (3) where that authority is satisfied that the application relates solely to development⁷ which is within one or more of the Classes specified in the Town and Country Planning (General Permitted Development) Order 1995⁸ and that the permission otherwise granted⁹ does not apply in respect of that development by reason of, and only by reason of, a direction¹⁰ which is in force on the date when the application is made or the requirements of a specified¹¹ condition¹²;

1704 (4) where that authority is satisfied:

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14. (a) that the application relates solely to the use¹³ of a building¹⁴ or other land for a purpose of any Class specified in the Town and Country Planning (Use Classes) Order 1987¹⁵; and

15. (b) that the existing use of that building or other land is for another purpose of the same Class; and

16. (c) that the making of an application for planning permission in respect of the use to which the application relates is necessary by reason of, and only by reason of, the requirements of a condition imposed on a permission granted or deemed to be granted¹⁶ under the Town and Country Planning Act 1990¹⁷;

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1705 (5) where all the specified conditions¹⁸ are satisfied, to:

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17. (a) an application for planning permission which is made following the granting of planning permission for development which the local planning authority is satisfied is development of the same character or description as the development to which the application relates, on an application for planning permission made by or on behalf of the same applicant; or

18. (b) an application for approval of one or more reserved matters which is made following the granting of approval of details relating to the same reserved matters authorised by the same outline planning permission, on an application made by or on behalf of the same applicant¹⁹;

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1706 (6) where all the specified conditions²⁰ are satisfied, to:

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19. (a) an application for planning permission which is made following the withdrawal, before notice of decision was issued, of an application for planning permission made by or on behalf of the same applicant;

20. (b) an application for planning permission which is made following the refusal of planning permission, whether by the local planning authority or by the Secretary of State²¹ or, in relation to Wales, the National Assembly for Wales²² on appeal or following reference of the application to him or to it for determination, on an application for planning permission made by or on behalf of the same applicant;

21. (c) an application for planning permission which is made following the making of an appeal to the Secretary of State or the Assembly in default of a planning decision in relation to an application for planning permission made by or on behalf of the same applicant;

22. (d) an application for approval of one or more reserved matters which is made following the withdrawal, before notice of decision was issued, of an application made by or on behalf of the same applicant for approval of details relating to the same reserved matters authorised by the same outline planning permission;

23. (e) an application for approval of one or more reserved matters which is made following the refusal, whether by the local planning authority or by the Secretary of State or the Assembly on appeal or following the reference of the application to him or to it for determination, to approve details relating

to the same reserved matters which were submitted in an application made by or on behalf of the same applicant and in relation to the same outline planning permission; or

24. (f) an application for approval of one or more reserved matters which is made following the making of an appeal to the Secretary of State or the Assembly in relation to an application made by or on behalf of the same applicant for approval of details relating to the same reserved matters authorised by the same outline planning permission²³;

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- 1707 (7) to impose a fee in relation to an application to a local planning authority for permission to carry out development consisting of the winning and working of minerals where the application is for permission which consolidates two or more subsisting permissions and does not seek permission for development which is not authorised by a subsisting permission²⁴.

1 Ie the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 3 (as amended): see PARA 459 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For these purposes, 'dwelling house' means a building or part of a building which is used as a single private dwelling house and for no other purpose: Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 2(1).

4 For these purposes, 'disabled person' means a person who is within any of the descriptions of persons to whom the National Assistance Act 1948 s 29 (as amended) applies or a child who is disabled for the purposes of the Children Act 1989 Pt III (s 17-30) (as amended): Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 4(3) (substituted by SI 1997/37).

5 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 4(1).

6 Ibid reg 4(2).

7 For the meaning of 'development' see PARA 217 ante.

8 Ie the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 (as amended): see PARA 265 et seq ante. The reference to an application which relates to development which is within one or more of the Classes in Sch 2 (as amended) is to be construed as including an application for planning permission for the continuance of a use of land, or the retention of buildings or works, without compliance with a condition subject to which a previous planning permission has been granted, where the condition in question prohibits or limits the carrying out of any development which is within one or more of those Classes: Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, regs 2(1), 5(2) (reg 5(1), (2) amended by SI 1997/37). For these purposes, 'use of land' includes use of land for the winning or working of minerals: Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 2(1). For the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'use' see PARA 221 note 4 ante; for the meaning of 'land' see PARA 2 note 10 ante; for the meaning of 'buildings or works' see PARA 43 note 9 ante; and for the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

9 Ie the permission granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3 (as amended): see PARA 255 ante.

10 Ie a direction under ibid art 4 (as amended): see PARA 258 et seq ante.

11 Ie the requirements of a condition imposed on a permission granted or deemed to be granted under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante, PARA 466 et seq post) otherwise than by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended).

12 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 5(1) (as amended: see note 8 supra).

13 For the meaning of 'use of land' see note 8 supra.

14 For the meaning of 'building' see PARA 2 note 10 ante.

15 le the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, arts 3, 4, Schedule (as amended): see PARA 225 et seq ante.

16 le under the Town and Country Planning Act 1990 Pt III (as amended): see PARA 217 et seq ante, PARA 466 et seq post.

17 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 6.

18 The specified conditions are: (1) that the application is made within 12 months of the date of the grant of planning permission or grant or approval of details of reserved matters, as the case may be; (2) that the application relates: (a) in the case of an application for planning permission, to the same site as that to which the grant of planning permission related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site; or (b) in the case of an application for approval of reserved matters, to the same site as that in respect of which the approval was granted, or to part of that site, and no other land; (3) in the case of an application for planning permission which is not made in outline, that the planning permission which has been granted is not an outline planning permission; (4) that no application made by or on behalf of the same applicant in relation to the whole or any part of the site has already been exempted from the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193 (as amended) by reg 7: reg 7(2). For these purposes, 'outline planning permission' has the same meaning as in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended) (see PARA 467 note 5 post): Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 2(1) (definition amended by SI 1997/37).

19 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 7(1).

20 The specified conditions are: (1) that the application is made within 12 months of (a) the date when the earlier application was made, in the case of a withdrawn application; (b) the date when, by virtue of the relevant provision of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended), the period for the giving of notice of a decision on the earlier application expired, in the case of an application which is made following an appeal; or (c) the date of the refusal, in any other case; (2) that the application relates: (a) in the case of an application for planning permission, to the same site as that to which the earlier application related, or to part of that site, and to no other land except land included solely for the purpose of providing a different means of access to the site; or (b) in the case of an application for approval of reserved matters, to the same site as that to which the earlier application related, or to part of that site, and no other land; (3) in the case of an application for planning permission, that the local planning authority to which the application is made is satisfied that the application relates to development of the same character as the development to which the earlier application related, and to no other development; (4) in the case of an application for planning permission which is not made in outline, that the earlier application was also not made in outline; (5) that the fee payable in respect of the earlier application was paid; and (6) that no application made by or on behalf of the same applicant in relation to the whole or any part of the site has already been exempted from the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193 (as amended), reg 3 (as amended) by reg 8 (as amended): reg 8(2) (amended by SI 1997/37).

21 As to the Secretary of State see PARA 19 ante.

22 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

23 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 8(1).

24 Ibid reg 9.

UPDATE

460 Exceptions where fees for planning applications do not apply

TEXT AND NOTES 18, 19--In relation to Wales, head (5)(a) omitted: SI 1989/193 reg 7(1) (substituted by SI 2006/948).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/461. Fees in respect of deemed applications.

461. Fees in respect of deemed applications.

A fee must be paid¹ to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ in every case where an application for planning permission⁴ is deemed to have been made in consequence of an appeal⁵ against an enforcement notice⁶.

The fee due in respect of a deemed application must be paid at such time as the Secretary of State or the Assembly may in the particular case specify by notice in writing to the appellant⁷ and is refundable in prescribed circumstances⁸.

1 The subject to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(3) (as substituted) (see note 6 *infra*) and reg 10(5) (see PARA 462 *post*).

2 As to the Secretary of State see PARA 19 *ante*.

3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

4 For the meaning of 'planning permission' see PARA 43 note 6 *ante*.

5 The appeal under the Town and Country Planning Act 1990 s 177(5) (as amended): see PARA 610 *post*.

6 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, regs 1(2)(d), 10(1)(a); Planning (Consequential Provisions) Act 1990 s 2. A fee: (1) must be so paid in respect of such a deemed application by every person who has made a valid appeal against the enforcement notice and whose appeal has not been withdrawn before the date on which the Secretary of State or the Assembly issues a notice requiring payment of the fee; (2) is payable of twice the fee calculated in accordance with Sch 1 (as amended); (3) must be paid as to half to the Secretary of State or the Assembly and as to the other half to the local planning authority which issued the relevant enforcement notice: reg 10(2), (3) (respectively amended and substituted by SI 1991/2735). For the meaning of 'enforcement notice' see PARA 44 note 1 *ante*.

The Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, regs 4-6 (as amended) (see PARA 460 *ante*) apply to a deemed application as they apply to an application for planning permission made to the local planning authority, with the following modifications: (a) references to the local planning authority to which the application is made are to be construed as references to the Secretary of State or the Assembly; and (b) references to the development to which the application relates are to be construed as references to the use of the land or the operations to which the relevant enforcement notice relates: reg 10(7). As to local planning authorities see PARA 28 *et seq ante*; and for the meaning of 'use of land' for these purposes see PARA 460 note 8 *ante*.

7 *Ibid* reg 10(4).

8 In the event that the Secretary of State or the Assembly declines jurisdiction on the relevant appeal, dismisses it or allows it and quashes the relevant enforcement notice, any fee paid in respect of the deemed application must be refunded to the appellant: see *ibid* reg 10(8) (amended by SI 1991/2735). In the event of the relevant appeal being withdrawn with the result that there are at least 21 days between the date of withdrawal and (1) the date, or in the event of postponement, the latest date, appointed for the holding of an inquiry into that appeal; or (2) in the case of an appeal which is being dealt with by way of written representations, the date, or in the event of postponement the latest date, appointed for the inspection of the

site to which the enforcement notice relates, any fee paid in respect of the deemed application must be refunded to the appellant: see the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(9) (as so amended). In the event of the local planning authority withdrawing the relevant enforcement notice before it takes effect or if the Secretary of State or the Assembly decides that the enforcement notice is a nullity, any fee paid by an appellant must be refunded to him: reg 10(11) (as so amended). In the event of the Secretary of State or the Assembly allowing the appeal against the relevant enforcement notice: (a) on grounds set out in the Town and Country Planning Act 1990 s 174(2)(b)-(e) (as substituted) (see PARA 603 post); or (b) the ground that the notice is invalid, or that it contains an informality, defect or error which cannot be corrected in pursuance of his or the Assembly's powers under s 176(1) (as substituted) (see PARA 609 post), save in the case of an application deemed to have been made in connection with an enforcement notice alleging a breach of planning control by the use of land as a caravan site, or where, on the determination of the appeal, the Secretary of State or the Assembly issues a certificate of lawful use or development, the fee paid by the appellant must be refunded to him: see the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(12) (as so amended; also amended by SI 1992/1817). Finally, in the case of an enforcement notice being varied otherwise than to take account of a grant of planning permission and where the fee as calculated would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable is that lesser amount and any excess amount already paid must be refunded: see the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(14).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/462. Exemptions from fees in respect of deemed applications.

462. Exemptions from fees in respect of deemed applications.

The statutory provisions relating to fees for deemed applications¹ do not apply where the person who has appealed against the relevant enforcement notice² had:

- 1708 (1) before the date when the notice was issued, made an application to the local planning authority³ for planning permission⁴ for the development⁵ to which the relevant enforcement notice relates, and had paid to the authority the fee payable in respect of that application; or
- 1709 (2) before the date specified in the notice as the date on which the notice is to take effect, made an appeal to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷ against the refusal of the local planning authority to grant such permission,

and, at the date when the relevant enforcement notice was issued, that application or, in the case of an appeal made before that date, that appeal, had not been determined⁸.

¹ ie the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(1)(a): see PARA 461 ante.

² For the meaning of 'enforcement notice' see PARA 44 note 1 ante.

³ As to local planning authorities see PARA 28 et seq ante.

⁴ For the meaning of 'planning permission' see PARA 43 note 6 ante.

⁵ For the meaning of 'development' see PARA 217 ante.

⁶ As to the Secretary of State see PARA 19 ante.

7 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10(5).

Regulation 10(6) provides for an exemption in the case of an application or appeal deemed to have been made by virtue of the Town and Country Planning Act 1990 s 196(6), (7) (now repealed) which was subsequently withdrawn or in respect of which jurisdiction was declined.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/463. Fees for applications for certificates of lawfulness of existing or proposed use or development.

463. Fees for applications for certificates of lawfulness of existing or proposed use or development.

Where an application is made to a local planning authority¹ for a certificate of lawfulness of an existing or proposed use or development², a fee must³ be paid to that authority⁴.

The fee due in respect of such an application must accompany the application when it is lodged with the local planning authority⁵; but any fee so paid must be refunded if the application is rejected as invalidly made⁶.

1 As to local planning authorities see PARA 28 et seq ante.

2 Ie under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 post) or s 192 (as substituted) (see PARA 587 post).

3 Ie subject to the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10A(2)-(4), (9) (as amended) (reg 10A added by SI 1992/1817): see note 4 infra; and PARA 464 post.

4 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10A(1) (as added: see note 3 supra). As to calculation of the fee payable see reg 10A(5), (6), (8)-(10) (as so added; amended in relation to England by SI 2005/843; and in relation to Wales by SI 2004/2736).

5 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10A(11) (as added: see note 3 supra).

6 Ibid reg 10A(12) (as added: see note 3 supra).

UPDATE

463 Fees for applications for certificates of lawfulness of existing or proposed use or development

NOTE 4--SI 1989/193 reg 10A(5) further amended: SI 2008/958 (England), SI 2009/851 (Wales). SI 1989/193 reg 10A(6) further amended in relation to England by SI 2008/958; and substituted in relation to Wales by SI 2009/851.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/464. Exemptions from fees for certificates of lawfulness.

464. Exemptions from fees for certificates of lawfulness.

The statutory provisions relating to fees for certificates of lawfulness of an existing or proposed use or development¹ do not apply:

1710 (1) where the local planning authority² to which the application is made is satisfied that it relates solely to the carrying out of specified operations³ for providing means of access for a disabled person or persons or for providing facilities designed to secure the greater safety, health or comfort of a disabled person⁴;

1711 (2) where all of the specified conditions⁵ are met, to:

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25. (a) an application which is made following the withdrawal, before notice of decision was issued, of an application made by or on behalf of the same applicant;

26. (b) an application which is made following the refusal of an application, whether by the local planning authority or the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ on appeal, made by or on behalf of the same applicant;

27. (c) an application which is made following the making of an appeal⁸ to the Secretary of State or the Assembly in default of decision in relation to an application made by or on behalf of the same applicant⁹.

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1 Ie the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10A(1) (as added): see PARA 463 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Ie operations specified in the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 4 (as amended) for the purposes specified therein: see PARA 460 ante.

4 Ibid reg 10A(2) (reg 10A added by SI 1992/1817).

5 The conditions so specified are (1) that the application is made within 12 months of (a) the date when the earlier application was made, in the case of a withdrawn application; (b) the date when, by virtue of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended), the period for the giving of notice of a decision on the earlier application expired, in the case of an application which is made following an appeal under the Town and Country Planning Act 1990 s 195(1)(b) (see PARA 613 post); or (c) the date of refusal, in any other case; (2) that the application relates to the same site as that to which the earlier application related, or to part of that site and to no other land; (3) that the local planning authority to which the application is made is satisfied that the application relates to a use, operation or other matter of the same description as the use, operation or matter to which the earlier application related and to no other use, operation or matter; (4) that the fee payable in respect of the earlier application was paid; and (5) that no application made by or on behalf of the same applicant in relation to the whole or any part of the site has already been exempted from these provisions by the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10A(3) (as added): reg 10A(3), (4) (as added (see note 4 supra); amended by SI 1997/37).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of town and country of planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 le an appeal under the Town and Country Planning Act 1990 s 195(1)(b).

9 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989 reg 10A(3) (as added: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/C. FEES/465. Fees for certain other applications.

465. Fees for certain other applications.

Where an application is made to a local planning authority¹ for its determination as to whether the prior approval of the authority will be required in relation to:

1712 (1) permitted development relating to agricultural buildings², forestry buildings³ or the demolition of buildings⁴; or

1713 (2) certain permitted development relating to electronic communications⁵,

a fee must be paid to that authority⁶. Any fee so paid must, however, be refunded if the application is rejected as invalidly made⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 le under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 6 (as amended): see PARAS 302-309 ante.

3 le under ibid Sch 2 Pt 7: see PARAS 310-312 ante.

4 le under ibid Sch 2 Pt 31: see PARAS 412-414 ante.

5 le under ibid Sch 2 Pt 24 (as substituted and amended): see PARAS 394-396 ante.

6 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11A(1) (added by SI 1991/2735; substituted and amended in relation to England by SI 2001/2719; SI 2005/843; substituted and amended, subject to minor variation, in relation to Wales by SI 2002/1876; SI 2004/2736).

7 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11A(2) (substituted by SI 1992/3052).

UPDATE

465 Fees for certain other applications

TEXT AND NOTES--Where a site visit is made to a mining site or a landfill site by a local planning authority, the operator of the site must pay a fee to the authority: see SI 1989/193 reg 11B (England) and reg 11C (Wales) (reg 11B added by SI 2006/994; SI 1989/193 reg 11C added by SI 2006/1052). Where a request is made to a local planning authority for written confirmation of compliance with a condition or conditions

attached to a grant of planning permission, a fee must be paid to the authority: see SI 1989/193 reg 11D (added by SI 2008/958 (England)).

NOTE 6--SI 1989/193 reg 11A(1) further amended: SI 2008/958 (England), SI 2009/851 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/D. REGISTER OF APPLICATIONS/466. Register of applications etc; in general.

D. REGISTER OF APPLICATIONS

466. Register of applications etc; in general.

Partly as from a day to be appointed¹, the following provisions apply. The local planning authority² must keep a register containing such information as is prescribed³ as to:

- 1714 (1) applications for planning permission⁴;
- 1715 (2) local development orders⁵;
- 1716 (3) simplified planning zone schemes⁶.

The register must contain:

- 1717 (a) information as to the manner in which applications mentioned in head (1) above have been dealt with⁷;
- 1718 (b) such information as is prescribed with respect to any local development order or simplified planning zone scheme in relation to the authority's area⁸.

A development order may require the register to be kept in two or more parts⁹. Each part must contain such information as is prescribed relating to the matters mentioned in head (1) above¹⁰. A development order may also make provision:

- 1719 (i) for a specified part of the register to contain copies of applications and of any other documents or material submitted with them;
- 1720 (ii) for the entry relating to an application, and everything relating to it, to be removed from that part of the register when the application, including any appeal arising out of it, has been finally disposed of¹¹;

but provision made under head (ii) above does not prevent the inclusion of a different entry relating to the application in another part of the register¹².

The register must be kept in such manner as is prescribed¹³ and must be kept available for inspection by the public at all reasonable hours¹⁴.

The register also contains information with regard to applications for certificates of the lawfulness of existing or proposed use or development¹⁵.

¹ ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante.

2 As to local planning authorities see PARA 28 et seq ante. The functions of local planning authorities in England and outside Greater London under the Town and Country Planning Act 1990 s 69 (as substituted) are exercisable by district planning authorities: see s 1(5)(a) (as amended), Sch 1 paras 14, 21(1).

3 Anything prescribed for these purposes must be prescribed by development order: *ibid* s 69(9) (s 69 substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 3, partly as from a day to be appointed: see note 1 *supra*). For the meaning of 'development order' see PARA 252 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante. References to applications for planning permission in the Town and Country Planning Act 1990 s 69 (as substituted: see note 3 *supra*) include references to applications for certificates under s 191 or s 192 (each as substituted) ('CLEUDs' and 'CLOPUDs': see PARAS 586-587 post): s 193(6) (substituted by the Planning and Compensation Act 1991 s 10(1)).

5 As to local development orders see PARA 419 et seq ante.

6 Town and Country Planning Act 1990 s 69(1) (as substituted: see note 3 *supra*). As to simplified planning zone schemes see PARA 426 et seq ante. Section 61(1) (as so substituted) also contains a requirement for the register to contain such information as is prescribed as to requests for statements of development principles within the meaning of s 61E (see s 61(1)(b) (as so substituted)), but it is apprehended that this is a drafting error as there is no s 61E. The Planning and Compulsory Purchase Bill originally contained clauses (1) introducing the requirement for a statement of development principles; and (2) providing for the removal of outline planning permission; but both these proposals were dropped during the Bill's passage through Parliament: see HL Debates vol 659 col 895 (25 March 2004); HC Debates vol 420 col 1037 (29 April 2004).

7 The Town and Country Planning Act 1990 s 69(2)(a) (as substituted) (see head (a) in the text) also refers to information as to the manner in which requests mentioned in s 69(1)(b) (as substituted) have been dealt with; but see note 6 *supra*.

8 *Ibid* s 69(2) (as substituted: see note 3 *supra*).

9 *Ibid* s 69(3) (as substituted: see note 3 *supra*).

10 *Ibid* s 69(4) (as substituted: see note 3 *supra*). Section 69(4) (as so substituted) also provides that each part must contain such information as is prescribed relating to the matters mentioned in s 69(1)(b) (as substituted); but see note 6 *supra*.

11 *Ibid* s 69(5) (as substituted: see note 3 *supra*). Section 69(5) (as so substituted) refers to 'applications or requests' and 'an application or request': but see note 6 *supra*.

12 *Ibid* s 69(6) (as substituted: see note 3 *supra*). Section 69(6) (as so substituted) refers to 'the application or request': but see note 6 *supra*.

13 *Ibid* s 69(7) (as substituted: see note 3 *supra*).

14 *Ibid* s 69(8) (as substituted: see note 3 *supra*). Prior to such substitution, s 69 (amended by the Planning and Compensation Act 1991 ss 32, 84, Sch 7 para 13, Sch 19, Pt I) provided as follows: Every local planning authority must keep, in such manner as may be prescribed by a development order, a register containing such information as may be so prescribed with respect to applications for planning permission: Town and Country Planning Act 1990 s 69(1) (as originally enacted and as so amended). The register must contain: (1) information as to the manner in which such applications have been dealt with; and (2) such information as may be prescribed by a development order with respect to simplified planning zone schemes relating to zones in the authority's area: s 69(2) (as originally enacted). A development order may make provision for the register to be kept in two or more parts, each part containing such information relating to applications for planning permission as may be prescribed by the order: s 69(3) (as originally enacted and as so amended). A development order may also make provision: (a) for a specified part of the register to contain copies of applications and of any plans or drawings submitted with them; and (b) for the entry relating to any application, and everything relating to it, to be removed from that part of the register when the application, including any appeal arising out of it, has been finally disposed of, without prejudice to the inclusion of any different entry relating to it in another part of the register: s 69(4) (as originally enacted). Every register so kept must be available for inspection by the public at all reasonable hours: s 69(5) (as originally enacted).

15 See PARA 591 post.

UPDATE

466 Register of applications etc; in general

NOTE 1--Day now appointed: SI 2010/321.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(i) Application for Planning Permission/D. REGISTER OF APPLICATIONS/467. Form of register of applications.

467. Form of register of applications.

Each local planning register authority¹ must keep, in two parts, a register of every application for planning permission² relating to its area³.

Part I of the register must contain in respect of each such application and any application for approval of reserved matters⁴ made in respect of an outline planning permission⁵ granted on such an application, made or sent to the local planning register authority and not finally disposed of⁶:

- 1721 (1) a copy, which may be photographic or in electronic form, of the application together with any accompanying plans and drawings;
- 1722 (2) a copy, which may be photographic or in electronic form, of any planning obligation⁷ or agreement pursuant to the relevant provision of the Highways Act 1980⁸ proposed or entered into in connection with the application;
- 1723 (3) a copy, which may be photographic or in electronic form, of any other planning obligation or agreement such as is mentioned in head (2) above entered into in respect of the land the subject of the application which the applicant considers relevant; and
- 1724 (4) particulars of any modification to any planning obligation or agreement such as is mentioned in head (2) above included in Part I of the register in accordance with heads (2) and (3) above⁹.

Part II of the register must contain, in respect of every application for planning permission relating to the local planning register authority's area:

- 1725 (a) a copy, which may be photographic or in electronic form, of the application and of plans and drawings submitted in relation thereto;
- 1726 (b) particulars of any direction given in respect of the application;
- 1727 (c) the decision, if any, of the local planning authority in respect of the application, including details of any conditions subject to which permission was granted, the date of such decision and the name of the local planning authority;
- 1728 (d) the reference number, the date and effect of any decision of the Secretary of State¹⁰ or, in relation to Wales, of the National Assembly for Wales¹¹ in respect of the application, whether on appeal or on a reference¹²;
- 1729 (e) the date of any subsequent approval, whether approval of reserved matters or any other approval required, given in relation to the application;
- 1730 (f) a copy, which may be photographic or in electronic form, of any planning obligation or agreement such as is mentioned in head (2) above entered into in connection with any decision of the local planning authority or of the Secretary of State or the Assembly in respect of the application;

- 1731 (g) a copy, which may be photographic or in electronic form, of any other planning obligation or agreement such as is mentioned in head (2) above taken into account by the local planning authority or by the Secretary of State or the Assembly when making the decision; and
- 1732 (h) particulars of any modification to or discharge of any planning obligation or agreement such as is mentioned in head (2) above included in Part II of the register in accordance with heads (f) and (g) above¹³.

Where, on an appeal to the Secretary of State or the Assembly against an enforcement notice¹⁴, the appellant is deemed to have made an application for planning permission and the Secretary of State or the Assembly has granted permission, the local planning register authority must, on receipt of notification of the Secretary of State's or Assembly's decision, enter into Part II of the register particulars of the development concerned, the land on which it was carried out, and the date and effect of the Secretary of State's or Assembly's decision¹⁵.

The register must contain the following information about simplified planning zone schemes¹⁶ in the area of the authority:

- 1733 (i) brief particulars of any specified action taken by the authority or by the Secretary of State or the Assembly¹⁷;
- 1734 (ii) a copy of any simplified planning zone scheme, including any diagrams, illustrations, descriptive matters or any other prescribed material which has been made available for inspection¹⁸;
- 1735 (iii) an index map showing the boundary of any operative or proposed simplified planning zone schemes, including alterations to existing schemes where appropriate, together with a reference to the entries in the register under heads (i) and (ii) above¹⁹.

The information about applications for certificates of lawfulness of existing or proposed use or development which must also be included in the register is discussed in a later part of this title²⁰.

Every entry in the register must be made within 14 days of the receipt of an application, or of the giving or making of the relevant direction, decision or approval, as the case may be²¹.

To enable any person to trace any entry in the register, every register must include an index together with a separate index of applications for development involving mining operations²² or the creation of mineral working deposits²³.

The register must either be kept at the principal office of the local planning register authority or that part of the register which relates to land in part of that authority's area must be kept at a place within or convenient to that part²⁴. Where the register kept by a local planning register authority is kept using electronic storage, the authority may make the register available for inspection by the public on a website maintained by the authority for that purpose²⁵.

1 For these purposes and the purposes of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 26 (register of enforcement and stop notices: see PARA 554 post), 'the local planning register authority' means: (1) in Greater London or a metropolitan county or in Wales, the local planning authority (and references to the area of the local planning register authority are, in this case, to the area of the local planning authority); (2) in relation to land in a National Park (except in a metropolitan county or in Wales), the county planning authority (and references to the area of the local planning register authority are, in this case, to the area of the county planning authority within a National Park); (3) in relation to any other land, the district planning authority (and references to the area of the local planning register authority are, in this case, to the area of the district planning authority, other than any part of its area falling within a National Park): art 25(1) (amended by SI 1996/525). As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(2).

4 For these purposes, 'reserved matters', in relation to an outline permission, or an application for such permission, means any of the following matters in respect of which details have not been given in the application, namely (1) siting; (2) design; (3) external appearance; (4) means of access; (5) the landscaping of the site; and 'landscaping' means the treatment of land, other than buildings, being the site or part of the site in respect of which an outline planning permission is granted, for the purpose of enhancing or protecting the amenities of the site and the area in which it is situated and includes screening by fences, walls or other means, the planting of trees, hedges, shrubs or grass, the formation of banks, terraces or other earthworks, the laying out of gardens or courts, and the provision of other amenity features: *ibid* art 1(2). 'Building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery or any structure in the nature of plant or machinery: art 1(2). As to the meaning of 'amenity' see PARA 158 note 8 ante. The express definition of 'reserved matters' under art 1(2) is exclusive and specifically restricts 'reserved matters' to the examples given in heads (1)-(5) *supra*; thus a condition in an outline planning permission providing for subsequent approval of the provision of mitigation or substituted land was not a reserved matter for the purposes of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended): *R (on the application of Murray) v Hampshire County Council* [2002] EWHC 1401 (Admin), [2003] JPL 224, [2002] All ER (D) 260 (Jun); *affd* [2003] All ER (D) 174 (May), CA.

5 For these purposes, 'outline planning permission' means a planning permission for the erection of a building, which is granted subject to a condition requiring the subsequent approval of the local planning authority with respect to one or more reserved matters: *ibid* art 1(2). 'Erection', in relation to buildings as defined in art 1(2) (see note 4 *supra*), includes extension, alteration or re-erection: art 1(2).

6 For these purposes, an application is not treated as finally disposed of unless (1) it has been decided by the authority, or the appropriate period allowed under *ibid* art 23(2) (see PARA 532 post) has expired without its giving a decision, and the period of six months specified in art 23 (as amended) (see PARA 599 post) has expired without any appeal having been made to the Secretary of State (or in Wales to the National Assembly for Wales); (2) if it has been referred to the Secretary of State (or in Wales to the Assembly) under the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 post) or an appeal has been made to the Secretary of State (or in Wales to the Assembly) under s 78 (as amended) (see PARA 598 post), the Secretary of State (or in Wales the Assembly) has issued his (or its) decision and the period of six weeks specified in s 288 (as amended) (see PARA 47 ante) has expired without any application having been made to the High Court thereunder; or (3) an application has been made to the High Court under s 288 (as amended) and the matter has been finally determined, either by final dismissal of the application by a court or by the quashing of the Secretary of State's (or in Wales, the Assembly's) decision and the issue of a fresh decision without a further application under s 288 (as amended); or (4) it has been withdrawn before being decided by the authority, or an appeal has been withdrawn before the Secretary of State (or in Wales, the Assembly) has issued his (or its) decision: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(11) (amended in relation to England by SI 2004/3340).

7 For these purposes, 'planning obligation' means an obligation entered into by agreement or otherwise by any person interested in land pursuant to the Town and Country Planning Act 1990 s 106 (as substituted; prospectively repealed) (see PARA 244 ante): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2) (definition added in relation to England by SI 2002/828 and in relation to Wales by SI 2004/1434).

8 *le* a 'section 278 agreement' which means an agreement entered into pursuant to the Highways Act 1980 s 278 (as substituted) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 73): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2) (definition added in relation to England by SI 2002/828 and in relation to Wales by SI 2004/1434).

9 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(3) (substituted in relation to England by SI 2002/828; amended by SI 2003/956; substituted (subject to minor variation) in relation to Wales by SI 2004/1434; amended by SI 2004/3156).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

12 *le* a reference under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 post.

13 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(4) (amended in relation to England by SI 2002/828 and SI 2003/956; and (subject to minor variation) in relation to Wales by SI 2004/1434 and SI 2004/3156).

14 le an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 post.

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(5). The particulars referred to in the text must be entered in the register together with a copy (which may be photographic or in electronic form) of (1) any planning obligation or section 278 agreement entered into in connection with the decision; and (2) any other planning obligation or section 278 agreement taken into account by the Secretary of State or the Assembly when making the decision: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(5) (amended in relation to England by SI 2002/828 and SI 2003/956; and in relation to Wales by SI 2004/1434 and SI 2004/3156).

16 As to simplified planning zone schemes see PARA 426 et seq ante.

17 le brief particulars of any action taken by the authority or by the Secretary of State or the Assembly in accordance with the Town and Country Planning Act 1990 s 83 (as amended) or s 83(3), Sch 7 (as amended) to establish or approve any simplified planning zone scheme, including the date of adoption or approval, the date on which the scheme or alteration becomes operative and the date on which it ceases to be operative: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(7)(a).

18 le made available for inspection under the Town and Country Planning Act 1990 Sch 7 (as amended): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(7)(b).

19 Ibid art 25(7)(c).

20 See PARA 591 post.

21 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(9).

22 For these purposes, 'mining operations' means the winning and working of minerals in, on or under land, whether by surface or underground working: ibid art 1(2).

23 Ibid art 25(8).

24 Ibid art 25(10).

25 Ibid art 25(12) (added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156).

UPDATE

467 Form of register of applications

TEXT AND NOTES--In relation to England, Part III of the register must contain, in relation to local development orders, (1) copies of draft local development orders which have been prepared but not adopted by the authority; (2) copies of local development orders which have been adopted by the authority; (3) particulars of the revocation of any local development order made by the authority, including the date on which the revocation took effect; and (4) particulars of the reversion of any local development order, including the date on which the reversion took effect: SI 1995/419 art 25A (added by SI 2006/1062).

NOTE 4--Definitions of 'reserved matters' and 'landscaping' substituted in relation to Wales: SI 2008/2336. In relation to England, heads (1)-(5) now (1) access; (2) appearance; (3) landscaping; (4) layout; (5) scale, within the upper and lower limit for the height, width and length of each building stated in the application for planning permission: see SI 1995/419 art 1(2) (amended by SI 2006/1062).

TEXT AND NOTES 10-13--Head (a) now includes, in relation to England, a copy of any accompanying design and access statement provided and, in relation to Wales, a copy of any accompanying design and access statement or access statement provided in accordance with SI 1995/419 art 4D (as substituted); head (d), in relation to Wales, refers also to an application for urgent Crown development: SI 1995/419 art 25(4)

(amended, in relation to England, by SI 2006/1062 and, in relation to Wales, by SI 2006/1386, SI 2006/3390, SI 2009/1024).

TEXT AND NOTE 21--In relation to Wales, a copy of any application made under the Town and Country Planning Act 1990 s 293A(2) and of any plans and drawings submitted in relation to it must be placed on the register within 14 days of the date on which the local planning authority is consulted on the application by the Secretary of State: SI 1995/419 art 25 (amended by SI 2006/1386).

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(ii) Publicity for Applications

468. Notice etc of applications for planning permission; in general.

A development order¹ may make provision requiring:

- 1736 (1) notice to be given of any application for planning permission²; and
- 1737 (2) any applicant for such permission to issue a certificate as to the interests in the land³ to which the application relates⁴ or the purpose for which it is used,

and provide for publicising such applications and for the form, content and service of such notices and certificates⁵.

Provision must be made by a development order for the purpose of securing that, in the case of any application for planning permission, any person, other than the applicant, who on such date as may be prescribed by the order⁶ is an owner⁷ of the land to which the application relates, or an agricultural tenant⁸ of that land, is given notice of the application in such manner as may be required by the order⁹.

A development order may require an applicant for planning permission to certify, in such form as may be prescribed by the order, or to provide evidence, that any requirements of the order have been satisfied¹⁰.

A development order making any such provision may make different provision for different cases or different classes of development¹¹.

A local planning authority¹² may not entertain an application for planning permission unless any requirements imposed by virtue of the above provisions have been satisfied¹³.

If any person:

- 1738 (a) issues a certificate which purports to comply with any requirement imposed by virtue of the above provisions and contains a statement which he knows to be false or misleading in a material particular; or
- 1739 (b) recklessly issues a certificate which purports to comply with any such requirement and contains a statement which is false or misleading in a material particular,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale¹⁴. A magistrates' court may¹⁵ try an information in respect of such an offence whenever laid¹⁶.

1 For the meaning of 'development order' see PARA 252 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For these purposes, the reference to the interests in the land to which an application for planning permission relates includes any interest in any mineral in, on or under the land: Town and Country Planning Act 1990 s 65(8) (s 65 substituted by the Planning and Compensation Act 1991 s 16(1)).

5 Town and Country Planning Act 1990 s 65(1) (as substituted: see note 4 supra).

6 The date so prescribed is the day 21 days before the date of the application: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(5)(a).

7 For these purposes, 'owner', in relation to any land, means any person who (1) is the estate owner in respect of the fee simple; (2) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired; or (3) in the case of such applications as may be prescribed by a development order, is entitled to an interest in any mineral so prescribed: Town and Country Planning Act 1990 s 65(8) (as substituted: see note 4 supra). The applications so prescribed are minerals applications, and the minerals so prescribed are any minerals other than oil, gas, coal, gold or silver: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(5)(b). 'Minerals applications' mean applications for planning permission for development consisting of the winning and working of minerals: art 6(6). For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

8 For these purposes, 'agricultural tenant', in relation to any land, means any person who: (1) is the tenant, under a tenancy in relation to which the Agricultural Holdings Act 1986 applies, of an agricultural holding within the meaning of that Act any part of which is comprised in that land; or (2) is the tenant, under a farm business tenancy (within the meaning of the Agricultural Tenancies Act 1995), of land any part of which is comprised in that land: Town and Country Planning Act 1990 s 65(8) (as substituted: see note 4 supra; s 65(2), (8) amended by the Agricultural Tenancies Act 1995 s 40, Schedule para 35).

9 Town and Country Planning Act 1990 s 65(2) (as substituted and amended: see notes 4, 8 supra). See PARAS 469-471 post.

10 Ibid s 65(3) (as substituted: see note 4 supra).

11 Ibid s 65(4) (as substituted: see note 4 supra). For the meaning of 'development' see PARA 217 ante.

12 As to local planning authorities see PARA 28 et seq ante.

13 Town and Country Planning Act 1990 s 65(5) (as substituted: see note 4 supra).

14 Ibid s 65(6), (7) (as substituted: see note 4 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 55 ante.

15 Ie notwithstanding the Magistrates' Court Act 1980 s 127 (time limits): see MAGISTRATES vol 29(2) (Reissue) PARA 589.

16 Town and Country Planning Act 1990 s 65(9) (as substituted: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(ii) Publicity for Applications/469. Notice of application for planning permission; procedure.

469. Notice of application for planning permission; procedure.

An applicant for planning permission¹ must give requisite notice² of the application to any person, other than the applicant, who on the prescribed date³ is an owner⁴ of the land to which the application relates, or a tenant⁵:

- 1740 (1) by serving the notice on every such person whose name and address is known to him; and
- 1741 (2) where he has taken reasonable steps to ascertain the names and addresses of every such person, but has been unable to do so, by local advertisement⁶ after the prescribed date⁷.

In the case of an application for planning permission for development⁸ consisting of the winning and working of minerals by underground operations, instead of giving notice in the manner described above, the applicant must give requisite notice of the application to any person, other than the applicant, who on the prescribed date is an owner of any of the land to which the application relates, or a tenant:

- 1742 (a) by serving the notice on every such person who the applicant knows to be such a person and whose name and address is known to him;
- 1743 (b) by local advertisement after the prescribed date; and
- 1744 (c) by site display⁹ in at least one place in every parish or community within which there is situated any part of the land to which the application relates, leaving the notice in position for not less than seven days in the period of 21 days immediately preceding the making of the application to the local planning authority¹⁰.

The provisions set out above apply to any appeal to the Secretary of State¹¹ or, in relation to Wales, to the National Assembly for Wales¹² against a planning decision or a failure to take such a decision¹³ as they apply to applications for planning permission¹⁴.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For these purposes, 'requisite notice' means notice in the appropriate form set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6, Sch 2 Pt I (as amended) or in a form substantially to the like effect: art 6(6). It does not, however, include notice served using electronic communications: art 6(6) (amended in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156). As to the use of electronic communications see PARA 451 ante.

3 For these purposes, 'the prescribed date' is the day 21 days before the date of the application: *ibid* art 6(5) (a).

4 For these purposes and for the purposes of the certificates required by *ibid* art 7 (see PARA 470 post), where an application for planning permission is made by virtue of the Town and Country Planning Act 1990 s 299(2) (as amended and prospectively repealed) (see PARA 454 ante), the applicant is to be treated as an owner of the land and no account is to be taken of any Crown interest or Duchy interest in the land or in any mineral in the land: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(7) (added by SI 1995/1139).

5 For these purposes, 'tenant' means the tenant of an agricultural holding any part of which is comprised in the land to which an application relates: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(6).

6 For these purposes, 'by local advertisement' means (1) by publication of the notice in a newspaper circulating in the locality in which the land to which the application relates is situated; and (2) where the local planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website: *ibid* art 1(2) (definition substituted in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156). As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(1).

8 For the meaning of 'development' see PARA 217 ante.

9 'By site display' means by the posting of the notice by firm affixture to some object, sited and displayed in such a way as to be easily visible and legible by members of the public: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2).

10 Ibid art 6(2). The notice required by art 6(2)(c) (see head (c) in the text) must, in addition to any other matters required to be contained in it, name a place within the area of the local planning authority to which the application is made where a copy of the application for planning permission, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice: art 6(3). Where, however, a local planning authority maintains a website for the purpose of advertisement of applications for planning permission, the notice so required must (in addition to any other matters required to be contained in it) state the address of the website where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during such period as may be specified in the notice, and the place on the website where such documents may be accessed, and how they may be accessed: art 6(3A) (added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156.). Where the notice is, without any fault or intention of the applicant, removed, obscured or defaced before the period of seven days referred to in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6(2)(c) has elapsed, the applicant is treated as having complied with the requirements of art 6(2)(c) if he has taken reasonable steps for its protection and, if need be, replacement: art 6(4).

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

13 Ie any appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 et seq post.

14 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(ii) Publicity for Applications/470. Certificates in relation to notice of applications for planning permission.

470. Certificates in relation to notice of applications for planning permission.

Where an application for planning permission¹ is made, the applicant must certify, in the appropriate prescribed form² or in a form substantially to the like effect, that the requirements relating to notice of application for planning permission³ have been satisfied⁴.

The provisions set out above apply to any appeal to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ against a planning decision or a failure to take such a decision⁷ as they apply to applications for planning permission⁸.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the prescribed form of certificate see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 7, Sch 2 Pt 2 (as amended). As to the treatment of the applicant as the owner for the purposes of such a certificate where an application is made under the Town and Country Planning Act 1990 s 299(2) (as amended and prospectively repealed) in relation to Crown land see PARA 469 note 4 ante.

3 Ie the requirements of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6 (as amended): see PARA 469 ante.

4 Ibid art 7(1). If an applicant has cause to rely on art 6(4) (see PARA 469 note 10 ante), the certificate must state the relevant circumstances: art 7(2). As to the effect of a factually erroneous certificate on the validity of a subsequent grant of planning permission in respect of the planning application see *Main v Swansea City Council* (1984) 49 P & CR 26, CA.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

7 In any appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 et seq post.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(1).

UPDATE

470 Certificates in relation to notice of applications for planning permission

TEXT AND NOTES 1-4--SI 1995/419 art 7(1) amended in relation to England: SI 2008/550.

NOTE 2--SI 1995/419 Sch 2 Pt 2 revoked in relation to England: SI 2008/550.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(ii) Publicity for Applications/471. Publicity for applications for planning permission.

471. Publicity for applications for planning permission.

An application for planning permission¹ must be publicised by the local planning authority² to which the application is made in the following manner³.

In the case of an application for planning permission for development⁴ which:

- 1745 (1) is an EIA application⁵ accompanied by an environmental statement⁶;
- 1746 (2) does not accord with the provisions of the development plan⁷ in force in the area in which the land to which the application relates is situated; or
- 1747 (3) would affect a right of way to which Part III of the Wildlife and Countryside Act 1981⁸ applies,

the application (a 'paragraph (2) application') must be publicised by giving requisite notice⁹ by site display¹⁰ in at least one place on or near the land to which the application relates for not less than 21 days and by local advertisement¹¹.

In the case of an application for planning permission which is not a paragraph (2) application, if the development proposed is major development¹², the application must be publicised by giving requisite notice by:

- 1748 (a) site display in at least one place on or near the land to which the application relates for not less than 21 days, or serving the notice on any adjoining owner or occupier¹³; and
- 1749 (b) local advertisement¹⁴.

In a case to which none of the above provisions applies¹⁵, the application must be publicised by giving requisite notice by:

- 1750 (i) site display in at least one place on or near the land to which the application relates for not less than 21 days; or
- 1751 (ii) serving the notice on any adjoining owner or occupier¹⁶.

If the local planning authority has failed to satisfy the requirements of the above provisions¹⁷ in respect of an application for the planning permission at the time the application is referred¹⁸ to the Secretary of State¹⁹ or, in relation to Wales, to the National Assembly for Wales²⁰ those requirements continue to apply as if such referral had not been made²¹.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(1).

4 For the meaning of 'development' see PARA 217 ante.

5 For these purposes, 'EIA application' has the meaning given in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2 (as amended) (see PARA 491 note 8 post); and 'environmental statement' means a statement which the applicant refers to as an environmental statement for the purposes of those 1999 Regulations: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(7) (definition substituted by SI 1999/293). As to EIA applications see PARA 487 et seq post.

6 For the meaning of 'environmental statement' see note 5 supra; and as to such statements see PARA 497 et seq post.

7 For the meaning of 'development plan' see PARA 91 ante.

8 I.e. the Wildlife and Countryside Act 1981 Pt III (ss 53-66) (as amended) (public rights of way): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 591 et seq.

9 For these purposes, 'requisite notice' means notice in the appropriate form set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(7), Sch 3 (as amended): art 8(7).

10 For the meaning of 'by site display' see PARA 469 note 9 ante.

11 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(2), (3) (amended by SI 1999/293). For the meaning of 'by local advertisement' see PARA 469 note 6 ante. Where, however, the notice is, without any fault or intention of the local planning authority, removed, obscured or defaced before the period of 21 days referred to in art 8(3)(a), art 8(4)(a)(i) or art 8(5)(a) has elapsed, the authority is treated as having complied with the relevant requirements if it has taken reasonable steps for the protection of the notice and, if need be, its replacement: art 8(6).

Article 8(2)-(6) (as amended) is substituted for the purposes of the application of art 8 (as amended) to publicity for planning applications for development within the London Borough of Camden: see the Town and Country Planning (London Borough of Camden) Special Development Order 2004, SI 2004/1231, arts 3, 4 (as amended by SI 2004/2355).

12 For these purposes, 'major development' means development involving any one or more of the following: (1) the winning and working of minerals or the use of the land for mineral-working deposits; (2) waste development; (3) the provision of dwelling houses where (a) the number of dwelling houses to be provided is ten or more; or (b) the development is to be carried out on a site having an area of 0.5 hectare or more and it is not known whether the development falls within head (a) supra; (4) the provision of a building or buildings where the floor space to be created by the development is 1,000 square metres or more; or (5) development carried out on a site having an area of one hectare or more: *ibid* art 8(7). 'Waste development' means any operational development designed to be used wholly or mainly for the purpose of, or a material change of use to, treating, storing, processing or disposing of refuse or waste materials: art 8(7). For these purposes, unless the context otherwise requires, 'dwelling house' does not include a building containing one or more flats, or a flat contained within such a building; 'flat' means a separate and self-contained set of premises constructed or

adapted for use for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally; and 'floor space' means the total floor space in a building or buildings: art 1(2). For the meaning of 'building' see PARA 467 note 4 ante.

13 For these purposes, 'adjoining owner or occupier' means any owner or occupier of any land adjoining the land to which the application relates: *ibid* art 8(7).

14 *Ibid* art 8(4). See also note 11 *supra*.

15 *Ie* in a case to which neither *ibid* art 8(2) (as amended: see note 11 *supra*) nor art 8(4) applies.

16 *Ibid* art 8(5). See also note 11 *supra*.

17 *Ie* the requirements of *ibid* art 8 (as amended).

18 *Ie* under the Town and Country Planning Act 1990 s 76A (as added) (see PARA 481 post) or s 77 (as amended) (see PARA 483 post).

19 As to the Secretary of State see PARA 19 ante.

20 *Ie* under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 post. As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

21 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(2) (amended in relation to England only by SI 2005/2087). Where the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(2) (as so amended) applies, when the local planning authority has satisfied the requirements of art 8 (as amended) it must inform the Secretary of State or the Assembly that it has done so: art 9(3). As to failure to satisfy the requirements of art 9 when an appeal is made under the Town and Country Planning Act 1990 s 78 (as amended) see PARA 600 post.

UPDATE

471 Publicity for applications for planning permission

NOTE 2--In relation to Wales, SI 1995/419 art 8 applies to applications made to the Secretary of State under the Town and Country Act 1990 s 293A (see PARA 456) as if the references to a local planning authority were references to the Secretary of State: art 8(7A) (added by SI 2006/1386).

TEXT AND NOTE 12--In relation to England, definitions of 'major development' and 'waste development' replaced: see SI 1995/419 art 1(2) (amended by SI 2006/1062).

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(iii) Consultations Before and Restrictions on Grant of Planning Permission

472. Duty to respond to consultation.

Partly as from a day to be appointed in relation to Wales¹, the following provisions apply to a prescribed requirement to consult² any person or body ('the consultee') which exercises

functions³ for the purposes of any enactment⁴; and a prescribed requirement to consult is a requirement:

- 1752 (1) with which the appropriate authority⁵ or a local planning authority⁶ must comply before granting any permission, approval or consent under or by virtue of the planning Acts⁷;
- 1753 (2) which is prescribed⁸ for these purposes⁹.

At any time before an application is made for any permission, approval or consent mentioned in heads (1) and (2) above, any person may in relation to a proposed development¹⁰ consult the consultee on any matter in respect of which the appropriate authority or the local planning authority is required to consult the consultee¹¹. Before the end of the period prescribed for these purposes¹², or such other period as is agreed in writing between the consultee and the appropriate authority or the local planning authority, as the case may be, the consultee must give a substantive response to any such¹³ consultation¹⁴. A development order¹⁵ may:

- 1754 (a) require consultees to give the appropriate authority a report as to their compliance with this requirement to give a substantive response;
- 1755 (b) prescribe the form and content of the report;
- 1756 (c) prescribe the times at which the report is to be made¹⁶.

The appropriate authority may also prescribe:

- 1757 (i) the procedure to be followed for the purposes of these provisions;
- 1758 (ii) the information to be provided to the consultee for the purposes of the consultation¹⁷;
- 1759 (iii) the requirements of a substantive response¹⁸.

In relation to England only, each consultee who is, by virtue of the above provisions, under a duty to respond to consultation must give to the Secretary of State¹⁹, not later than 1 July in each year beginning with the year commencing on 1 January 2006, a report as to that consultee's compliance with the requirement²⁰ to give a substantive response²¹. The report must relate to the period of 12 months commencing on 1 April in the preceding year ('the report year')²² and must contain, in respect of the relevant report year:

- 1760 (A) a statement as to the number of occasions on which the consultee was consulted by a person other than a local planning authority;
- 1761 (B) a statement as to the number of occasions on which a substantive response was given to a person other than a local planning authority within the prescribed period²³;
- 1762 (C) a statement as to the number of occasions on which the consultee was consulted by a local planning authority;
- 1763 (D) a statement as to the number of occasions on which a substantive response was given to a local planning authority within the prescribed period;
- 1764 (E) in relation to occasions on which the consultee has given a substantive response outside the prescribed period, a summary of the reasons why the consultee failed to comply with the duty to respond within that period²⁴.

1 le a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, the provisions set out in the text had been brought fully into force in relation to England but were in force for limited purposes only in relation to Wales: see PARA 4 note 8 ante.

2 For the meaning of 'consult' see PARA 2 note 1 ante.

3 For the meaning of 'functions' see PARA 2 note 1 ante (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

4 Ibid s 54(1). For the meaning of 'enactment' see PARA 2 note 11 ante (definition as applied: see note 3 supra). As to consultation in connection with planning applications see PARA 473 et seq post; and as to statutory consultees see also PARA 70 ante.

5 The appropriate authority is (1) the Secretary of State in relation to England; (2) the National Assembly for Wales in relation to Wales: Planning and Compulsory Purchase Act 2004 s 54(8). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 For the meaning of 'the planning Acts' see PARA 2 ante.

8 Anything prescribed for the purposes of the Planning and Compulsory Purchase Act 2004 s 54(1)-(5) must be prescribed by development order: s 54(6). For the meaning of 'development order' see PARA 252 ante (definition as applied: see note 3 supra). The requirements to consult which are prescribed for these purposes are those contained in: (1) the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 (as amended) (see PARA 475 post); (2) art 12 (as amended) (see PARA 478 post); (3) the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 24 para A.3(5)(a) (as substituted) (see PARA 395 note 30 ante); (4) the Town and Country Planning Act 1990 s 71(3) (see PARA 473 post); (5) Sch 1 para 4(2) (as amended) (see PARA 39 ante); (6) Sch 1 para 7 (as substituted) (see PARA 477 post); and (7) the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 3(b) (as substituted and amended) (see PARA 1111 post): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11A(1), (5) (arts 11A, 11B added in relation to England only by SI 2005/2087).

9 Planning and Compulsory Purchase Act 2004 s 54(2). See also note 8 supra.

10 For the meaning of 'development' see PARA 217 ante (definition as applied: see note 3 supra).

11 Planning and Compulsory Purchase Act 2004 s 54(3). See also note 8 supra.

12 The period prescribed for these purposes is the period of 21 days beginning with the day on which (1) the document on which the views of consultees are sought; or (2) where there is more than one such document and they are sent on different days, the last of those documents, is received by the consultee, or such other period as may be agreed in writing between the consultee and the consultor: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11A(2) (as added: see note 8 supra).

13 Ie any consultation (1) mentioned in the Planning and Compulsory Purchase Act 2004 s 54(2); (2) by virtue of s 54(3).

14 Ibid s 54(4). See also note 8 supra. The duty in s 54(4) to give a substantive response to any consultation mentioned in s 54(2) has, however, no effect in relation to an application for permission, approval or consent under or by virtue of the planning Acts received by a local planning authority in England before 24 August 2005: see the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(3).

15 See note 8 supra.

16 Planning and Compulsory Purchase Act 2004 s 54(7). See the text and notes 19-24 infra.

17 The information to be provided to the consultee for the purposes of the consultation, pursuant to ibid s 54(5)(b) (see head (ii) in the text), is such information as will enable that person to provide a substantive response: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11A(3) (as added: see note 8 supra).

18 Planning and Compulsory Purchase Act 2004 s 54(5). See also note 8 supra. For the purposes of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, arts 11A, 11B (as added) and pursuant to the Planning and Compulsory Purchase Act 2004 s 54(5)(c) (see head (iii) in the text), a substantive response is one which (1) states that the consultee has no comment to make; (2) states that, on the basis of the information available, the consultee is content with the development proposed; (3) refers the consultor to current standing advice by the consultee on the subject of the consultation; or (4) provides advice to the consultor: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11A(4) (as added: see note 8 supra).

19 As to the Secretary of State see PARA 19 ante.

20 le a report as to that consultee's compliance with the Planning and Compulsory Purchase Act 2004 s 54(4): see the text and notes 12-14 supra.

21 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11B(1) (as added: see note 8 supra).

22 Ibid art 11B(2) (as added: see note 8 supra).

23 le the period referred to in the Planning and Compulsory Purchase Act 2004 s 54(4): see note 12 supra.

24 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11B(3) (as added: see note 8 supra).

UPDATE

472 Duty to respond to consultation

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 8--SI 1995/419 art 11A amended in relation to England: SI 2009/2261.

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473. Consultations in connection with determinations.

A development order¹ may provide that a local planning authority² shall not determine an application for planning permission³ before the end of such period as may be prescribed⁴.

A development order may require a local planning authority:

- 1765 (1) to take into account, in determining such an application, such representations, made within such period, as may be prescribed⁵; and
- 1766 (2) to give to any person whose representations have been taken into account such notice as may be prescribed⁶ of the authority's decision⁷.

A development order making any such provision may make different provision for different cases or different classes of development⁸.

Before a local planning authority grants planning permission for the use of land as a caravan site⁹, the authority must, unless it is also the authority with power to issue a site licence¹⁰ for that land, consult¹¹ the local authority¹² with that power¹³.

1 For the meaning of 'development order' see PARA 252 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

- 4 Town and Country Planning Act 1990 s 71(1) (s 71(1), (2) substituted and s 71(2A) added by the Planning and Compensation Act 1991 s 16(2)). For these purposes, 'prescribed' means prescribed by a development order: Town and Country Planning Act 1990 s 71(4) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 15). For the prescribed periods see PARA 532 post.
- 5 For the prescribed periods and representations see PARA 474 post.
- 6 For the prescribed notice see PARA 474 post.
- 7 Town and Country Planning Act 1990 s 71(2) (as substituted: see note 4 supra).
- 8 Ibid s 71(2A) (as added: see note 4 supra). For the meaning of 'development' see PARA 217 ante.
- 9 For the meaning of 'caravan site' for these purposes see PARA 237 note 16 ante (applying the definition set out in PARA 1032 note 4 post).
- 10 For these purposes, 'site licence' means a licence under the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended) authorising the use of land as a caravan site (see PARA 1032 note 5 post): Town and Country Planning Act 1990 s 71(4).
- 11 For the meaning of 'consult' see PARA 2 note 1 ante.
- 12 For the meaning of 'local authority' see PARA 3 note 3 ante.
- 13 Town and Country Planning Act 1990 s 71(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/474. Representations to be taken into account.

474. Representations to be taken into account.

A local planning authority¹ must, in determining an application for planning permission², take into account any representations made, where any notice of the application has been:

- 1767 (1) given by site display³, within 21 days beginning with the date when the
notice was first displayed by site display;
- 1768 (2) served on:
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28. (a) an owner of the land or a tenant of an agricultural holding⁴; or
29. (b) an adjoining owner or occupier⁵,
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- 1769 within 21 days beginning with the date when the notice was served on that
person, provided that the representations are made by any person who satisfies
the authority he is such an owner, tenant or occupier; or
- 1770 (3) given by local advertisement⁶, within 14 days beginning with the date on
which the notice was published⁷.

A local planning authority must give notice of its decision to every person who has made representations which the authority was required to take into account in accordance with head (2)(a) above⁸.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 le under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6 (as amended) (see PARA 469 ante) or art 8 (as amended) (see PARA 471 ante). For the meaning of 'by site display' see PARA 469 note 9 ante.

4 le under ibid art 6 (as amended).

5 le under ibid art 8 (as amended).

6 le under ibid art 6 (as amended) or art 8 (as amended). For the meaning of 'by local advertisement' see PARA 469 note 9 ante.

7 Ibid art 19(1). The representations and periods in art 19 are representations and periods prescribed for the purposes of the Town and Country Planning Act 1990 s 71(2)(a) (as substituted) (see PARA 473 ante at head (1) in the text): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1). The late submission of representations may prevent leave being granted subsequently to challenge the local planning authority's decision by way of judicial review: *R v Derbyshire County Council, ex p Woods* [1997] JPL 958, CA.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(2). Such notice is notice prescribed for the purposes of the Town and Country Planning Act 1990 s 71(2)(b) (as substituted) (see PARA 473 ante at head (2) in the text): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(2).

Article 19(1), (2) applies to applications referred to the Secretary of State under the Town and Country Planning Act 1990 s 76A (as added) (see PARA 481 post) or to him or to the National Assembly for Wales under s 77 (as amended) (see PARA 483 post) and the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1)(b), (2) applies to appeals to the Secretary of State or to the Assembly made under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 post) as if the references to (1) a local planning authority were to the Secretary of State or the Assembly; and (2) determining an application for planning permission were to determining such application or appeal, as the case may be: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(3) (amended by SI 2005/2087) As to the Secretary of State see PARA 19 ante; as to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

The rules of natural justice may require that an interested party be given an opportunity to comment on draft planning conditions, even where they are applied on appeal by the Secretary of State: *Jory v Secretary of State for Transport, Local Government and the Regions* (2002) Times, 3 December, [2002] All ER (D) 173 (Nov).

UPDATE

474 Representations to be taken into account

NOTE 8--SI 1995/419 art 19(3) amended: SI 2006/1386 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/475. Consultations before grant of permission; in general.

475. Consultations before grant of permission; in general.

Before granting permission for development¹ which in its opinion falls within a category set out in heads (1) to (29) below, a local planning authority² must, subject to prescribed exceptions³, consult⁴ the persons or bodies specified in those heads, as follows:

- 1771 (1) in the case of development likely to affect land⁵ in Greater London⁶ or in a metropolitan county⁷ or, in relation to Wales, land in the area of another local planning authority, the local planning authority concerned;
- 1772 (2) in the case of development likely to affect land in a non-metropolitan county⁸ in England, other than land in a National Park⁹, the district planning authority¹⁰ concerned;
- 1773 (3) in the case of development likely to affect land in a National Park in England, the county planning authority concerned;
- 1774 (4) in the case of development within an area which has been notified to the local planning authority by the Health and Safety Executive¹¹ for these purposes because of the presence within the vicinity of toxic, highly reactive, explosive or inflammable substances and which involves the provision of:

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- 30. (a) residential accommodation;
- 31. (b) more than 250 square metres of retail floor space¹²;
- 32. (c) more than 500 square metres of office floor space; or
- 33. (d) more than 750 square metres of floor space to be used for an industrial process¹³,

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1775 or which is otherwise likely to result in a material increase in the number of persons working within or visiting the notified area, the Health and Safety Executive;

1776 (5) in the case of development likely to result in a material increase in the character of traffic:

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- 34. (a) entering or leaving a trunk road¹⁴, in England, the Secretary of State for Transport and, in Wales, the National Assembly for Wales¹⁵;
- 35. (b) using a level-crossing over a railway, the operator of the network¹⁶ which includes or consists of the railway in question, and in England the Secretary of State for Transport and, in Wales, the Assembly;

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1777 (6) in the case of development likely to result in a material increase in the volume or a material change in the character of traffic entering or leaving a classified road¹⁷ or proposed highway¹⁸, the local highway authority¹⁹ concerned;

1778 (7) in the case of development likely to prejudice the improvement or construction of a classified road or proposed highway, the local highway authority concerned;

1779 (8) in the case of development involving:

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- 36. (a) the formation, laying out or alteration of any means of access to a highway, other than a trunk road, the local highway authority concerned; or
- 37. (b) the construction of a highway or private means of access to premises affording access to a road in relation to which a toll order²⁰ is in force, the local highway authority concerned and, in the case of a road subject to a concession²¹, the concessionaire²²;

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1780 (9) in the case of development which consists of the laying out or construction of a new street²³, the local highway authority;

1781 (10) in the case of development which involves the provision of a building²⁴ or pipeline in an area of coal working notified by the Coal Authority²⁵ to the local planning authority, the Coal Authority;

1782 (11) in the case of development involving or including mining operations²⁶, the Environment Agency²⁷;

1783 (12) in the case of development within 3 kilometres of Windsor Castle, Windsor Great Park, or Windsor Home Park, or within 800 metres of any other royal

- palace or park, which might affect the amenities, including security, of that palace or park, the Secretary of State for Culture, Media and Sport;
- 1784 (13) in the case of development of land in Greater London involving the demolition, in whole or in part, or the material alteration of a listed building²⁸, the Historic Buildings and Monuments Commission for England ('English Heritage')²⁹;
- 1785 (14) in the case of development likely to affect the site of a scheduled monument³⁰, in England, English Heritage and in Wales, the Assembly;
- 1786 (15) in the case of development likely to affect any garden or park of special historic interest which is registered in accordance with the Historic Buildings and Ancient Monuments Act 1953³¹ and which is classified as Grade I or Grade II, English Heritage;
- 1787 (16) in the case of development involving the carrying out of works or operations in the bed of or on the banks of a river or stream, the Environment Agency;
- 1788 (17) in the case of development for the purpose of refining or storing mineral oils and their derivatives, the Environment Agency;
- 1789 (18) in the case of development involving the use of land for the deposit of refuse or waste, the Environment Agency;
- 1790 (19) in the case of development relating to the retention, treatment or disposal of sewage, trade-waste, slurry³² or sludge (other than the laying of sewers, the construction of pumphouses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling houses³³ or single caravans³⁴ or single buildings in which not more than ten people will normally reside, work or congregate, and works ancillary thereto), the Environment Agency;
- 1791 (20) in the case of development relating to the use of land as a cemetery, the Environment Agency;
- 1792 (21) in the case of development:
- 166
38. (a) in or likely to affect an area of special scientific interest³⁵ of which notification has been given³⁶, or has effect as if so given, to the local planning authority by English Nature or the Countryside Council for Wales³⁷; or
39. (b) within an area which has been notified to the local planning authority by English Nature or the Countryside Council for Wales, and which is within 2 kilometres of an area of special scientific interest of which notification has been so given, or has effect as if so given,
- 167
- 1793 the body which gave, or is to be regarded as having given, the notice;
- 1794 (22) in the case of development involving any land on which there is a theatre³⁸, the Theatres Trust³⁹;
- 1795 (23) in the case of development which is not for agricultural purposes and is not in accordance with the provisions of a development plan⁴⁰ and involves:
- 168
40. (a) the loss of not less than 20 hectares of grades 1, 2 or 3a agricultural land which is for the time being used, or was last used, for agricultural purposes; or
41. (b) the loss of less than 20 hectares of grades 1, 2 or 3a agricultural land which is for the time being used, or was last used, for agricultural purposes, in circumstances in which the development is likely to lead to a further loss of agricultural land amounting cumulatively to 20 hectares or more,
- 169
- 1796 in England, the Secretary of State for Environment, Food and Rural Affairs and in Wales, the Assembly;
- 1797 (24) in the case of development within 250 metres of land which:
- 170

42. (a) is or has, at any time in the 30 years before the relevant application, been used for the deposit of refuse or waste; and
43. (b) has been notified to the local planning authority by the waste regulation authority⁴¹ for these purposes,
- 171
1798 the waste regulation authority concerned;
- 1799 (25) in the case of development for the purposes of fish farming, the Environment Agency;
- 1800 (26) in the case of development which:
- 172
44. (a) is likely to prejudice the use, or lead to the loss of use, of land being used as a playing field⁴²; or
45. (b) is on land which has been used as a playing field at any time in the five years before the making of the relevant application and which remains undeveloped, or which has been allocated for use as a playing field in a development plan or in proposals for such a plan or its alteration or replacement; or
46. (c) involves the replacement of the grass surface of a playing pitch on a playing field with an artificial, man-made or composite surface,
- 173
- 1801 in England, the Sports Council for England or in Wales, the Sports Council for Wales⁴³;
- 1802 (27) in the case of development likely to affect any inland waterway, whether natural or artificial, or reservoir owned or managed by the British Waterways Board⁴⁴ or any canal feeder channel, watercourse, let off or culvert which is within an area which has been notified for the purposes of this provision to the local planning authority by the British Waterways Board, that Board;
- 1803 (28) in the case of development:
- 174
47. (a) involving the siting of new establishments⁴⁵; or
48. (b) consisting of modifications to existing establishments which could have significant repercussions on major-accident hazards; or
49. (c) including transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or development is such as to increase the risk or consequences of a major accident⁴⁶,
- 175
- 1804 the Health and Safety Executive and the Environment Agency, and, where it appears to the local planning authority that an area of particular natural sensitivity or interest may be affected, in England, English Nature, or in Wales, the Countryside Council for Wales;
- 1805 (29) in the case of development in England which:
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50. (a) involves or is likely to affect the provision of an existing or proposed strategic infrastructure project of which notification has been given to the local planning authority and which is likely to have a significant impact upon a policy in the regional development agency's strategy⁴⁷; or
51. (b) is within an area of which notification has been given to the local planning authority for the purpose of this provision and is likely to affect the implementation of a strategic regional investment or employment policy in the regional development agency's strategy,
- 177
- 1806 the regional development agency which gave the notice⁴⁸.

Additionally, the Secretary of State or, in relation to Wales, the Assembly may give directions to a local planning authority requiring that authority to consult with any person or body named in the directions, in any case or class of case specified in the directions⁴⁹.

Where a local planning authority is required so to consult any person or body ('the consultee') before granting planning permission:

- 1807 (i) the authority must⁵⁰, unless an applicant has served a copy of the application for planning permission on the consultee, give notice of the application to the consultee; and
- 1808 (ii) the authority may not determine the application until at least 21 days in England or 14 days in Wales after the date on which notice is given under head (i) above or, if earlier, 21 or 14 days respectively after the date of service of a copy of the application on the consultee by the applicant⁵¹;

but in relation to England head (ii) above does not apply if before the end of the period referred to in that head either the local planning authority has received representations concerning the application from the consultee or the consultee gives notice that it does not intend to make representations⁵².

In determining the application the local planning authority must take into account any representations received from a consultee⁵³.

1 For the meaning of 'development' see PARA 217 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Ie except where (1) the local planning authority is the authority mentioned; (2) the local planning authority is required to consult the authority so mentioned under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11 (as substituted) (see PARA 477 post) or art 12 (see PARA 478 post); or (3) the authority or person so mentioned has advised the local planning authority that it does not wish to be consulted; or (4) in relation to England only, the development is subject to any standing advice provided by the authority or person so mentioned to the local planning authority in relation to the category of development: art 10(1)(i)-(iv) (amended in relation to England only by SI 2003/2047). The exception in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(1)(iii) (see head (3) supra) does not, however, apply where, in the opinion of the local planning authority, development falls within art 10, Table, PARA (zb) (as added) (see head (28) in the text): art 10(1A) (added by SI 1999/981). Nor does the exception in Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(1)(iv) (as added) (see head (4) supra) apply where (a) the development is an EIA development; or (b) the standing advice was issued more than two years before the date of the application for planning permission for the development and the guidance has not been amended or confirmed as being extant by the authority or person within that period: art 10(1B) (added in relation to England only by SI 2003/2047). For the meaning of 'EIA development' see PARA 488 post; and for the meaning of 'planning permission' see PARA 43 note 6 ante.

4 For the meaning of 'consult' see PARA 2 note 1 ante. As to the duty to respond to consultation see PARA 472 ante; and as to statutory consultees see also PARA 70 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 As to metropolitan counties see PARA 28 note 1 ante.

8 For the meaning of 'non-metropolitan county' see PARA 28 note 1 ante.

9 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

10 As to district planning authorities see PARA 28 ante.

11 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

12 For the meaning of 'floor space' see PARA 471 note 12 ante.

13 For these purposes, 'industrial process' means a process for or incidental to any of the following purposes: (1) the making of any article or part of any article (including a ship or vessel, or a film, video or sound recording); (2) the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning, adapting for sale, breaking up or demolition of any article; or (3) the getting, dressing or treatment of minerals in the course of any trade or business other than agriculture, and other than a process carried out on land used as a mine or adjacent to and occupied together with a mine (and for this purpose, 'mine' means any site on which mining operations are carried out): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(a).

14 For the meaning of 'trunk road' see PARA 453 note 4 ante.

15 As to the transfer of transport functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

16 For these purposes, 'network' and 'operator' have the same meaning as in the Railways Act 1993 Pt I (ss 2-83) (as amended) (the provision of railway services) (see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 82, 83): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(b).

17 For these purposes, 'classified road' means a highway or proposed highway which: (1) is a classified road or a principal road by virtue of the Highways Act 1980 s 12(1) (general provision as to principal and classified roads: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 26); or (2) classified for the purposes of any enactment by the Secretary of State or, in relation to Wales, by the Assembly by virtue of s 12(3): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(c).

18 For the meaning of 'proposed highway' see PARA 453 note 4 ante.

19 For the meaning of 'local highway authority' see PARA 39 note 21 ante.

20 For these purposes, 'toll order' has the same meaning as in the New Roads and Street Works Act 1991 Pt I (ss 1-26) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 762): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(d).

21 For these purposes, 'road subject to a concession' has the same meaning as in the New Roads and Street Works Act 1991 Pt I (ss 1-26) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 752): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(d).

22 For these purposes, 'concessionaire' has the same meaning as in the New Roads and Street Works Act 1991 Pt I (ss 1-26) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 752 note 2): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(d).

23 For these purposes, 'street' has the same meaning as in the New Roads and Street Works Act 1991 s 48(1) (streets, street works and undertakers: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9), and 'new street' includes a continuation of an existing street: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(e).

24 For the meaning of 'building' see PARA 467 note 4 ante.

25 As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq.

26 For the meaning of 'mining operations' see PARA 467 note 22 ante.

27 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

28 For these purposes, 'listed building' has the same meaning as in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1 (listing of buildings of special architectural or historic interest) (see PARA 1091 post): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(f).

29 As to English Heritage see PARA 1058 post.

30 For these purposes, 'scheduled monument' has the same meaning as in the Ancient Monuments and Archaeological Areas Act 1979 s 1(11) (schedule of monuments: see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010 et seq): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(g).

31 le in accordance with the Historic Buildings and Ancient Monuments Act 1953 s 8C (as added) (register of gardens): see PARA 1070 post.

32 For these purposes, 'slurry' means animal faeces and urine (whether or not water has been added for handling): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(h).

33 For the meaning of 'dwelling house' see PARA 471 note 12 ante.

34 For these purposes, 'caravan' has the same meaning as for the purposes of the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended) (caravan sites) (see PARA 1033 post): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(h).

35 For these purposes, 'site of special scientific interest' means land to which the Wildlife and Countryside Act 1981 s 28(1) (as substituted) (areas of special scientific interest) applies (see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(i).

36 le under the Wildlife and Countryside Act 1981 s 28 (as substituted): see OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 674.

37 As to the English Nature and the Countryside Council for Wales see PARA 70 ante; and OPEN SPACES AND COUNTRYSIDE vol 78 (2010) PARA 523 et seq.

38 For these purposes, 'theatre' has the same meaning as in the Theatres Trust Act 1976 s 5 (interpretation) (see LICENSING AND GAMBLING vol 67 (2008) PARA 21): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 art 10(2)(j) (amended by SI 1996/1817).

39 As to the Theatres Trust see LICENSING AND GAMBLING vol 67 (2008) PARAS 21-22.

40 For the meaning of 'development plan' see PARA 91 ante.

41 For these purposes, 'waste regulation authority' has the same meaning as in the Environmental Protection Act 1990 s 30(1) (as substituted) (authorities for purposes of Pt II (ss 29-78) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 620): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(k) (amended by SI 1999/981).

42 For these purposes, 'playing field' means the whole of a site which encompasses at least one playing pitch; and 'playing pitch' means a delineated area which, together with any run-off area, is of 0.4 hectare or more, and which is used for association football, American football, rugby, cricket, hockey, lacrosse, rounders, baseball, softball, Australian football, Gaelic football, shinty, hurling, polo or cycle polo: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(l)(i), (ii) (added by SI 1996/1817; amended by SI 1999/981).

43 As to the Sports Councils for England and Wales see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 500.

44 As to the British Waterways Board see WATER AND WATERWAYS vol 101 (2009) PARA 725 et seq.

45 For these purposes, the expressions used in head (28) in the text have the same meaning as in EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended) on the control of major-accident hazards involving dangerous substances (the 'SEVESO II' directive: see PARA 1211 post): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(m) (added by SI 1999/981). For the meaning of 'establishment' see PARA 1211 note 2 post.

46 For the meaning of 'major accident' see PARA 1211 note 2 post.

47 For these purposes, 'regional development agency' has the same meaning as in the Regional Development Agencies Act 1998 s 41 (as amended) and 'regional development agency's strategy' is a strategy formulated and kept under review under s 7 (as amended) and s 7A (as added): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(n) (added by SI 2003/2047). See further TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq.

48 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(1), Table paras (a)-(zc) (amended by the Environment Act 1995 s 120, Sch 22 para 233(1) and by virtue of the Countryside and Rights of Way Act 2000 s 73(2); also amended by SI 1996/525; SI 1996/1817; SI 1997/858; SI 1999/981; and SI 2003/2047). The reference in head (12) in the text to the Secretary of State for Culture, Media and Sport and the reference in head (23) in the text to the Secretary of State for Environment, Food and Rural Affairs are substituted for references to the Secretary of State for National Heritage and the Minister for

Agriculture, Fisheries and Food as a result of departmental reorganisations and subsequent transfers of functions; and references to the National Assembly for Wales are inserted in the text as appropriate virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). See also PARA 451 note 13 ante.

49 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(3). Any power conferred by the 1995 Order to give a direction includes power to cancel or vary the direction by a subsequent direction: art 27.

50 le subject to ibid art 10(4A) (as added): see the text and note 52 infra.

51 Ibid art 10(4) (amended in relation to England only, so as to substitute '21' for '14', by SI 2005/2087).

52 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(4A) (added in relation to England only by SI 2005/2087)

53 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(5).

UPDATE

475 Consultations before grant of permission; in general

TEXT AND NOTES--In relation to England, now head (16) in the case of development involving (a) the carrying out of works or operations in the bed of, or within 20 metres of the top of a bank of, a main river which has been notified to the local planning authority by the Environment Agency as a main river; or (b) the culverting or control of flow of any river or stream: SI 1995/419 art 10(1), Table para (p) (art 10, Table para (p) substituted, PARAS (zd), (ze) added, by SI 2006/2375). Also, heads (30) in the case of development in England, which, other than minor development, is to be carried out on land (a) in an area within flood zones two or three; or (b) in an area within flood zone 1 which has critical drainage problems and which has been notified to the local planning authority by the Environment Agency; (31) in the case of development in England, any development of land of one hectare or more: SI 1995/419 art 10(1), Table para (zd), (ze).

NOTES--In relation to Wales, ibid art 10 applies in relation to applications made to the Secretary of State under the Town and Country Planning Act 1990 s 293A (see PARA 456) with modifications: see SI 1995/419 art 10A (added by SI 2006/1386).

Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--Also, in relation to England, head (5) the development is not EIA development and is the subject of an application in relation which SI 1995/419 art 10B applies: SI 1995/419 art 10(1)(v) (added by SI 2009/2261).

NOTE 42--In England, for '0.4 hectare' read '0.2 hectare': SI 1995/419 art 10(2)(l)(ii) (amended by SI 2009/453).

TEXT AND NOTES 50, 51--SI 1995/419 art 10(4) further amended in relation to England: SI 2009/2261.

FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/476. Notification of development of potential strategic importance in London.

476. Notification of development of potential strategic importance in London.

The local planning authority¹ of a London borough² must as soon as reasonably practicable after receiving an application of potential strategic importance³, send to the Mayor of London⁴ at his principal office a copy of the application and a copy of any plans, drawings or other documents submitted by the applicant in support of the application⁵. The local planning authority may not grant permission on an application which it was so required to notify to the Mayor unless:

1809 (1) the authority has sent to the Mayor:

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52. (a) a copy of any representations made to the authority in respect of the application;

53. (b) a copy of any report on the application prepared by an officer of the authority; and

54. (c) a statement of the permission the authority proposes to grant and of any conditions the authority proposes to impose; and

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1810 (2) either a period of 14 days has elapsed beginning with the date notified in writing by the Mayor to the authority as the date he received the items specified in head (1) above, or the Mayor has notified the local planning authority in writing that he is content for the authority to grant permission in accordance with the statement referred to in head (1)(c) above⁶.

Heads (1) and (2) above do not, however, apply where the Mayor has notified the local planning authority in writing that he does not wish to be consulted pursuant to these provisions⁷.

The local planning authority must, at the same time as it gives notice to an applicant of a determination on an application of potential strategic importance, send to the Mayor a copy of that notice⁸.

If the Mayor considers that to grant permission on an application which has been notified to him under the above provisions would be contrary to the spatial development strategy⁹ or prejudicial to its implementation, or otherwise contrary to good strategic planning in Greater London¹⁰, he may, within the 14-day period specified above¹¹, direct the local planning authority to refuse the application¹². Before giving such a direction, the Mayor must have regard to the following matters so far as material to the application:

1811 (i) the principal purposes of the Greater London Authority¹³;

1812 (ii) the effect that permission would have on the health of persons in Greater London and the achievement of sustainable development¹⁴ in the United Kingdom¹⁵;

1813 (iii) national policies and such international obligations as the Secretary of State¹⁶ may notify to the Mayor for the relevant statutory purposes¹⁷;

1814 (iv) any regional planning guidance¹⁸ issued by the Secretary of State so far as relating to an area which includes or adjoins Greater London;

1815 (v) the desirability of promoting and encouraging the use of the River Thames safely, in particular for the provision of passenger transport services and for the transportation of freight;

1816 (vi) any statement which contains the Secretary of State's policies in relation to the recovery and disposal of waste in England and which is made under the statutory provisions regarding a national waste strategy¹⁹;

1817 (vii) the objectives of preventing major accidents and limiting the
consequences of such accidents; and

1818 (viii) the need:

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55. (A) in the long term, to maintain appropriate distances between
establishments and residential areas, areas of public use and areas of
particular natural sensitivity or interest; and

56. (B) in the case of existing establishments²⁰ for additional technical
measures in accordance with the relevant European Directive on the control
of major-accident hazards involving dangerous substances²¹ so as not to
increase the risks to people²².

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Any direction so given must be accompanied by a statement setting out the Mayor's reasons
for that direction²³.

At any time before the local planning authority has determined the application the Mayor may
by a further direction cancel a direction given under the above provisions²⁴.

The Mayor must, at the same time as he gives a direction to a local planning authority²⁵, send
to the Secretary of State a copy of that direction and, in the case of a direction to refuse the
application²⁶, a copy of the required statement of reasons²⁷.

Subject to any direction given by the Secretary of State²⁸, the local planning authority must, as
soon as reasonably practicable after receiving a direction from the Mayor to that effect²⁹, refuse
the application and include with the decision notice given to the applicant³⁰ a copy of the
statement setting out the Mayor's reasons³¹. The Secretary of State may, however, give a
direction prohibiting a local planning authority to which a refusal direction is given by the
Mayor³² from implementing that direction in such circumstances or during such period as are
specified in the Secretary of State's direction³³. The Secretary of State must, at the same time
as he gives such a direction to a local planning authority, send to the Mayor a copy of that
direction³⁴.

An authority must place on Part II of the register of applications³⁵ a copy of any direction it
receives under the above provisions³⁶.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'London borough' see PARA 28 note 7 ante.

3 For these purposes, 'application of potential strategic importance' has the meaning given in the Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, Schedule: art 2(1). Subject to art 2(1), Schedule para 1(2), (3), 'application of potential strategic importance' means any application for planning permission for development which the local planning authority considers falls within a category set out infra: Schedule para 1(1). Schedule para 1(1) does not apply to an application under the Town and Country Planning Act 1990 s 73 (as amended) (see PARA 524 post) or an application for renewal of planning permission, where the previous planning permission was granted pursuant to an application for planning permission which was received by the local planning authority on or before 2 July 2000; and for this purpose 'previous planning permission' means the planning permission in respect of which the application referred to is made: Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, Schedule para 1(2), (3). For the meaning of 'planning permission' see PARA 43 note 6 ante.

If the local planning authority receives an application for planning permission for development, which it considers forms part of more substantial proposed development, on the same land or adjoining land, it must for these purposes treat that application as an application for planning permission for the more substantial development: Schedule para 2. In deciding, in accordance with Schedule para 2, whether an application for planning permission for development ('the relevant application') forms part of more substantial development, a local planning authority must take into account other development of the same land or adjoining land (1) in respect of which an application for planning permission has been made but not finally determined on the date the relevant application is received by the local planning authority; (2) in respect of which planning permission

has been granted within the period of five years immediately preceding that date; (3) substantially completed within the period of five years immediately preceding that date: Schedule para 3. The date of receipt of an application is to be determined in accordance with the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(3) (time periods for decision) (see PARA 532 post): Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 2(2). For these purposes, development occupies that area in respect of which the application for planning permission for the development seeks planning permission; and 'floor space' means the total floor space in a building or buildings, including the width of external walls: Schedule paras 4, 5. The categories of development which fall within the Schedule are as follows:

2 (a) Part I: large scale development:

18. (i) Category 1A: development which comprises or includes the provision of more than 500 houses, flats, or houses and flats or comprises or includes the provision of flats or houses and the development occupies more than 10 hectares;
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19. (ii) Category 1B: development (other than development which only comprises the provision of houses, flats, or houses and flats) which comprises or includes the erection of a building or buildings in the City of London and with a total floor space of more than 30,000 square metres, or in Central London (other than the City of London) and with a total floor space of more than 20,000 square metres, or outside Central London and with a total floor space of more than 15,000 square metres; and for this purpose 'Central London' means the area bounded by the outer edge of the red line on a map entitled 'Map of Central London referred to in the Town and Country Planning (Mayor of London) Order 2000' of which prints, dated 25 May 2000 and signed by a department director, are deposited and available for inspection at the principal office of the Secretary of State, the Government Office for London, the principal office of the Mayor and the principal office of the local planning authority for each London borough;
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20. (iii) Category 1C: development which comprises or includes the erection of a building in respect of which one or more of the following conditions is met: (A) the building is more than 25 metres high and is adjacent to the River Thames; (B) the building is more than 75 metres high and in the City of London; (C) the building is more than 30 metres high and outside the City of London; and for this purpose a building is adjacent to the River Thames if the building is wholly or partly on a site which falls within an area identified as a Thames Policy Area in the development plan, or where no such area is so identified in respect of the relevant part of the River Thames, if the building is wholly or partly on a site which falls within the Thames Policy Area being the area bounded by the outer edge of the red line on the set of maps numbered 1 to 3 entitled 'Maps of the Thames Policy Area referred to in the Town and Country Planning (Mayor of London) Order 2000' of which prints, dated 25 May 2000 and signed by a departmental director, are deposited and available for inspection at the principal office of the Secretary of State, the Government Office for London, the principal office of the Mayor and the principal office of the local planning authority for each London borough; and any part of a building below ground level is to be ignored;
20
21. (iv) Category 1D: development which comprises or includes the alteration of an existing building where the development would increase the height of the building by more than 15 metres and the building would, on completion of the development, be higher than a relevant threshold set out in Category 1C para 1 (see head (a)(iii) supra).
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3 (b) Part II: major infrastructure:

22. (i) Category 2A: development which comprises or includes mining operations where the development occupies more than 10 hectares; and for this purpose 'mining operations' means the winning and working of minerals in, on or under land, whether by surface or underground working;
22
23. (ii) Category 2B: waste development to provide an installation with capacity for a throughput of more than 50,000 tonnes per annum of waste produced outside the land in respect of which planning permission is sought; and for this purpose 'waste development' means any operational development designed to be used wholly or mainly for the purpose of, or a material change of use to, treating, keeping, processing or disposing of refuse or waste materials;
23
24. (iii) Category 2C: development to provide an aircraft runway, a heliport (including a floating heliport or a helipad on a building), an air passenger terminal at an airport, a railway station, a tramway, an underground, surface or elevated railway, or a cable car, a bus or coach station, an installation for a use within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, art 3(1), Schedule,

Class B8 (storage or distribution: see PARA 230 ante) where the development would occupy more than 4 hectares, a crossing over or under the River Thames or a passenger pier on the River Thames;

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25. (iv) development to alter an air passenger terminal to increase its capacity by more than 500,000 passengers per year;
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- 4 (c) Part III: development which may affect strategic policies; and for these purposes land is to be treated as used for a particular use if it was last used for that use or it is allocated for that use in the development plan in force in the area in which the application site is situated, proposals for such a plan or proposals for the alteration or replacement of such a plan:
26. (i) Category 3A: development which is likely to result in the loss of more than 200 houses, flats, or houses and flats (irrespective of whether the development would entail also the provision of new houses or flats) or prejudice the residential use of land which exceeds 4 hectares and is used for residential use;
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27. (ii) Category 3B: development which occupies more than 4 hectares of land which is used for a use within the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule Class B1 (business: see PARA 228 ante), Class B2 (as amended) (general industrial: see PARA 229 ante) or Class B8 (storage or distribution: see PARA 230 ante) and which is likely to prejudice the use of that land for any such use;
- 27
28. (iii) Category 3C: development which is likely to prejudice the use as a playing field of more than 2 hectares of land which is used as a playing field at the time the relevant application for planning permission is made, or has at any time in the five years before the making of the application been used as a playing field; and for this purpose 'playing field' has the same meaning as in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(2)(l) (as added) (see PARA 475 note 42 ante);
- 28
29. (iv) Category 3D: development on land allocated as Green Belt or Metropolitan Open Land in the development plan, in proposals for such a plan, or in proposals for the alteration or replacement of such a plan and which would involve the construction of a building with a floor space of more than 1,000 square metres or a material change in the use of such a building;
- 29
30. (v) Category 3E: development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated and comprises or includes the provision of more than 2,500 square metres of floor space for a use falling within any of the following Classes in the Town and Country Planning (Use Classes) Order 1987, SI 1987/764, Schedule (as amended), ie Class A1 (as amended) (retail: see PARA 225 ante), Class A2 (financial and professional: see PARA 226 ante), Classes A3-A5 (as substituted) (food and drink: see PARA 227 ante), Class B1 (business: see PARA 228 ante), Class B2 (as amended) (general industrial: see PARA 229 ante), Class B8 (storage and distribution: see PARA 230 ante), Class C1 (as substituted) (hotels: see PARA 231 ante), Class C2 (residential institutions: see PARA 232 ante), Class D1 (non-residential institutions: see PARA 234 ante), Class D2 (assembly and leisure: see PARA 235 ante), or which comprises or includes the provision of more than 150 houses or flats or houses and flats;
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31. (vi) Category 3F: development for a use, other than residential use, which includes the provision of more than 200 car parking spaces in connection with that use;
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- 5 (d) Part IV: development on which the Mayor must be consulted by virtue of a direction of the Secretary of State:
32. (i) Category 4: development in respect of which the local planning authority is required to consult the Mayor by virtue of a direction given by the Secretary of State under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10(3) (see PARA 475 ante).
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4 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

5 Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 3.

6 Ibid art 4(1).

- 7 Ibid art 4(2).
- 8 Ibid art 4(3).
- 9 As to the spatial development strategy see PARA 86 ante.
- 10 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 11 Ie the period specified in the Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 4(1)(b)(i): see head (2) in the text.
- 12 Ibid art 5(1).
- 13 As to the Greater London Authority see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 79.
- 14 As to sustainable development see PARA 6 ante.
- 15 For the meaning of 'United Kingdom' see PARA 60 note 5 ante.
- 16 As to the Secretary of State see PARA 19 ante.
- 17 Ie for the purposes of the Greater London Authority Act 1999 s 41(5)(a): see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 177.
- 18 Regional planning guidance has now become the regional spatial strategy for the region: see PARA 72 ante.
- 19 Ie any statement made under the Environmental Protection Act 1990 s 44A (as added) (national waste strategy): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 627.
- 20 Expressions appearing both in the Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(2) (see heads (i)-(viii) in the text) and in EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended) have the same meaning as in that Directive: Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(3). For the meaning of 'establishment' see PARA 1211 note 2 post.
- 21 Ie EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended) (the 'SEVESO II' directive): see PARA 1211 post.
- 22 Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(2).
- 23 Ibid art 5(4).
- 24 Ibid art 5(5).
- 25 Ie under ibid art 5(1) or art 5(5): see the text and notes 9-12, 24 supra.
- 26 Ie a direction under ibid art 5(1): see the text and notes 9-12 supra.
- 27 Ibid art 5(6).
- 28 Ie under ibid art 5(8): see the text and notes 32-33 infra.
- 29 See note 26 supra.
- 30 Ie the notice given in accordance with the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(1): see PARA 532 post.
- 31 Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(7).
- 32 See note 26 supra.
- 33 Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(8).
- 34 Ibid art 5(9).
- 35 Ie the register required by the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25 (as amended): see PARA 467 ante.

36 Town and Country Planning (Mayor of London) Order 2000, SI 2000/1493, art 5(10).

UPDATE

476 Notification of development of potential strategic importance in London

TEXT AND NOTES--SI 2000/1493 replaced: Town and Country Planning (Mayor of London) Order 2008, SI 2008/580.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/477. Consultation requirements regarding regional strategies and policies and county policies.

477. Consultation requirements regarding regional strategies and policies and county policies.

Except in relation to an application for planning permission¹ received by a local planning authority in England² before 24 August 2005³, the following provisions apply. A local planning authority in England must not determine an application for planning permission to which the consultation requirements apply unless it complies with the following requirements⁴. If the consultation requirements apply, the local planning authority:

- 1819 (1) must give notice to the regional planning body ('RPB')⁵ or county planning authority⁶, as the case may be, (the consulted body) that it proposes to consider the application;
- 1820 (2) must send a copy of the application to the consulted body; and
- 1821 (3) must not determine the application until the end of such period as is prescribed by development order⁷ beginning with the date of the giving of notice under head (1) above⁸;

but head (3) above does not apply if before the end of the period there mentioned either the local planning authority has received representations concerning the application from the consulted body, or the consulted body gives notice that it does not intend to make representations⁹.

The consultation requirements are:

- 1822 (a) consultation with the RPB for the region in which the authority's area is situated if the development¹⁰ is one to which one of the following descriptions applies:
- 182 (i) a development which would by reason of its scale or nature or the location of the land be of major importance for the implementation of the regional spatial strategy ('RSS')¹¹ or a relevant regional policy¹²; or
- 58. (ii) a development of a description in relation to which the RPB has given notice in writing to the local planning authority that it wishes to be consulted¹³;

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1823 (b) consultation by a district planning authority¹⁴ with the county planning authority for its area if the development is one to which one of the following descriptions applies:

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- 59. (i) a development which would materially conflict with or prejudice the implementation of a relevant county policy¹⁵;
- 60. (ii) a development in an area in relation to which the county planning authority has given notice in writing to the district planning authority that development is likely to affect or be affected by the winning and working of minerals¹⁶, other than coal;
- 61. (iii) a development of land in respect of which the county planning authority has given notice in writing to the district planning authority that it proposes to carry out development;
- 62. (iv) a development which would prejudice a proposed development mentioned in head (iii) above in respect of which notice has been given as so mentioned;
- 63. (v) a development of land in relation to which the county planning authority has given notice in writing to the district planning authority that it is proposed to use the land for waste disposal; or
- 64. (vi) a development which would prejudice a proposed use mentioned in head (v) above in respect of which notice has been given as so mentioned¹⁷.

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The consultation requirements do not, however apply in respect of a development to which head (a) above applies if the RPB gives a direction¹⁸ authorising the determination of the application without compliance with the requirements¹⁹. Nor do they apply in respect of a development to which head (b) above applies if the county planning authority gives a direction authorising the determination of the application without compliance with the requirements²⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 See the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(4).

4 Town and Country Planning Act 1990 s 1(5) (as amended), Sch 1 para 7(1) (Sch 1 para 7 substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 para 16(1), (4)).

5 'RPB' is to be construed in accordance with the Planning and Compulsory Purchase Act 2004 Pt I (ss 1-12) (see PARA 72 et seq ante): Town and Country Planning Act 1990 Sch 1 para 7(11), (12) (as substituted: see note 4 supra).

6 For the meaning of 'county planning authority' see PARA 28 ante.

7 The period prescribed for these purposes is 21 days: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 11 (substituted by SI 2005/2087). For the meaning of 'development order' see PARA 252 ante; and for the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 Sch 1 para 7(7) (as substituted: see note 4 supra).

9 Ibid Sch 1 para 7(8) (as substituted: see note 4 supra).

10 For the meaning of 'development' see PARA 217 ante.

11 'RSS' is to be construed in accordance with the Planning and Compulsory Purchase Act 2004 Pt I (see PARA 72 et seq ante): Town and Country Planning Act 1990 Sch 1 para 7(11), (12) (as substituted: see note 4 supra).

12 A relevant regional policy is (1) a policy contained in a draft revision of the RSS which has been submitted to the Secretary of State in pursuance of the Planning and Compulsory Purchase Act 2004 s 5(8) (see PARA 76 ante); or (2) a policy contained in a structure plan which has effect by virtue of Sch 8 para 1 (see PARAS 125-126 ante); Town and Country Planning Act 1990 Sch 1 para 7(9) (as substituted: see note 4 supra).

13 Ibid Sch 1 para 7(2)(a), (3)(a), (b) (as substituted: see note 4 supra).

14 For the meaning of 'district planning authority' see PARA 28 ante.

15 A relevant county policy is (1) a policy contained in a local development document which has been prepared in accordance with a minerals and waste scheme and submitted to the Secretary of State in pursuance of the Planning and Compulsory Purchase Act 2004 s 20(1) (see PARA 108 ante) or adopted by the county planning authority in pursuance of s 23 (see PARAS 120-121 ante); or (2) a policy contained in a structure plan which has effect by virtue of Sch 8 para 1 (see PARAS 125-126 ante); Town and Country Planning Act 1990 Sch 1 para 7(10) (as substituted: see note 4 supra).

16 For the meaning of 'winning and working of minerals' see PARA 16 note 2 ante.

17 Town and Country Planning Act 1990 Sch 1 para 7(2)(b), (4)(a)-(f) (as substituted: see note 4 supra).

18 Such a direction may be given in respect of a particular application or a description of application: ibid Sch 1 para 7(6) (as substituted: see note 4 supra).

19 Ibid Sch 1 para 7(5)(a) (as substituted: see note 4 supra).

20 Ibid Sch 1 para 7(5)(b) (as substituted: see note 4 supra). As to the giving of such a direction see note 18 supra.

In cases to which the above provisions do not apply, the district planning authority must consult the county planning authority for its area before determining any application for planning permission for the carrying out (1) of any development of land which would materially conflict with or prejudice the implementation of any policy contained in a structure plan which has been adopted or approved, or of other specified policies or proposals; (2) of any development of land which would, by reason of its scale or nature or the location of the land, be of major importance for the implementation of a structure plan; (3) of any development of land in an area which the county planning authority has notified to the district planning authority, in writing, as an area in which development is likely to affect or be affected by the winning and working of minerals, other than coal; (4) of any development of land which the county planning authority has notified the district planning authority, in writing, that it proposes to develop itself; (5) of any development of land which would prejudice the carrying out of development proposed by the county planning authority and notified to the district planning authority under head (4) above; (6) of any development of land in England in respect of which the county planning authority has notified the district planning authority, in writing, that it is proposed that it is to be used for waste disposal; (7) of any development of land which would prejudice a proposed use of land for waste disposal notified to the district planning authority under head (6) supra: Town and Country Planning Act 1990 Sch 1 para 7(2), (3) (as originally enacted; amended by the Planning and Compensation Act 1991 s 27 Sch 4 Pt II para 35(2)). The district planning authority may, however, determine any such application without the consultation so required if the county planning authority has given it directions authorising it to do so: Sch 1 para 7(4) (as originally enacted). Such a direction may relate to a class of applications or to a particular application: Sch 1 para 7(5) (as originally enacted). As to structure plans see PARA 176 et seq ante.

Subject to Sch 1 para 7(7) (as originally enacted), where the district planning authority is required to consult the county planning authority before determining an application for planning permission, it must give the county planning authority notice that it proposes to consider the application and send it a copy of the application; and it must not determine the application until the expiration of such period from the date of the notice as a development order may provide: Sch 1 para 7(6) (as originally enacted). A district planning authority may determine an application for planning permission before the expiration of such a period as is so mentioned, however, if it has received representations concerning the application from the county planning authority before the expiration of that period or if the county planning authority has notified it that it does not wish to make representations: Sch 1 para 7(7) (as originally enacted). Where a district planning authority is required to consult the county planning authority before determining an application for planning permission, it must in determining it take into account any representations relating to it which the authority has received from the county planning authority before the expiration of the period so mentioned: Sch 1 para 7(8) (as originally enacted).

FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/478. Applications relating to county matters.

478. Applications relating to county matters.

A county planning authority¹ in England must², before determining an application for planning permission³, an application for a certificate of lawfulness of an existing or proposed use or development⁴ or an application for approval of reserved matters⁵, give the district planning authority⁶, if any, for the area in which the relevant land⁷ lies a period of at least 21 days, from the date of receipt of the application by the district planning authority, within which to make recommendations about the manner in which the application is determined; and the county planning authority must take any such recommendations into account⁸. This does not, however, prevent a county planning authority determining an application if before the end of the period referred to above:

- 1824 (1) the authority has received recommendations concerning the application from the district planning authority; or
- 1825 (2) the district planning authority gives notice that it does not intend to make recommendations⁹.

A county planning authority must:

- 1826 (a) on determining such an application, as soon as reasonably practicable notify the district planning authority, if any, of the terms of its decision; or
- 1827 (b) if any such application is referred to the Secretary of State¹⁰, inform the district planning authority, if any, of the date when the application was so referred and, when notified to it, of the terms of the decision¹¹.

1 As to county planning authorities see PARA 28 ante.

2 Ie subject to the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(1A) (as added): see the text and note 9 infra.

3 Ie an application under the Town and Country Planning Act 1990 Pt III (ss 56-106B) (as amended) (control over development): see PARA 217 et seq ante, PARA 481 et seq post. For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 Ie an application under ibid s 191 or s 192 (each as substituted): see PARA 586 et seq post.

5 For the meaning of 'reserved matters' see PARA 467 note 4 ante.

6 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(1) (amended by SI 2005/2087).

9 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(1A) (added by SI 2005/2087).

10 As to the Secretary of State see PARA 19 ante.

11 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(iii) Consultations Before and Restrictions on Grant of Planning Permission/479. Duty to notify parish and community councils.

479. Duty to notify parish and community councils.

A local planning authority¹ which has the function² of determining applications for planning permission³ must, if requested to do so by the council of any parish⁴ in England or community⁵ or group of communities in Wales situated in its area, notify the council of:

- 1828 (1) any relevant planning application⁶; and
- 1829 (2) any alteration to that application accepted by the authority⁷.

Any request so made must be in writing and must state that the council wishes to be notified of all relevant applications or all applications of a description specified in the request⁸.

An authority must comply with the duty to notify a council of an application by:

- 1830 (a) sending the council a copy of the application; or
- 1831 (b) indicating to the council the nature of the development⁹ which is the subject of the application and identifying the land to which it relates;

and any notification falling within head (b) above must be in writing¹⁰.

An authority must comply with its duty to notify a council of an alteration by sending a copy of the alteration to the council or by informing the council in writing of its general effect, but it need not notify a council of an alteration which in its opinion is trivial¹¹.

A development order¹² may require a local planning authority which is dealing with an application of which a council is entitled to be notified:

- 1832 (i) to give the council an opportunity to make representations to it as to the manner in which the application should be determined;
- 1833 (ii) to take into account any such representations;
- 1834 (iii) to notify the council of the terms of its decision or, where the application is referred to the Secretary of State¹³ or, in relation to Wales, to the National Assembly for Wales¹⁴, the date when it was so referred and, when notified to the authority, the terms of his or its decision¹⁵.

Where the council of a parish or community is so given information in relation to an application, it must, as soon as practicable, notify the local planning authority which is determining the application whether it proposes to make any representations about the manner in which the application should be determined, and must make any such representations to that authority within 21 days in England, or 14 days in Wales, of the notification to it of the application¹⁶.

A local planning authority may not, however, determine any application in respect of which a parish or community council is required to be given information before:

- 1835 (A) the council of the parish or community informs the local planning authority that it does not propose to make any representations;
- 1836 (B) representations are made by that council; or
- 1837 (C) the 21-day or 14-day period mentioned above has elapsed,

whichever first occurs; and, in determining the application, the authority must take into account any representations received from the council of the parish or community¹⁷.

The district planning authority¹⁸ or, in a metropolitan county¹⁹ or in Wales, the local planning authority, must notify the council of the parish or community of the terms of the decision on any such application or, where the application is referred to the Secretary of State or, in relation to Wales, to the Assembly, of the date when it was so referred and, when notified to it, of the terms of his or the Assembly's decision²⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'functions' see PARA 2 note 1 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 As to the parishes in England and their meetings and councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.

5 As to the communities in Wales and their meetings and councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

6 For these purposes, 'a relevant planning application' means an application which (1) relates to land in the parish or community or group of communities; and (2) is an application for planning permission or approval of a matter reserved under an outline planning permission within the meaning of the Town and Country Planning Act 1990 s 92 (as amended) (see PARA 519 post): s 1(5)(c), (6), Sch 1 para 8(2), Sch 1A para 2(2) (Sch 1 para 8 substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 53; the Town and Country Planning Act 1990 s 1(6), Sch 1A para 2 added, and Sch 1 para 8(1), (2) amended, by the Local Government (Wales) Act 1994 ss 18, 20, 66, Sch 4, Sch 6 para 24, Sch 18; the Town and Country Planning Act 1990 s 1(5)(c), (6) amended by the Environment Act 1995 s 120(3), Sch 24). The Town and Country Planning Act 1990 Sch 1 para 8 (as so substituted) does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'land' see PARA 2 note 10 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to the service of notices see PARA 54 ante.

7 Ibid Sch 1 para 8(1) (as substituted and amended: see note 6 supra), Sch 1A para 2(1) (as added: see note 6 supra).

8 Ibid Sch 1 para 8(3) (as substituted: see note 6 supra), Sch 1A para 2(3) (as added: see note 6 supra).

9 For the meaning of 'development' see PARA 217 ante.

10 Town and Country Planning Act 1990 Sch 1 para 8(4) (as substituted: see note 6 supra), Sch 1A para 2(4) (as added: see note 6 supra).

11 Ibid Sch 1 para 8(5) (as substituted: see note 6 supra), Sch 1A para 2(5) (as added: see note 6 supra).

12 For the meaning of 'development order' see PARA 252 ante.

13 As to the Secretary of State see PARA 19 ante.

14 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 1A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

15 Town and Country Planning Act 1990 Sch 1 para 8(6) (as substituted: see note 6 supra), Sch 1A para 2(6) (as added: see note 6 supra).

16 Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 13(1) (amended by SI 1996/525; amended in relation to England only, so as to substitute '21' for '14', by SI 2005/2087).

17 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 13(2) (amended in relation to England only, so as to substitute '21' for '14', by SI 2005/2087).

18 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

19 As to metropolitan counties see PARA 28 note 1 ante.

20 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 13(3) (amended by SI 1996/525).

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480. Directions by the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions restricting the grant of permission by a local planning authority³, either indefinitely or during such period as may be specified in the directions, in respect of any development⁴ or in respect of development of any class so specified⁵.

The Secretary of State or the Assembly may also give directions that development which is both of a description set out in Schedule 2 to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁶, and of a class described in the direction, is EIA development⁷ for the purposes of those Regulations⁸.

A local planning authority must deal with applications for planning permission⁹ for development to which a direction so given applies in such manner as to give effect to the direction¹⁰.

Examples of directions made under these powers are the directions made by the Secretary of State with regard to aerodromes, technical sites and military explosives storage areas¹¹; residential density in London and South-east England¹²; and playing fields in England¹³. Such directions may be set out in departmental circulars and are published in the same way as other policy guidance¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 For the meaning of 'development' see PARA 217 ante.

5 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 14(1).

6 As set out in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1), Sch 2 para 2, Table col 1 (as amended): see PARA 490 post.

7 For the meaning of 'EIA development' see PARA 488 post.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 14(2) (substituted by SI 1999/293).

9 For the meaning of 'planning permission' see PARA 43 note 6 ante.

10 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 14(3).

11 See the Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002.

¹² See the *Town and Country Planning (Residential Density) Direction 2005*.

13 See the *Town and Country Planning (Playing Fields) (England) Direction 1998*.

14 Eg the direction referred to in note 11 supra is set out in ODPM Circular 1/2003 (NAFW Circular 1/2003) *Safeguarding Aerodromes, Technical Sites and Military Explosives Storage Areas: The Town and Country Planning (Safeguarded Aerodromes, Technical Sites and Military Explosives Storage Areas) Direction 2002 Annex 1*. As to departmental circulars and policy guidance see generally para 9 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(iv) Applications to be decided by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/481. Major infrastructure projects; in general.

(iv) Applications to be decided by the Secretary of State or the Assembly

A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND

481. Major infrastructure projects; in general.

Except in relation to an application for planning permission¹, or an application for approval by a local planning authority² required under a development order³, received by a local planning authority before 24 August 2005⁴, the following provisions apply to:

- 1838 (1) an application for planning permission;
- 1839 (2) an application for the approval of a local planning authority required under a development order,

if the Secretary of State⁵ thinks that the development⁶ to which the application relates is of national or regional⁷ importance⁸. They do not, however, apply to an application which relates to the development of land in Wales⁹.

The Secretary of State may direct¹⁰ that the application must be referred to him instead of being dealt with by the local planning authority¹¹. If the Secretary of State gives such a direction, he may also direct that any application:

- 1840 (a) under or for the purposes of the planning Acts¹²; and
- 1841 (b) which he thinks is connected with the application mentioned in heads (1) and (2) above,

must also be referred to him instead of being dealt with by the local planning authority¹³. If the Secretary of State gives a direction under these provisions, the application must be referred to him and he must appoint an inspector¹⁴ to consider the application¹⁵.

If the Secretary of State gives such a direction the applicant must prepare an economic impact report which must:

- 1842 (i) be in such form and contain such matter as is prescribed by development order;

- 1843 (ii) be submitted to the Secretary of State in accordance with such provision as is so prescribed¹⁶;

and for these purposes the Secretary of State may, by development order, prescribe such requirements as to publicity and notice as he thinks appropriate¹⁷. Where the Secretary of State has given such a direction, an economic impact report ('the report') prepared by an applicant in accordance with heads (i) and (ii) above must be in the prescribed form¹⁸ and must¹⁹ contain the applicant's estimates of the overall economic impact at local level²⁰, regional level²¹ and national level of the project for which planning permission or approval, as the case may be, is sought²². Without prejudice to the generality of these requirements, each estimate must include estimates specific to employment, investment and economic output²³ and must separately identify the costs and benefits falling on or accruing to the local, regional or national community as the case may be²⁴. The estimates must exclude factors which would lead to benefits being counted more than once²⁵. The report must state the assumptions made in preparing the estimates, state the sources of information used to produce the estimates and, where there is uncertainty as to any matter relevant to the estimates, must explain that uncertainty²⁶. The report must be submitted to the Secretary of State not later than 15 weeks after the date on which the applicant received from the Secretary of State a written request for its submission²⁷. The applicant must, on submitting the report to the Secretary of State, publish in a local newspaper circulating in the locality in which the land to which the application relates is situated a notice stating:

- 1844 (A) his name and that he is the applicant for planning permission or approval, as the case may be;
- 1845 (B) the name and address of the local planning authority;
- 1846 (C) the date on which the application was made and that it has been referred to the Secretary of State for determination as a major infrastructure project;
- 1847 (D) the location and nature of the proposed development;
- 1848 (E) an address in the locality at which the report may be inspected, and the latest day on which it will be available for inspection, being a date not less than 21 days from the date on which the notice is published;
- 1849 (F) an address in the locality, whether or not the same as that given under head (E) above, at which copies of the report may be obtained, on payment of a reasonable charge;
- 1850 (G) the address of any website maintained by the applicant where a copy of the report may be viewed; and
- 1851 (H) that any person wishing to make representations about the report should make them in writing, before the date stated in accordance with head (E) above, to the Secretary of State and the address to which such representations should be sent²⁸.

The applicant must afford to any person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the report²⁹.

The decision of the Secretary of State on any application referred to him under these provisions is final³⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'development order' see PARA 252 ante.

4 Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(1).

- 5 As to the Secretary of State see PARA 19 ante.
- 6 For the meaning of 'development' see PARA 217 ante.
- 7 For these purposes, 'regional' relates to a region listed in the Regional Development Agencies Act 1998 s 1, Sch 1 (see PARA 24 note 4 ante; and TRADE AND INDUSTRY vol 97 (2010) PARA 988): Town and Country Planning Act 1990 s 76A(9) (s 76A added by the Planning and Compulsory Purchase Act 2004 s 44).
- 8 Town and Country Planning Act 1990 s 76A(1) (as added: see note 7 supra).
- 9 Ibid s 76A(12) (as added: see note 7 supra).
- 10 A direction under ibid s 76A (as added) or s 76B (as added) (see PARA 482 post) may be varied or revoked by a subsequent direction: s 76A(7) (as added: see note 7 supra).
- 11 Ibid s 76A(2) (as added: see note 7 supra). On so referring any application to the Secretary of State, pursuant to a direction in that behalf, a local planning authority must serve on the applicant a notice (1) setting out the terms of the direction and any reasons given by the Secretary of State for issuing it; (2) stating that the application has been referred to the Secretary of State; and (3) containing a statement that the Secretary of State will, if the applicant so desires, afford him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose, and that the decision of the Secretary of State on the application will be final: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 18 (amended for these purposes by SI 2005/2087).
- 12 For the meaning of 'the planning Acts' see PARA 2 ante.
- 13 Town and Country Planning Act 1990 s 76A(3) (as added: see note 7 supra).
- 14 See ibid s 76B (as added); and PARA 482 post.
- 15 Ibid s 76A(4) (as added: see note 7 supra). The following provisions of the Town and Country Planning Act 1990 apply (with any necessary modifications) to an application referred to the Secretary of State under s 76A (as so added) as they apply to an application which falls to be determined by a local planning authority: s 70 (as amended) (determination of applications; general considerations: see PARAS 484, 486 post); s 72(1), (5) (as amended) (conditional grant of planning permission: see PARA 522 post); s 73 (as amended) (determination of applications to develop land without conditions previously attached: see PARA 524 post); s 73A (as added) (planning permission for development already carried out: see PARA 525 post); s 76A(10) (as so added).
- 16 Ibid s 76A(5) (as added: see note 7 supra).
- 17 Ibid s 76A(6) (as added: see note 7 supra). A development order may apply (with or without modifications) any requirements imposed by the order by virtue of s 65 (as substituted and amended) (notice etc of applications for planning permission: see PARA 468 ante) or s 71 (as amended) (consultations in connection with determinations under s 70 (as amended): see PARA 473 ante) to an application referred to the Secretary of State under s 76A (as so added): s 76A(11) (as so added).
- 18 For the prescribed form see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4B(2), Sch 4A (art 4B, Sch 4A added by SI 2005/2087).
- 19 Ie subject to the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4B(5) (as added): see the text and note 25 infra.
- 20 For these purposes, 'local' means within the area of the relevant local planning authority: ibid art 4B(10) (as added: see note 18 supra).
- 21 For these purposes, 'regional' means relating to a region specified in Schedule 1 to the Regional Development Agencies Act 1998 s 1, Sch 1 (see PARA 27 note 1 ante; and TRADE AND INDUSTRY vol 97 (2010) PARA 988): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4B (10) (as added: see note 18 supra).
- 22 Ibid art 4B(1)-(3) (as added: see note 18 supra).
- 23 For these purposes, 'economic output' means the estimate of changes to either Gross Domestic Product or Gross Value Added as a result of the project: ibid art 4B(10) (as added: see note 18 supra).
- 24 Ibid art 4B(4) (as added: see note 18 supra).

- 25 Ibid art 4B(5) (as added: see note 18 supra).
- 26 Ibid art 4B(6) (as added: see note 18 supra).
- 27 Ibid art 4B(7) (as added: see note 18 supra).
- 28 Ibid art 4B(8) (as added: see note 18 supra).
- 29 Ibid art 4B(9) (as added: see note 18 supra).
- 30 Planning and Compulsory Purchase Act 2004 s 76A(8) (as added: see note 7 supra).

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482. Major infrastructure projects; inspectors.

Except in relation to an application for planning permission¹, or an application for approval by a local planning authority² required under a development order³, received by a local planning authority before 24 August 2005⁴, the following provisions apply if the Secretary of State⁵ appoints an inspector ('the lead inspector')⁶ under the provisions set out in the previous paragraph⁷. The Secretary of State may direct the lead inspector to consider such matters relating to the application as are prescribed⁸ and to make recommendations to the Secretary of State on those matters⁹. After considering any recommendations of the lead inspector the Secretary of State may:

- 1852 (1) appoint such number of additional inspectors as he thinks appropriate;
- 1853 (2) direct that each of the additional inspectors must consider such matters relating to the application as the lead inspector decides¹⁰.

If the Secretary of State does not so act he must direct the lead inspector to consider the application on his own¹¹.

An additional inspector must:

- 1854 (a) comply with such directions as to procedural matters as the lead inspector gives;
- 1855 (b) report to the lead inspector on the matters he is appointed to consider¹²;

and a copy of directions given as mentioned in head (a) above must be given to:

- 1856 (i) the person who made the application;
- 1857 (ii) the local planning authority¹³;
- 1858 (iii) any other person who requests it¹⁴.

In every case the lead inspector must report to the Secretary of State on his consideration of the application and the consideration of the additional inspectors, if any, of the matters mentioned in head (2) above¹⁵.

- 1 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 For the meaning of 'development order' see PARA 252 ante.
- 4 Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(1).
- 5 As to the Secretary of State see PARA 19 ante.
- 6 le under the Town and Country Planning Act 1990 s 76A(4)(b) (as added): see PARA 481 ante. As to the Planning Inspectorate see PARA 21 ante.
- 7 Ibid s 76B(1) (s 76B added by the Planning and Compulsory Purchase Act 2004 s 44).
- 8 For the meaning of 'prescribed' see PARA 16 note 5 ante.
- 9 Town and Country Planning Act 1990 s 76B(2) (as added: see note 7 supra). The function of the lead inspector in pursuance of s 76B(2) (as so added) may be exercised from time to time and includes making recommendations as to the number of additional inspectors required from time to time: s 76B(8) (as so added).
- 10 Ibid s 76B(3) (as added: see note 7 supra). The power of the Secretary of State under s 76B(3) (as so added) to appoint an additional inspector includes power to revoke such an appointment: s 76B(9) (as so added).
- 11 Ibid s 76B(6) (as added: see note 7 supra). As to the power to vary or revoke any such direction see s 76A(7) (as added); and PARA 481 ante.
- 12 Ibid s 76B(4) (as added: see note 4 supra).
- 13 As to local planning authorities see PARA 28 et seq ante.
- 14 Town and Country Planning Act 1990 s 76B(5) (as added: see note 7 supra).
- 15 Ibid s 76B(7) (as added: see note 7 supra).

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B. OTHER REFERRED APPLICATIONS

483. Reference of applications to the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications for planning permission³, or for the approval of any local planning authority⁴ required under a development order⁵ or a local development order⁶, to be referred to him or to the Assembly instead of being dealt with by local planning authorities⁷.

Such a direction:

- 1859 (1) may be given either to a particular local planning authority or to local planning authorities generally; and
- 1860 (2) may relate either to a particular application or to applications of a class specified in the direction⁸.

Any application in respect of which such a direction has effect must be referred to the Secretary of State or to the Assembly accordingly⁹.

Before determining an application so referred to him or to it, the Secretary of State or the Assembly must, if either the applicant or the local planning authority wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose¹⁰.

The decision of the Secretary of State or the Assembly on any application so referred is final¹¹. The validity of such a decision may, however, be challenged on certain statutory grounds¹² or on an application for judicial review¹³ and it has been held that, notwithstanding the absence of a right of appeal on the facts, the decision-making process on planning applications referred under the above provisions, which are known as 'called-in applications', is not incompatible with the right to a fair hearing before an impartial and independent tribunal¹⁴ because the judicial review jurisdiction of the High Court constitutes a sufficient review of the legality of the decisions and of the procedures followed¹⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 77 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 For the meaning of 'development order' see PARA 252 ante.

6 As to local development orders see PARA 419 et seq ante.

7 Town and Country Planning Act 1990 s 77(1) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante). Prior to such amendment being brought fully into force, the words 'or a local development order' are omitted. Subject to the Town and Country Planning Act 1990 s 77(5) (see the text and note 10 infra), where an application for planning permission is referred to the Secretary of State or the Assembly under s 77 (as amended), s 70 (as amended) (see PARAS 484, 486 post), s 72(1), (5) (as amended) (see PARA 522 post), s 73 (as amended) (see PARA 524 post) and s 73A (as added) (see PARA 525 post) apply, with any necessary modifications, as they apply to such an application which falls to be determined by the local planning authority and a development order may apply, with or without modifications, to an application so referred any requirements imposed by such an order by virtue of s 65 (as substituted and amended) (see PARA 468 ante) or s 71 (as amended) (see PARA 473 ante): s 77(4) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 18).

The power to call in applications for decision by the Secretary of State is exercised selectively and will normally only be exercised if planning issues of more than local importance are involved: see *R (on the application of Hadfield) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1266 (Admin) at [15]-[26], [2002] All ER (D) 47 (Jun).

Policy guidance issued to local planning authorities in England indicates that there is no presumption that all applications referred to the Secretary of State require environmental impact assessment, nor that all applications requiring such assessment will be so referred: see ODPM Circular 02/99 *Environmental Impact Assessment* para 35. As to environmental impact assessment see PARA 487 et seq post.

8 Town and Country Planning Act 1990 s 77(2).

9 Ibid s 77(3) (as modified: see note 7 supra). On so referring any application to the Secretary of State or the Assembly, pursuant to a direction in that behalf, a local planning authority must serve on the applicant a notice (1) setting out the terms of the direction and any reasons given by the Secretary of State or the Assembly for issuing it; (2) stating that the application has been referred to the Secretary of State or the Assembly; and (3) containing a statement that the Secretary of State or the Assembly will, if the applicant so desires, afford him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose, and that the decision of the Secretary of State or the Assembly on the application will be final: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 18. It has been held that failure to serve notice under what is now art 18 cannot be made the subject of an application

under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante) to quash the Secretary of State's decision: *Davies v Secretary of State for Wales* (1976) 33 P & CR 330.

As to the applicant's duty to supply the Secretary of State or the Assembly with copies of any environmental statement and further information under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) see reg 15; and PARA 503 post. The Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 19(1), (2) (representations to be taken into account: see PARA 474 ante) applies with modifications to applications referred to the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 77 (as amended): see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 19(3); and PARA 474 note 8 ante.

The Secretary of State may withdraw a direction to call in an application: *R (on the application of Trustees of the Friends of the Lake District) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 281 (Admin), [2002] 1 P & CR 306, [2001] All ER (D) 19 (Apr).

10 Town and Country Planning Act 1990 s 77(5). Section 77(5) does not apply to an application for planning permission referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 post): s 77(6). As to the application of s 77 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies see PARA 893 note 5 post. As to the timetable for decisions made by the Secretary of State in England see the Planning and Compulsory Purchase Act 2004 s 55, Sch 2; and PARA 527 et seq post. As to the approach to be taken by the Secretary of State in evaluating the inspector's report see *Sainsbury's Supermarkets Ltd v First Secretary of State* [2005] EWCA Civ 520 at [12]-[17], [2005] All ER (D) 75 (May).

As to deciding the application on the basis of written representations see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended); and PARAS 628-630 post. At the date at which this title states the law, no equivalent procedure had been prescribed for these purposes in relation to England.

11 Town and Country Planning Act 1990 s 77(7).

12 Ie under ibid s 288 (as amended): see PARA 47 ante.

13 As to judicial review see PARA 650 post.

14 Ie under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) (Cmd 8969)), art 6, now set out in the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 6: see PARA 7 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

15 See *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929. Prior to the coming into force of the Human Rights Act 1998 it was held that the discretion of the Secretary of State to 'call in' an application for planning permission was purely administrative in character, and that he was not required to give reasons for refusing to exercise his discretion (*R v Secretary of State for the Environment, ex p Newprop* [1983] JPL 386) although he must act reasonably in its exercise (*Rhys Williams v Secretary of State for Wales* [1985] JPL 29, CA; *R v Secretary of State for the Environment, ex p Middlesbrough Borough Council* [1988] 3 PLR 52, DC; *Lakin Ltd v Secretary of State for Scotland* [1989] JPL 339, Ct of Sess). The administrative nature of the Secretary of State's role was restated by the House of Lords in *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* supra (see eg at [60] per Lord Nolan and at [123] per Lord Hoffmann) and by the Court of Appeal in *R (on the application of Adlard) v Secretary of State for the Environment, Transport and the Regions* [2002] EWCA Civ 671, [2002] 1 WLR 2515; and it has been held that he is not prevented from declining to call in one of two competing applications where he has called in the other (*R v Secretary of State for the Environment, ex p Carter Commercial Developments Ltd* [1999] PLCR 125). However, in *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* supra the court recognised, applying eg *Bryan v United Kingdom* (1995) 21 EHRR 342, ECt HR, that such administrative decisions affect the civil rights protected by the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) art 6, now set out in the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 6, and that the overall process, including the availability of judicial review, must comply with art 6. As to the Secretary of State's duty to act reasonably see also *Virgin Cinema Properties Ltd v Secretary of State for the Environment* [1998] PLCR 1 (in refusing planning permission for a called-in application, the Secretary of State erred in law in placing reliance on abstracts from a report, taken out of context, which could not reasonably support his conclusions when read in context).

UPDATE

483 Reference of applications to the Secretary of State or the Assembly

TEXT AND NOTES--As to the duty of the Secretary of State to make a determination as to the procedure by which applications under the 1990 Act s 77 are to be considered see the Town and Country Planning Act 1990 s 319A (added by the Planning Act 2008 s 196(1)).

NOTE 7--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(A) Material Considerations and General Considerations/484. Development plan.

(v) Determination of Applications

A. RELEVANT CONSIDERATIONS

(A) MATERIAL CONSIDERATIONS AND GENERAL CONSIDERATIONS

484. Development plan.

In dealing with a planning application¹ the local planning authority² must have regard to the provisions of the development plan³, so far as material to the application, and to any other material considerations⁴. The application must be determined in accordance with the plan unless material considerations indicate otherwise⁵.

When exercising their functions in determining applications for planning permission received before 24 August 2005, local planning authorities in non-metropolitan counties in England are under a statutory duty to seek the achievement of the general objectives of the structure plan for the time being in force in their areas⁶. Subject to transitional provisions⁷, however, structure plans are no longer to be prepared⁸; accordingly this statutory duty is replaced⁹ by the consultation requirements with regard to regional strategies and policies and county policies which have already been discussed¹⁰.

1 For these purposes, 'dealing with' extends beyond 'considering' so as to include administrative acts done by the authority's delegated officers; furthermore, it is not to be limited to the particular acts of the authority in granting or refusing permission under the Town and Country Planning Act 1990 s 70(1) (see PARA 486 post): *R (on the application of Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370, [2003] JPL 431, [2002] All ER (D) 114 (Oct).

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'development plan' see PARA 91 ante.

4 Town and Country Planning Act 1990 s 70(2). The authority may, however, grant permission for development which does not accord with the provisions of the plan: see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 17; and PARA 526 post. The development plan may not be relied upon without taking into account subsequent policy documents, in particular a new Use Classes Order: *Wesson v Secretary of State for the Environment* [1992] 1 PLR 36. For these purposes, 'material consideration' means a relevant consideration: *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636, [1995] 1 WLR 759, HL. As to the weight to be attached to the development plan see *Loup v Secretary of State for the Environment and Salisbury District Council* (1995) 71 P & CR 175, [1996] JPL 22, CA. For the proper approach to the construction of a development plan see *ICP Developments Ltd v Secretary of State for the Environment* [1997] JPL 930. See also *R v Plymouth City Council, ex p Plymouth and South Devon Co-Operative Society Ltd* (1993) 67 P & CR 78, CA; *Houghton v Secretary of State for the Environment* (1995) 70

P & CR 178; *City of Edinburgh Council v Secretary of State for Scotland* [1998] 1 All ER 174, sub nom *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 WLR 1447, HL (decided under the Town and Country Planning (Scotland) Act 1972 s 18A). As to material considerations see PARA 485 post. Personal hardship to an applicant may constitute special circumstances so as to override planning policies: see *South Bucks District Council v Secretary of State for Transport, Local Government and the Regions* [2004] UKHL 33, [2004] 4 All ER 775, [2004] 1 WLR 1953.

5 See the Planning and Compulsory Purchase Act 2004 s 38(6); and PARA 91 ante.

6 See the Town and Country Planning Act 1990 s 1(5)(c), Sch 1 para 7(1) (as originally enacted; amended by the Planning and Compensation Act 1991 s 32, Sch 7 para 53). See further the Town and Country Planning Act 1990 Sch 1 para 7(2)-(8) (as originally enacted and as amended); and PARA 477 ante. As to structure plans see PARA 176 et seq ante. Schedule 1 para 7 is, however, now substituted by the Planning and Compulsory Purchase Act 2004, subject to transitional provisions: see PARA 477 ante.

7 See PARA 125 et seq ante.

8 As to development plans under the Planning and Compulsory Purchase Act 2004 see PARA 91 et seq ante.

9 See PARA 477 ante.

10 See the Town and Country Planning Act 1990 Sch 1 para 7 (substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 para 16(1), (4)); and PARA 477 ante.

UPDATE

484 Development plan

NOTE 4--See *South Cambridgeshire DC v Secretary of State for Communities* [2008] EWCA Civ 1010, [2008] All ER (D) 24 (Sep) (inspector had to decide whether or more material considerations outweighed the provision of the development plan and the harm which would be caused if the development was allowed to proceed).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(A) Material Considerations and General Considerations/485. Material considerations; in general.

485. Material considerations; in general.

Any consideration which relates to the use and development of land is capable of being a planning consideration, its materiality depending on the circumstances¹. There is no necessary dichotomy between public and private interests, the protection of the interests of individual occupiers being an important aspect of the public interest as a whole². Even where an individual's Convention rights³ under the Human Rights Act 1998 are engaged, the interference with those individual rights in the interests of the community as a whole is not necessarily disproportionate⁴.

Material considerations include the following matters:

- 1861 (1) development plans in course of preparation⁵;
- 1862 (2) ministerial policies⁶;
- 1863 (3) existing development rights⁷;
- 1864 (4) retention of existing use⁸;
- 1865 (5) fear of setting a precedent⁹;
- 1866 (6) availability of alternative sites¹⁰;

- 1867 (7) alternative powers of control¹¹;
- 1868 (8) previous appeal decisions¹²;
- 1869 (9) noise levels¹³;
- 1870 (10) fear of crime¹⁴;

but heads (1) to (10) above do not purport to constitute an exhaustive list. The extent to which the cost of a proposed development is a material consideration in the context of planning control is uncertain¹⁵. Planning permission should not be refused on the ground that the applicant has not offered to do that which should more properly be done by a local authority in some other capacity¹⁶.

1 *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65 at 77, [1970] 1 WLR 1281 at 1294 per Cooke J. The personal circumstances of an applicant may be a peripheral material consideration: *New Forest District Council v Secretary of State for the Environment and Clarke* [1984] JPL 178; cf *Tameside Metropolitan Borough Council v Secretary of State for the Environment and Myatt* [1984] JPL 180. The environmental impact of a clinical waste incinerator can be a material consideration in determining a planning application, even though some aspects of its operation are subject to regulation under the Environmental Protection Act 1990. Where there is an overlap between statutory provisions, it is for the Secretary of State, in the exercise of his discretion, to decide which should take precedence: *Gateshead Metropolitan Borough Council v Secretary of State for the Environment* (1993) 67 P & CR 179, DC. See also *R v Leicester City Council, ex p Blackfordby and Boothcorpe Action Group Ltd* [2000] EHLR 215, DC. The need for housing of a particular type in a certain area is a material consideration, and may be dictated by matters of cost and the type of tenure: *Mitchell v Secretary of State for the Environment* (1995) 69 P & CR 60, CA. Even where a particular planning policy does not apply to a developer's site, it can be treated by an inspector as a matter of considerable weight: *ECC Construction Ltd v Secretary of State for the Environment* (1994) 69 P & CR 51, [1994] 3 PLR 5, DC. The impact of a proposed development upon the use of and activities upon neighbouring land may be a material consideration: *West Midlands Probation Committee v Secretary of State for the Environment* (1998) 76 P & CR 589, CA (planning permission for extension of bail and probation hostel refused); *R v Broadland District Council, ex p Dove* [1998] PLCR 119 (planning permission for building of hostel for single people with special needs granted). The potential expansion of a development proposal is capable of being a material consideration: *British Aerospace plc v Secretary of State for the Environment* (1997) 75 P & CR 486. See also *FA Wellworth & Co Ltd's Application and related application (J Sainsbury plc, notice party)* [1996] NI 509, NI CA. There is nothing to suggest that, when rejecting an application on the ground that a future use of the site exists which is more desirable than that proposed, it must be shown that such a future development, on the balance of probabilities, will be undertaken: *Nottinghamshire County Council v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC 293 (Admin), [2002] 1 P & CR 389. The fact that residential use of a building is not viable in the short or longer term can be a material consideration: *Hounslow London Borough Council v Secretary of State for the Environment, Transport and the Regions* [1999] JPL 364. The test of a material consideration is an objective one: *R (on the application of Kides) v South Cambridgeshire District Council* [2002] EWCA Civ 1370, [2003] 1 P & CR 298, [2002] All ER (D) 114 (Oct).

2 *Stringer v Minister of Housing and Local Government* [1971] 1 All ER 65, [1970] 1 WLR 1281 (planning permission for development likely to interfere with the efficient working of Jodrell Bank telescope refused); *RMC Management Services Ltd v Secretary of State for the Environment* (1972) 222 Estates Gazette 1593 (permission for a ready-mixed concrete plant on a site adjacent to a high precision engineering plant requiring especially clean air refused); *Barratt Developments (Eastern) Ltd v Secretary of State for the Environment and Oadby and Wigston Borough Council* [1982] JPL 648 (permission for the retention of a house where its siting was detrimental to another house refused). See also *Rexworthy v Secretary of State for the Environment* [1998] JPL 864 (the needs of gypsies ought to be given equal weight to other material considerations), and *AL Wood-Robinson v Secretary of State for the Environment* [1998] JPL 976 (planning permission for building likely to overlook other properties and obstruct residents' private views refused).

3 As to Convention rights see the Human Rights Act 1998 s 1(3), Sch 1; and PARA 7 ante. See also COURTS vol 10 (Reissue) PARA 316.

4 See PARA 7 ante, particularly the text and notes 25-26.

5 The authority is not compelled to wait for the approval of the plan before granting permission under it: see *R v City of London Corpn, ex p Allan* (1980) 79 LGR 223; *Davies v Hammersmith and Fulham London Borough Council* [1981] JPL 682, CA; *R v Hammersmith and Fulham London Borough Council, ex p People before Profit Ltd* (1981) 45 P & CR 364, [1981] JPL 869, DC. As to the materiality of a draft local plan see *Thornville Properties Ltd v Secretary of State for the Environment and Stafford Borough Council* [1981] JPL 116; *North Wiltshire District Council v Secretary of State for the Environment* [1991] 2 PLR 67; *Lewes District Council v Secretary of State for the Environment* [1998] JPL 1093; *Mitchell v Secretary of State for the Environment* (1995) 69 P & CR

60, CA. The recommendation of the local plan inquiry inspector is a material consideration: *Bath Society v Secretary of State for the Environment* [1992] 1 All ER 28, [1991] 1 WLR 1303, CA.

6 The current policies of the Secretary of State, as stated in circulars to local planning authorities and elsewhere, are material considerations: *JA Pye (Oxford) Estates Ltd v West Oxfordshire District Council and the Secretary of State for the Environment* (1982) 47 P & CR 125, [1982] JPL 577 (the Secretary of State was held not to be entitled to disregard his own circular); *Second City (South West) Ltd v Secretary of State for the Environment and Woodspring District Council* (1990) 61 P & CR 498. He is entitled to take into account the policies of other Ministers where relevant, but he must make his own decision: *H Lavender & Son Ltd v Minister of Housing and Local Government* [1970] 3 All ER 871, [1970] 1 WLR 1231; *Kent County Council v Secretary of State for the Environment* (1976) 33 P & CR 70; *Leggat v Secretary of State for the Environment* [1991] 1 PLR 103 (Secretary of State entitled to apply Department of Transport policy with regard to motorway service areas in determining planning application); and see *Wandsworth London Borough Council v Secretary of State for Transport, Local Government and the Regions* [2003] EWCA Civ 142, [2003] 08 LS Gaz R 31, [2003] All ER (D) 250 (Feb) (Secretary of State entitled to take into account a Parliamentary answer (the 'Caborn statement') clarifying government policy on retail development). A government policy that town centres ought to be sustained and enhanced requires that a local authority considers the effect of a proposed development, including an out-of-town development, upon a town centre only to the extent that the development might have a harmful effect: *R v Hambleton District Council, ex p Somerfield Stores Ltd* (1998) 77 P & CR 475, [1999] 1 PLR 66. Where the wording of a national policy is open to interpretation, provided the local planning authority applies a meaning to the words which they are capable of bearing at law, it does not matter that there are other possible meanings: *R v Derbyshire County Council, ex p Woods* [1997] JPL 958, CA. See also *Boulevard Land Ltd v Secretary of State for the Environment* [1998] JPL 983 (inspector failing to refer to policy in his reasons).

As to the presumption against inappropriate development on Green Belt land see *Doncaster Metropolitan Borough Council v Secretary of State for the Environment, Transport and the Regions* [2002] EWHC 808 (Admin), [2002] JPL 1509, [2002] 16 EG 181 (CS) (unexceptional educational needs of children do not justify inappropriate development); *Williams v First Secretary of State* [2004] EWHC 611 (Admin), [2004] All ER (D) 213 (Mar) (unmet need for local sites for gypsies not justifying such development); *Marney v First Secretary of State* [2003] EWHC 226 (Admin), [2003] All ER (D) 28 (Feb) (applicant did not come within the agricultural exemption allowing development); *Samuel Smith Old Brewery (Tadcaster) v Selby District Council* [2003] EWHC 856 (Admin), [2003] All ER (D) 288 (Apr) (previous planning applications for development in Green Belt failing on highway and not Green Belt grounds; the subsequent absence of a highway objection did not constitute very special circumstances justifying development after changes to national policy on the Green Belt); and see *PPG2--Green Belts* para 3.1 et seq.

As to development on a flood plain see eg *Thomas Bates & Son Ltd v First Secretary of State* [2004] EWHC 1818 (Admin), [2004] 30 LS Gaz R 30, [2004] All ER (D) 217 (Jul); and *PPG25--Development and flood risk*.

As to the interpretation of policy guidance on the installation of mobile telephone masts (ie *PPG8--Telecommunications*) see *T-Mobile (UK) Ltd v First Secretary of State* [2004] EWCA Civ 1763, (2004) Times, 16 November, [2004] All ER (D) 208 (Nov) (where the proposals meet international safety guidelines for public exposure to emissions, local concerns about possible health risks can only be taken into account in exceptional circumstances).

As to whether the consideration of an alternative site for residential development is a material consideration see *Laing Homes Ltd v Secretary of State for Transport, Local Government and the Regions, Fareham Borough Council v Pelham Homes* [2002] EWHC 1967 (Admin), [2003] JPL 559. The adverse impact of a particular development may outweigh a general policy, such as the desirability of prioritising previously developed land: see *Crown Timber Group plc v First Secretary of State* [2003] EWHC 867 (Admin), [2003] All ER (D) 461 (Mar). Conversely the local economic benefits of a proposed development may outweigh a national policy: see eg *R (on the application of the Council for National Parks Ltd) v Pembrokeshire Coast National Park Authority* [2004] EWHC 2907 (Admin), [2004] All ER (D) 281 (Dec); affd [2005] EWCA Civ 888, [2005] All ER (D) 277 (Jul).

As to ministerial guidance to local planning authorities in England and guidance issued by the National Assembly for Wales to local planning authorities in Wales see generally para 9 ante.

7 Permitted development rights and existing planning permissions for similar, although not identical, development are material considerations: *Wells v Minister of Housing and Local Government* [1967] 2 All ER 1041, [1967] 1 WLR 1000, CA; *North Surrey Water Co v Secretary of State for the Environment* (1976) 34 P & CR 140.

8 The desirability of preserving an existing use is a material consideration if refusal of planning permission would result in the retention of the use: *Clyde & Co v Secretary of State for the Environment* [1977] 3 All ER 1123, [1977] 1 WLR 926, CA. There is, however, no requirement to apply a competing needs test of whether in planning terms the desirability of preserving the existing use outweighs the merits of the proposed new use: *London Residuary Body v Lambeth London Borough Council* [1990] 2 All ER 309, [1990] 1 WLR 744, HL. As to the weight to be given to the presumption in favour of planning permission see *Christchurch Borough Council v Secretary of State for the Environment* (1993) 68 P & CR 116, [1994] JPL 661, CA. As to consideration of the 'fall

back position' see *South Buckinghamshire District Council v Secretary of State for the Environment* [1999] PLCR 72.

9 The local planning authority is entitled to take account of the prospect of a proliferation of similar planning applications if permission were granted: *Collis Radio Ltd v Secretary of State for the Environment* (1975) 29 P & CR 390, DC; *Tempo Discount Warehouses Ltd v Borough of Enfield and the Secretary of State for the Environment* [1979] JPL 97.

10 In some cases, depending upon the nature of the proposed development, the availability of alternative sites may be a material consideration: *Rhodes v Minister of Housing and Local Government* [1963] 1 All ER 300, [1963] 1 WLR 208 (airport); *Brown v Secretary of State for the Environment* (1978) 40 P & CR 285 (sites for gypsies); *Ynystawe, Ynyforgan and Glais Gypsy Site Action Group v Secretary of State for Wales and West Glamorgan County Council* [1981] JPL 874; *Vale of Glamorgan Borough Council v Secretary of State for Wales and Rhys-Williams* (1985) 52 P & CR 418, [1986] JPL 198 (sites for sewage treatment works); *Scottish and Newcastle Breweries plc v Secretary of State for the Environment* (1992) 64 P & CR 290, [1992] 2 PLR 147, CA (permission for development within the Green Belt refused on the basis that the proposed development could be carried out elsewhere). See also *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 53 P & CR 293; *MJT Securities Ltd v Secretary of State for the Environment* (1996) 72 P & CR 342 (failure to have regard to the fact that a site proposed for a petrol station was the only suitable site); *R (on the application of Jones) v North Warwickshire Borough Council* [2001] PLCR 509, CA (requirement to consider alternative site only in exceptional circumstances). As to the particular considerations relating to gypsy sites see PARA 7 the text and notes 24-26 ante; and as to alternative sites for mobile phone masts see eg *Phillips v First Secretary of State* [2003] EWHC 2415 (Admin), [2003] All ER (D) 362 (Oct); *St Leger-Davey v First Secretary of State* [2004] EWCA Civ 1612, [2005] 2 P & CR 86, [2004] All ER (D) 08 (Dec); and PARA 395 ante.

11 The materiality of a matter is not affected by the fact that other statutory powers are available for its regulation or that the applicant would be entitled to compensation if the alternative powers were exercised: see eg *Westminster Bank Ltd v Minister of Housing and Local Government* [1971] AC 508, [1970] 2 All ER 734, HL (planning permission refused on the ground that land might be required for road widening); *Esdell Caravan Parks Ltd v Hemel Hempstead RDC* [1966] 1 QB 895, [1965] 3 All ER 737, CA (overlap between planning legislation and controls under the Caravan Sites and Control of Development Act 1960); *Ladbroke (Rentals) Ltd v Secretary of State for the Environment and Royal Borough of Kensington and Chelsea* [1981] JPL 427 (overlap between planning and gaming licensing controls); *Hoveringham Gravels Ltd v Secretary of State for the Environment* [1975] QB 754, [1975] 2 All ER 931, CA (ancient monument).

12 *North Wiltshire District Council v Secretary of State for the Environment* (1992) 65 P & CR 137, (1992) Times, 21 April, CA. See also *R (on the application of Rank) v East Cambridgeshire District Council* [2002] EWHC 2081 (Admin), [2002] 42 EG 159 (CS), [2002] All ER (D) 90 (Oct) (failure to consider previous refusal of planning permission and concurring appeal vitiated planning decision). The judgment and discretion of the decision-maker is informed but not necessarily fettered by the previous history of the site: see *R (on the application of Chisnell) v Richmond-upon-Thames London Borough Council* [2005] EWHC 134 (Admin) at [19], [2005] 05 EG 203 (CS), [2005] All ER (D) 278 (Jan) per Newman J.

13 *Newham London Borough v Secretary of State for the Environment and East London Housing Association Ltd* (1986) 53 P & CR 98, [1986] JPL 607 (sound insulation in flat conversions a material consideration). The quality of building work is not, however, in general a matter for planning control: *Sutton London Borough Council v Secretary of State for the Environment* (1975) 29 P & CR 350, DC. As to building regulations see BUILDING vol 4(2) (2002 Reissue) PARA 306 et seq. An inspector hearing an appeal against a refusal of planning permission is not necessarily required to have regard to technical evidence before making any finding regarding noise in the surrounding area, and is entitled to make a finding, as a matter of impression, regarding the potential disturbance caused by peaks of noise: see *R (on the application of Dubb) v Secretary of State for Transport, Local Government and the Regions* [2003] EWHC 300 (Admin), [2003] All ER (D) 90 (Feb).

14 *West Midlands Probation Committee v Secretary of State for the Environment and Walsall Metropolitan Borough Council* [1997] JPL 323, CA; and see *Smith v First Secretary of State* [2005] EWCA Civ 859, [2005] All ER (D) 313 (Jul).

15 In some cases cost has been held not to be relevant: see *J Murphy & Sons Ltd v Secretary of State for the Environment* [1973] 2 All ER 26, [1973] 1 WLR 560; *Hambledon and Chiddingfold Parish Councils v Secretary of State for the Environment* [1976] JPL 502; *Walters v Secretary of State for Wales and City of Swansea* (1978) 77 LGR 529, [1979] JPL 171. The contrary view was taken in *Sovmots Investments Ltd v Secretary of State for the Environment* [1977] QB 411, [1976] 1 All ER 178 (affd on other grounds [1979] AC 144, [1977] 2 All ER 385, HL); *Calfane Ltd v Secretary of State for the Environment and Westminster City Council* [1981] JPL 879. For a review of the earlier authorities see *Sosmo Trust Ltd v Secretary of State for the Environment* [1983] JPL 806. See also *Tonbridge and Malling District Council v Secretary of State for the Environment* [1981] JPL 757; *Essex County Council v Secretary of State for the Environment* [1989] JPL 187; *Wain Leisure Ltd v Secretary of State for the Environment* [1989] JPL 190; *Care Link and Trustees of the Formby Settlement v Secretary of State for*

the Environment [1989] 2 PLR 47; *Northumberland County Council v Secretary of State for the Environment* (1989) 59 P & CR 468.

Where a development plan provided that there should be no extension of temporary office uses in respect of premises which could reasonably be used or adapted for use for residential occupation, it was held that the cost of adaptation was a material consideration: *Niarchos (London) Ltd v Secretary of State for the Environment* (1977) 35 P & CR 259; but cf *Sears Blok v Secretary of State for the Environment* [1980] JPL 523; *Bell and Colvill Ltd v Secretary of State for the Environment and Guildford Borough Council* [1980] JPL 823.

It seems that the financial consequences of the grant of planning permission may be a material consideration if there is a likelihood of some planning gain: *Brighton Borough Council v Secretary of State for the Environment* (1978) 39 P & CR 46 (proposal to apply the profits of a development of school playing fields to the restoration of school buildings). See also *R v Westminster City Council, ex p Monahan* [1990] 1 QB 87, [1989] 2 All ER 74, CA (proposed commercial development to fund improvements to the Royal Opera House, Covent Garden; planning authority entitled to have regard to the fact that the financial gains from that development would enable a related and desirable development to proceed; considered in *R (on the application of Hampson) v Wigan Metropolitan Borough Council* [2005] EWHC 1656 (Admin), [2005] All ER (D) 383 (Jul)); *Safeway Properties Ltd v Secretary of State for the Environment and Greenwich London Borough Council* (1991) 63 P & CR 73, CA (developers offering financial assistance towards road improvements in area of proposed superstore); *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 2 All ER 636, [1995] 1 WLR 759, HL (developers offering financial assistance towards road improvements in area of proposed foodstore); *R v South Holland District Council, ex p Lincoln Co-operative Society Ltd* [2000] EGCS 133 (developers offering financial assistance towards town centre improvements in area of proposed supermarket).

16 *Westminster Renslade Ltd v Secretary of State for the Environment and Hounslow London Borough Council* [1983] JPL 454 at 455 per Forbes J; cf *Richmond upon Thames London Borough Council v Secretary of State for the Environment* [1984] JPL 24.

UPDATE

485 Material considerations; in general

NOTE 1--The existence of a better alternative design does not automatically render a planning decision irrational: *First Secretary of State v Sainsbury's Supermarkets Ltd* [2007] EWCA Civ 1083, [2008] JPL 973, [2007] All ER (D) 213 (Nov). See also *R (on the application of Batey) v Boston BC* [2008] EWHC 2516 (Admin), [2009] JPL 1235, [2008] All ER (D) 263 (Dec).

NOTE 6--Where planning policy guidelines on health concerns are satisfied, such concerns can be a material consideration only in exceptional circumstances: *Harris v First Secretary of State* [2007] EWHC 1847 (Admin), [2008] JPL 538 (telecommunications mast; interference with vital medical equipment; unsubstantiated fears of interference insufficient). See also *R (on the application of Heath & Hampstead Society) v Vlachos* [2008] EWCA Civ 193, [2008] 3 All ER 80 (inappropriate replacement of existing dwelling with materially larger dwelling on green belt land); *Wychavon DC v Secretary of State for Communities and Local Government* [2008] EWCA Civ 692, [2009] [2009] PTSR 19, [2008] All ER (D) 286 (Jun) (balance of protecting gypsy homes against public value of protecting Green Belt). See also *Adams (t/a Strategic Land Partnership) v Secretary of State for Communities and Local Government* [2009] EWHC 771 (Admin), [2009] JPL 1236, [2009] All ER (D) 113 (Apr) (Secretary of State not required to undertake comparative assessment in relation to harm proposed development would cause to area of outstanding natural beauty); and *River Club v Secretary of State for Communities and Local Government* [2009] All ER (D) 66 (Oct) (benefit of development to club on Metropolitan Open Land did not outweigh harm to Green Belt).

NOTE 10--See *R (on the application of Buglife: Invertebrate Conservation Trust) v Thurrock Thames Gateway Development Corp'n* [2009] EWCA Civ 29, [2009] 2 P & CR 132, [2009] All ER (D) 223 (Jan); *R (on the application of the Governing Body of Langley Park School for Girls) v Bromley LBC* [2009] EWCA Civ 734, [2010] 1 P & CR 197, [2009] All ER (D) 348 (Jul).

NOTE 12--See *Dunster Properties Ltd v First Secretary of State* [2007] EWCA Civ 236, [2007] 2 P & CR 515 (inspector failed to give reasons why he preferred his conclusion to that of previous inspector).

NOTE 14--*Smith*, cited, reported at [2006] JPL 386.

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486. Grant or refusal of permission; in general.

Where an application is made to a local planning authority¹ for planning permission²:

- 1871 (1) the authority may³ grant planning permission⁴, either unconditionally or subject to such conditions⁵ as it thinks fit; or
- 1872 (2) it may refuse planning permission⁶.

The local planning authority must consider each application on its merits⁷. The weight of an objection may, however, be affected by its authorship⁸.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 The subject to the Town and Country Planning Act 1990 s 91 (as amended) (see PARA 537 post) and s 92 (as amended) (see PARA 519 post): s 70(1)(a). As to the obligation to take account of material considerations see s 70(2); and PARA 484 ante; as to consultations before and general restrictions on granting planning permission see PARA 472 et seq ante; and as to the prohibition on granting planning permission without an environmental impact assessment in the case of certain categories of development see PARA 491 post.

4 As to whether a planning authority may grant planning permission for a development smaller than that for which an application for permission has been made see *Bernard Wheatcroft Ltd v Secretary of State for the Environment* (1980) 43 P & CR 233; *Kent County Council v Secretary of State for the Environment* (1976) 33 P & CR 70; *Wessex Regional Health Authority v Salisbury District Council and the Secretary of State for the Environment* [1984] JPL 344. As to the effect of different planning permissions in respect of the same land see *Pilkington v Secretary of State for the Environment* [1974] 1 All ER 283, [1973] 1 WLR 1527, DC; *F Lucas & Sons Ltd v Dorking and Horley RDC* (1964) 62 LGR 491; *Wealden District Council v Taylor* [1992] 1 PLR 42; *Staffordshire County Council v NGR Land Developments Ltd and Roberts* [2002] EWCA Civ 856, [2003] JPL 56.

5 As to conditions see PARA 523 post.

6 Town and Country Planning Act 1990 s 70(1). Section 70(1) has effect subject to s 65 (as substituted) (see PARA 468 ante), s 70A (as added) et seq (see PARA 452 et seq ante, PARA 487 et seq post), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 66 (as amended) (see PARA 1106 post), s 67 (as amended) (see PARA 1107 post), s 72 (as amended) (see PARA 1171 post) and s 73 (as amended) (see PARA 1173 post) and to the Health Services Act 1976 s 15 (repealed): Town and Country Planning Act 1990 s 70(3) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 14).

It seems that there is no grant of planning permission unless and until written notice of the decision of the planning authority is given to the applicant; and, until such notice is given, the authority may withdraw its decision: *R v Yeovil Borough Council, ex p Trustees of Elim Pentecostal Church, Yeovil* (1971) 23 P & CR 39, DC; *Slough Estates Ltd v Slough Borough Council (No 2)* [1969] 2 Ch 305, [1969] 2 All ER 988, CA (affd [1971] AC 958, [1970] 2 All ER 216, HL); *R v West Oxfordshire District Council, ex p CH Pearce Homes Ltd* [1986] JPL 523.

7 See eg *Rugby School Governors v Secretary of State for the Environment* (1975) 234 Estates Gazette 371; *Link Homes Ltd v Secretary of State for the Environment* [1976] JPL 430. A planning application was held to have been sufficiently considered by a district council where, after the matter had been considered by a committee, the plans were on the table so that any councillor could have looked at them before the resolution was passed: *Ayles v Romsey and Stockbridge RDC* (1944) 42 LGR 210. A resolution to refuse permission was held to be good although it stated that the committee's report was adopted and the committee, in fact, had not yet reported: *Ayles v Romsey and Stockbridge RDC* supra.

A local planning authority is not liable in negligence to neighbouring owners in respect of grants of planning permission which affect their interests: *Strable v Dartford Borough Council* [1984] JPL 329, CA; *Ryeford Homes Ltd v Sevenoaks District Council* [1990] JPL 36. Cf, however, *Kane v New Forest District Council* [2001] EWCA Civ 878, [2001] 3 All ER 914, [2002] 1 WLR 312, cited in PARA 28 note 18 ante (possible liability in negligence for failure to impose appropriate conditions when granting planning permission).

8 See *R (on the application of Weir) v Camden London Borough Council* [2005] All ER (D) 426 (Jul).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(a) In general/487. Power to make regulations.

(B) ASSESSMENT OF ENVIRONMENTAL IMPACT

(a) In general

UPDATE

486 Grant or refusal of permission; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

487. Power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations make provision about the consideration to be given, before planning permission³ for development⁴ of any class specified in the regulations is granted, to the likely environmental effects of the proposed development⁵.

The regulations may make:

- 1873 (1) the same provision as, or provision similar to, any provision made⁶ for the purposes of any Community obligation⁷ of the United Kingdom⁸ about the assessment of the likely effects of development on the environment; and
- 1874 (2) different provision for different classes of development⁹.

The environmental assessment of plans and programmes has already been discussed¹⁰ and the assessment of the environmental impact of certain projects which is required for other statutory purposes is discussed elsewhere in this work¹¹.

1 As to the Secretary of State see PARA 28 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 71A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 For the meaning of 'development' see PARA 217 ante.

5 Town and Country Planning Act 1990 s 71A(1) (s 71A added by the Planning and Compensation Act 1991 s 15). In the exercise of this power, and prior to the transfer of functions in Wales to the Assembly, the Secretary of State made the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended), which came into force on 14 March 1999 (reg 1(1)) and apply throughout England and Wales (reg 1(2)) except that reg 14(2), (5)(a) (see PARA 502 post) does not apply to the Isles of Scilly and, in relation to the Isles of Scilly, the reference in reg 14(6) to reg 14(5) is to be construed as a reference to reg 14(5)(b) (reg 1(3)). As to the making of regulations generally see PARA 3 ante. See also the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(2) (as amended); and PARA 471 ante; art 14(2) (as substituted); and PARA 480 ante. As to the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

For guidance on the applicable principles arising from an interpretation of the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, SI 1988/1199 (now revoked and replaced by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended)) see *R (on the application of Burkett) v Hammersmith and Fulham London Borough Council* [2003] EWHC 1031 (Admin), [2003] 21 LS Gaz R 31, [2003] All ER (D) 203 (May). For guidance issued to local planning authorities in England on the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) see ODPM Circular 02/99 *Environmental Impact Assessment*; and as to the status of such guidance see PARA 9 ante.

6 le under the European Communities Act 1972 s 2(2): see EUROPEAN COMMUNITIES.

7 For the meaning of 'Community obligation' see EUROPEAN COMMUNITIES. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) implement EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) (as amended) and take into account the selection criteria in Annex III as amended by EC Council Directive 97/11 (OJ L73, 14.03.97, p 5). As to the obligations of member states under EC Council Directive 85/337 (as amended) with regard to carrying out environmental impact assessments of projects likely to have a significant effect on the environment see Case C-435/97 *World Wildlife Fund v Autonome Provinz Bozen* [1999] ECR I-5613, [2000] 1 CMLR 149, ECJ; see also *R (on the application of Candlish) v Hastings Borough Council* [2005] EWHC 1539 (Admin), [2005] All ER (D) 178 (Jul) and the authorities reviewed in that judgment.

8 For the meaning of 'United Kingdom' see PARA 60 note 5 ante.

9 Town and Country Planning Act 1990 s 71A(2) (as added: see note 5 supra). Where a draft of regulations made in exercise both of the power conferred by s 71A (as added) and the power conferred by the European Communities Act 1972 s 2(2) is approved by resolution of each House of Parliament, the Town and Country Planning Act 1990 s 333(3) (see PARA 3 ante) does not apply: s 71A(3) (as so added).

10 See PARA 60 et seq ante.

11 See PARA 69 notes 6-17 ante and the titles referred to in those notes.

UPDATE

487 Power to make regulations

NOTE 5--SI 1999/293 reg 1(2) amended, reg 1(4) added in relation to England: SI 2006/3295.

FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(a) In general/488. Meaning of 'EIA development'.

488. Meaning of 'EIA development'.

In the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹ 'EIA development' means development² which is either:

- 1875 (1) Schedule 1 development³; or
- 1876 (2) Schedule 2 development⁴ likely to have significant effects on the environment by virtue of factors such as its nature, size or location⁵.

1 In the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 489 et seq post.

2 There is no justification for treating the word 'development' as used in the 1999 Regulations as though it means a project of some wider kind; the 'development' in relation to which an environmental impact assessment may be required is the development to which the planning permission in question relates: see *R (on the application of Candlish) v Hastings Borough Council* [2005] EWHC 1539 (Admin), [2005] All ER (D) 178 (Jul). For the meaning of 'development' generally see PARA 217 ante.

3 For the meaning of 'Schedule 1 development' see PARA 489 post.

4 For the meaning of 'Schedule 2 development' see PARA 490 post.

5 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, art 2(1). The provisions enabling the Secretary of State or the Assembly to give directions which may be included in a development order by virtue of the Town and Country Planning Act 1990 s 60 (see PARA 254 ante) include provisions enabling him or it to direct that development which is both of a description mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1), Sch 2 para 2, Table col 1 (see PARA 490 post at heads (1)-(14) in the text) and of a class described in the direction is EIA development for the purposes of the 1999 Regulations: reg 33. In their application to Wales, the 1999 Regulations have effect, with any necessary amendments, as if each reference to 'the Secretary of State' were a reference to 'the National Assembly for Wales': reg 2(6) (added by SI 2000/2867). As to the Secretary of State see PARA 19 ante; as to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

For these purposes, references to the Secretary of State or to the Assembly are not to be construed as references to an inspector: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(5). 'Inspector' means a person appointed by the Secretary of State in England or by the National Assembly for Wales pursuant to the Town and Country Planning Act 1990 Sch 6 (as amended) to determine an appeal (see PARA 621 et seq post): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1).

As to the Secretary of State's duty to give reasons for refusing to require an environmental impact assessment to be made prior to the grant of planning permission see *R v Secretary of State for the Environment, Transport and Regions, ex p Marson* (1998) 77 P & CR 202, [1998] JPL 869, CA (decided under the Town and Country Planning (Assessment of Environmental Effects) Regulations 1988, SI 1988/1199 (now revoked and replaced)).

UPDATE

488 Meaning of 'EIA development'

NOTE 5--SI 1999/293 reg 2(6) amended: SI 2008/2335 (Wales).

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(a) In general/489. Meaning of 'Schedule 1 development'.

489. Meaning of 'Schedule 1 development'.

In the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹, 'Schedule 1 development' means development², other than exempt development³, of a description mentioned below⁴, that is, the carrying out of development to provide any of the following:

- 1877 (1) crude-oil refineries, excluding undertakings manufacturing only lubricants from crude oil, and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day;
- 1878 (2) power stations as follows:
 - 186 65. (a) thermal power stations and other combustion installations with a heat output of 300 megawatts or more;
 - 66. (b) nuclear power stations and other nuclear reactors⁵, except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed one kilowatt continuous thermal load;
- 187 1879 (3) installations:
 - 188 67. (a) for the reprocessing of irradiated nuclear fuel;
 - 68. (b) designed: (i) for the production or enrichment of nuclear fuel; (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste; (iii) for the final disposal of irradiated nuclear fuel; (iv) solely for the final disposal of radioactive waste; (v) solely for the storage, planned for more than ten years, of irradiated nuclear fuels or radioactive waste in a different site than the production site;
- 189 1880 (4) works and installations as follows:
 - 190 69. (a) integrated works for the initial smelting of cast-iron and steel;
 - 70. (b) installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes;
- 191 1881 (5) installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos:
 - 192 71. (a) for asbestos-cement products, with an annual production of more than 20,000 tonnes of finished products;
 - 72. (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
 - 73. (c) for other uses of asbestos, utilisation of more than 200 tonnes per year;
- 193 1882 (6) integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:

194

- 74. (a) for the production of basic organic chemicals;
- 75. (b) for the production of basic inorganic chemicals;
- 76. (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
- 77. (d) for the production of basic plant health products and of biocides;
- 78. (e) for the production of basic pharmaceutical products using a chemical or biological process;
- 79. (f) for the production of explosives;

195

1883 (7) construction:

196

- 80. (a) of lines for long-distance railway traffic and of airports⁶ with a basic runway length of 2,100 metres or more;
- 81. (b) of motorways and express roads⁷;
- 82. (c) of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length;

197

1884 (8) waterways and ports as follows:

198

- 83. (a) inland waterways and ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes;
- 84. (b) trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes;

199

1885 (9) waste disposal installations for the incineration, chemical treatment⁸ or landfill of hazardous waste⁹;1886 (10) waste disposal installations for the incineration or chemical treatment¹⁰ of non-hazardous waste with a capacity exceeding 100 tonnes per day;

1887 (11) groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres;

1888 (12) works for the transfer of water resources other than piped drinking water:

200

- 85. (a) between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year;
- 86. (b) in all other cases, between river basins where the multi-annual average flow of the basin of abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow;

201

1889 (13) waste water treatment plants with a capacity exceeding 150,000 population equivalent¹¹;

1890 (14) extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas;

1891 (15) dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres;

1892 (16) pipelines for the transport of gas, oil or chemicals with a diameter of more than 800 millimetres and a length of more than 40 kilometres;

1893 (17) installations for the intensive rearing of poultry or pigs with more than:

202

- 87. (a) 85,000 places for broilers or 60,000 places for hens;
- 88. (b) 3,000 places for production pigs over 30 kg; or
- 89. (c) 900 places for sows;

203

1894 (18) industrial plants for:

204

- 90. (a) the production of pulp from timber or similar fibrous materials;
- 91. (b) the production of paper and board with a production capacity exceeding 200 tonnes per day;

205

1895 (19) quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares;

1896 (20) installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more¹².

1 le the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 490 et seq post.

2 For the meaning of 'development' see PARA 217 ante.

3 For these purposes, 'exempt development' means development which comprises or forms part of a project serving national defence purposes or in respect of which the Secretary of State or the National Assembly for Wales has made a direction under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(4) (see PARA 492 post): reg 2(1). As to the Secretary of State see PARA 19 ante; as to transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

4 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1).

5 For the purposes of *ibid* reg 2(1), Sch 1, 'nuclear power station' and 'other nuclear reactor' do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor is not to be treated as development of the description mentioned in Sch 1 para 2(b) (see head (2)(b) in the text): Sch 1, interpretation. As to the environmental requirements in respect of dismantling or decommissioning a nuclear power station or other nuclear reactor see the Nuclear Reactors (Environmental Impact Assessment for Decommissioning) Regulations 1999, SI 1999/2892; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARAS 1614-1624.

6 For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1 (as amended), 'airport' means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14) (see AIR LAW vol 2 (2008) PARA 6): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1, interpretation.

7 For the purposes of *ibid* Sch 1 (as amended), 'express road' means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1, interpretation.

8 le as defined in EC Council Directive 75/442 (OJ L194, 25.07.1975, p 39) Annex IIA (as substituted) under heading D9.

9 le hazardous waste as defined in relation to England in the Hazardous Waste (England and Wales) Regulations 2005, SI 2005/894, reg 6 or, in relation to Wales, in the Hazardous Waste (Wales) Regulations 2005, SI 2005/1806, reg 6. A change in the use of land or buildings to a use for a purpose mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1 para 9 (as amended) (see head (9) in the text) involves a material change in the use of that land or those buildings for the purposes of the Town and Country Planning Act 1990 s 55(1) (meaning of 'development' and 'new development': see PARA 217 ante): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 31.

10 See note 8 supra.

11 le as defined in EC Council Directive 91/271 (OJ L 135, 30.05.1991, p 40) art 2(6).

12 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 1 (amended by SI 2005/894; SI 2005/1806).

UPDATE

489 Meaning of 'Schedule 1 development'

NOTE 3--Definition of 'exempt development' amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099. In relation to England, as to provision in connection with projects serving national defence purposes in Scotland, Wales and Northern Ireland see SI 1999/293 regs 36-38 (added by SI 2006/3295; SI 1999/293 reg 37 amended by SI 2008/2335).

NOTE 12--SI 1999/293 Sch 1 further amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(a) In general/490. Meaning of 'Schedule 2 development'.

490. Meaning of 'Schedule 2 development'.

In the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹, 'Schedule 2 development' means development², other than exempt development³, of a description mentioned below⁴ where any part of that development is to be carried out in a sensitive area⁵ or any applicable threshold or criterion⁶ is respectively exceeded or met in relation to that development⁷. The specified descriptions of development are carrying out of development to provide any of the following:

1897 (1) agriculture and aquaculture:
206

- 92. (a) projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes, where the area of the development exceeds 0.5 hectare;
- 93. (b) water management projects for agriculture, including irrigation and land drainage projects, where the area of the works⁸ exceeds 1 hectare;
- 94. (c) intensive livestock installations, unless included in Schedule 1⁹, where the area of new floor space¹⁰ exceeds 500 square metres;
- 95. (d) intensive fish farming, where the installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year;
- 96. (e) all development consisting of reclamation of land from the sea;

207
1898 (2) extractive industry:
208

- 97. (a) in the case of quarries, open cast mining and peat extraction, unless included in Schedule 1, all development except the construction of buildings or other ancillary structures where the new floor space does not exceed 1,000 square metres;
- 98. (b) underground mining;
- 99. (c) all development consisting of the extraction of minerals by fluvial dredging;
- 100. (d) deep drillings, in particular (i) geothermal drilling, (ii) drilling for the storage of nuclear waste material, (iii) drilling for water supplies, with the exception of drillings for investigating the stability of the soil, where, in relation to any type of drilling, the area of the works exceeds 1 hectare or, in relation to geothermal drilling and drilling for the storage of nuclear waste material, the drilling is within 100 metres of any controlled waters¹¹;
- 101. (e) surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale, where the area of the development exceeds 0.5 hectare;

209

1899 (3) energy industry:

210

- 102. (a) industrial installations for the production of electricity, steam and hot water, unless included in Schedule 1, where the area of the development exceeds 0.5 hectare;
- 103. (b) industrial installations for carrying gas, steam and hot water, where the area of the works exceeds 1 hectare;
- 104. (c) surface storage of natural gas, where the area of any new building, deposit or structure exceeds 500 square metres or a new building, deposit or structure is to be sited within 100 metres of any controlled waters;
- 105. (d) underground storage of combustible gases, where the area of any new building, deposit or structure exceeds 500 square metres or a new building, deposit or structure is to be sited within 100 metres of any controlled waters;
- 106. (e) surface storage of fossil fuels, where the area of any new building, deposit or structure exceeds 500 square metres or a new building, deposit or structure is to be sited within 100 metres of any controlled waters;
- 107. (f) industrial briquetting of coal and lignite, where the area of new floor space exceeds 1,000 square metres;
- 108. (g) installations for the processing and storage of radioactive waste, unless included in Schedule 1, where the area of new floor space exceeds 1,000 square metres or the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993¹²;
- 109. (h) installations for hydroelectric energy production, where the installation is designed to produce more than 0.5 megawatts;
- 110. (i) installations for the harnessing of wind power for energy production (wind farms), where the development involves the installation of more than 2 turbines or the hub height of any turbine or height of any other structure exceeds 15 metres;

211

1900 (4) production and processing of metals where, in each case, the area of new floor space exceeds 1,000 square metres:

212

- 111. (a) installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;

112. (b) the following installations for the processing of ferrous metals: hot-rolling mills; smitheries with hammers; application of protective fused metal coats;
113. (c) ferrous metal foundries;
114. (d) installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc);
115. (e) installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;
116. (f) manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;
117. (g) shipyards;
118. (h) installations for the construction and repair of aircraft;
119. (i) manufacture of railway equipment;
120. (j) swaging by explosives;
121. (k) installations for the roasting and sintering of metallic ores;
- 213
1901 (5) mineral industry where, in each case, the area of new floor space exceeds 1,000 square metres:
- 214
122. (a) coke ovens (dry coal distillation);
123. (b) installations for the manufacture of cement;
124. (c) installations for the production of asbestos and the manufacture of asbestos-based products, unless included in Schedule 1;
125. (d) installations for the manufacture of glass including glass fibre;
126. (e) installations for smelting mineral substances including the production of mineral fibres;
127. (f) manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain;
- 215
1902 (6) chemical industry, unless included in Schedule 1:
- 216
128. (a) treatment of intermediate products and production of chemicals, where the area of new floor space exceeds 1,000 square metres;
129. (b) production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides, where the area of new floor space exceeds 1,000 square metres;
130. (c) storage facilities for petroleum, petrochemical and chemical products, where the area of any new building or structure exceeds 0.05 hectare or more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time;
- 217
1903 (7) food industry, where in any case the area of new floor space exceeds 1,000 square metres:
- 218
131. (a) manufacture of vegetable and animal oils and fats;
132. (b) packing and canning of animal and vegetable products;
133. (c) manufacture of dairy products;
134. (d) brewing and malting;
135. (e) confectionery and syrup manufacture;
136. (f) installations for the slaughter of animals;
137. (g) industrial starch manufacturing installations;
138. (h) fish-meal and fish-oil factories;
139. (i) sugar factories;
- 219

1904 (8) textile, leather, wood and paper industries, where, in any case, the area of new floor space exceeds 1,000 square metres:

220

- 140. (a) industrial plants for the production of paper and board, unless included in Schedule 1;
- 141. (b) plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;
- 142. (c) plants for the tanning of hides and skins;
- 143. (d) cellulose-processing and production installations;

221

1905 (9) rubber industry: manufacture and treatment of elastomer-based products, where the area of new floor space exceeds 1,000 square metres;

1906 (10) infrastructure projects:

222

- 144. (a) industrial estate development projects, where the area of the development exceeds 0.5 hectare;
- 145. (b) urban development projects¹³, including the construction of shopping centres and car parks, sports stadiums, leisure centres and multiplex cinemas, where the area of the development exceeds 0.5 hectare;
- 146. (c) construction of intermodal transshipment facilities and of intermodal terminals, unless included in Schedule 1, where the area of the development exceeds 0.5 hectare;
- 147. (d) construction of railways, unless included in Schedule 1, where the area of the works exceeds 1 hectare;
- 148. (e) construction of airfields, unless included in Schedule 1, where the development involves an extension to a runway or the area of the works exceeds 1 hectare;
- 149. (f) construction of roads, unless included in Schedule 1, where the area of the works exceeds 1 hectare;
- 150. (g) construction of harbours and port installations including fishing harbours, unless included in Schedule 1, where the area of the works exceeds 1 hectare;
- 151. (h) inland-waterway construction not included in Schedule 1, canalisation and flood-relief works, where the area of the works exceeds 1 hectare;
- 152. (i) dams and other installations designed to hold water or store it on a long-term basis, unless included in Schedule 1, where the area of the works exceeds 1 hectare;
- 153. (j) tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, where the area of the works exceeds 1 hectare;
- 154. (k) oil and gas pipeline installations, unless included in Schedule 1, where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge;
- 155. (l) installations of long-distance aqueducts, where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge;
- 156. (m) all development consisting of coastal work to combat erosion and maritime works capable of altering the coast through the construction, for example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;
- 157. (n) groundwater abstraction and artificial groundwater recharge schemes not included in Schedule 1, where the area of the works exceeds 1 hectare;

158. (o) works for the transfer of water resources between river basins not included in Schedule 1, where the area of the works exceeds 1 hectare;
159. (p) motorway service areas, where the area of the development exceeds 0.5 hectare;
- 223
1907 (11) other projects:
- 224
160. (a) permanent racing and test tracks for motorised vehicles, where the area of the development exceeds 1 hectare;
161. (b) installations for the disposal of waste, unless included in Schedule 1, where the disposal is by incineration, or the area of the development exceeds 0.5 hectare, or the installation is to be sited within 100 metres of any controlled waters;
162. (c) waste-water treatment plants, unless included in Schedule 1, where the area of the development exceeds 1,000 square metres;
163. (d) sludge-deposition sites, where the area of deposit exceeds 0.5 hectare or a deposit is to be made within 100 metres of any controlled waters;
164. (e) storage of scrap iron, including scrap vehicles, where the area of storage exceeds 0.5 hectare or scrap is to be stored within 100 metres of any controlled waters;
165. (f) test benches for engines, turbines or reactors, where the area of new floor space exceeds 1,000 square metres;
166. (g) installations for the manufacture of artificial mineral fibres, where the area of new floor space exceeds 1,000 square metres;
167. (h) installations for the recovery or destruction of explosive substances, where the area of new floor space exceeds 1,000 square metres;
168. (i) knackers' yards, where the area of new floor space exceeds 1,000 square metres;
- 225
1908 (12) tourism and leisure:
- 226
169. (a) ski-runs, ski-lifts and cable-cars and associated developments, where the area of the works exceeds 1 hectare or the height of any building or other structure exceeds 15 metres;
170. (b) marinas, where the area of the inclosed water surface exceeds 1,000 square metres;
171. (c) holiday villages and hotel complexes outside urban areas and associated developments, where the area of the development exceeds 0.5 hectare;
172. (d) theme parks, where the area of the development exceeds 0.5 hectare;
173. (e) permanent camp sites and caravan sites, where the area of the development exceeds 1 hectare;
174. (f) golf courses and associated developments, where the area of the development exceeds 1 hectare;
- 227
1909 (13) any change to or extension of development of a description listed in Schedule 1 or in heads (1) to (12) above, where that development is already authorised, executed or in the process of being executed, and the change or extension may have significant adverse effects on the environment, where:
- 228
175. (a) in relation to development of a description mentioned in heads (1) to (12) above, the corresponding thresholds and criteria set out above

applied to the change or extension, and not to the development as changed or extended;

176. (b) in relation to development of a description mentioned in a specified paragraph in Schedule 1¹⁴, the specified thresholds and criteria¹⁵ applied to the change or extension, and not to the development as changed or extended;

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1910 (14) all development consisting of development of a description mentioned in Schedule 1 undertaken exclusively or mainly for the development and testing of new methods or products and not used for more than two years¹⁶.

1 Ie the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARAS 488-489 ante, PARA 491 et seq post.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'exempt development' see PARA 489 note 3 ante.

4 Ie mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1), Sch 2 para 2, Table col 1: see heads (1)-(14) in the text.

5 For these purposes, 'sensitive area' means any of the following: (1) land notified under the Wildlife and Countryside Act 1981 s 28(1) (as substituted) (sites of special scientific interest); (2) an area to which the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 (as amended), Table para (u)(ii) applies (see PARA 475 ante at head (21)(b) in the text); (3) a National Park; (4) the Broads; (5) a property appearing on the World Heritage List kept under the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage art 11(2); (6) a scheduled monument within the meaning of the Ancient Monuments and Archaeological Areas Act 1979; (7) an area of outstanding natural beauty designated as such by an order made by English Nature as respects England or the Countryside Council for Wales, as respects Wales, under the Countryside and Rights of Way Act 2000 s 82 as confirmed by the Secretary of State or by the National Assembly for Wales; (8) a European site within the meaning of the Conservation (Natural Habitats etc) Regulations 1994, SI 1994/2716, reg 10 (as amended): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1) (definition amended by virtue of the Countryside and Rights of Way Act 2000 ss 73, 76, 93, Sch 10, Sch 15 Pt II). As to the Secretary of State and the Assembly see PARAS 19-20 ante; and see also PARA 488 note 5 ante.

6 Ie any applicable threshold or criterion in the corresponding part of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 2 para 2, Table, col 2: see heads (1)-(14) in the text.

7 Ibid reg 2(1). The Secretary of State or the Assembly may direct that particular development of a description mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 reg 2(1), Sch 2 para 2, Table col 1 (see heads (1)-(14) in the text) is EIA development in spite of the fact that none of the conditions contained in sub-paras (a) and (b) of the definition of 'Schedule 2 development' in reg 2(1) is satisfied in relation to that development: see reg 4(8); and PARA 492 note 20 post.

8 For the purposes of ibid Sch 2, 'area of the works' includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation: Sch 2 para 1.

9 Ie included in ibid reg 2(1), Sch 1: see PARA 489 ante.

10 For the purposes of ibid Sch 2, 'floor space' means the floor space in a building or buildings: Sch 2 para 1.

11 For the purposes of ibid Sch 2, 'controlled waters' has the same meaning as in the Water Resources Act 1991 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 289): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 2 para 1.

12 As to authorisation under the Radioactive Substances Act 1993 see generally FUEL AND ENERGY vol 19(3) (2007 Reissue) PARAS 1453-1459.

13 It cannot be said that a storage and distribution facility, particularly when providing services to business and the community at large and not simply a private operation, however large and extensive, can never reasonably be regarded as part of the infrastructure for the purposes of the Town and Country Planning

(Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 2 para 2, Table item 10(b): see *R (on the application of Goodman) v Lewisham London Borough Council* [2003] EWCA Civ 140, [2003] 2 P & CR 262, [2003] All ER (D) 202 (Feb).

14 le in relation to development of a description mentioned in a paragraph in ibid Sch 1 indicated in Sch 2 para 2, Table item 13(a): see note 15 infra.

15 le the thresholds and criteria in ibid Sch 2 para 2, Table indicated in item 13(a). The paragraphs in Sch 1, and the specified thresholds and criteria in Sch 2 para 2, Table so indicated are as follows:

- 6 (1) in relation to Sch 1 para 1 (see PARA 489 ante at head (1) in the text), Sch 2 para 2, Table item 6(a) (see head (6)(a) in the text);
- 7 (2) in relation to Sch 1 para 2(a) (see PARA 489 ante at head (2)(a) in the text), Sch 2 para 2, Table item 3(a) (see head (3)(a) in the text);
- 8 (3) in relation to Sch 1 para 2(b) (see PARA 489 ante at head (2)(b) in the text), Sch 2 para 2, Table item 3(g) (see head (3)(g) in the text);
- 9 (4) in relation to Sch 1 para 3 (see PARA 489 ante at head (3) in the text), Sch 2 para 2, Table item 3(g) (see head (3)(g) in the text);
- 10 (5) in relation to Sch 1 para 4 (see PARA 489 ante at head (4) in the text), Sch 2 para 2, Table item 4 (see head (4) in the text);
- 11 (6) in relation to Sch 1 para 5 (see PARA 489 ante at head (5) in the text), Sch 2 para 2, Table item 5 (see head (5) in the text);
- 12 (7) in relation to Sch 1 para 6 (see PARA 489 ante at head (6) in the text), Sch 2 para 2, Table item 6(a) (see head (6)(a) in the text);
- 13 (8) in relation to Sch 1 para 7(a) (see PARA 489 ante at head (7)(a) in the text), Sch 2 para 2, Table item 10(d) in relation to railways (see head (10)(d) in the text) or item 10(e) in relation to airports (see head (10)(e) in the text);
- 14 (9) in relation to Sch 1 para 7(b), (c) (see PARA 489 ante at head (7)(b)-(c) in the text), Sch 2 para 2, Table item 10(f) (see head (10)(f) in the text);
- 15 (10) in relation to Sch 1 para 8(a) (see PARA 489 ante at head (8)(a) in the text), Sch 2 para 2, Table item 10(h) (see head (10)(h) in the text);
- 16 (11) in relation to Sch 1 para 8(b) (see PARA 489 ante at head (8)(b) in the text), Sch 2 para 2, Table item 10(g) (see head (10)(g) in the text);
- 17 (12) in relation to Sch 1 para 9 (see PARA 489 ante at head (9) in the text), Sch 2 para 2, Table item 11(b) (see head (11)(b) in the text);
- 18 (13) in relation to Sch 1 para 10 (see PARA 489 ante at head (10) in the text), Sch 2 para 2, Table item 11(b) (see head (11)(b) in the text);
- 19 (14) in relation to Sch 1 para 11 (see PARA 489 ante at head (11) in the text), Sch 2 para 2, Table item 10(n) (see head (10)(n) in the text);
- 20 (15) in relation to Sch 1 para 12 (see PARA 489 ante at head (11) in the text), Sch 2 para 2, Table item 10(o) (see head (10)(o) in the text);
- 21 (16) in relation to Sch 1 para 13 (see PARA 489 ante at head (13) in the text), Sch 2 para 2, Table item 11(c) (see head (11)(c) in the text);
- 22 (17) in relation to Sch 1 para 14 (see PARA 489 ante at head (14) in the text), Sch 2 para 2, Table item 2(e) (see head (2)(e) in the text);
- 23 (18) in relation to Sch 1 para 15 (see PARA 489 ante at head (15) in the text), Sch 2 para 2, Table item 10(i) (see head (10)(i) in the text);

- 24 (19) in relation to Sch 1 para 16 (see PARA 489 ante at head (16) in the text), Sch 2 para 2, Table item 10(k) (see head (10)(k) in the text);
- 25 (20) in relation to Sch 1 para 17 (see PARA 489 ante at head (17) in the text), Sch 2 para 2, Table item 1(c) (see head (1)(c) in the text);
- 26 (21) in relation to Sch 1 para 18 (see PARA 489 ante at head (18) in the text), Sch 2 para 2, Table item 8(a) (see head (8)(a) in the text);
- 27 (22) in relation to Sch 1 para 19 (see PARA 489 ante at head (19) in the text), Sch 2 para 2, Table item 2(a) (see head (2)(a) in the text);
- 28 (23) in relation to Sch 1 para 20 (see PARA 489 ante at head (20) in the text), Sch 2 para 2, Table item 6(c) (see head (6)(c) in the text).

16 Ibid Sch 2 para 2, Table.

UPDATE

490 Meaning of 'Schedule 2 development'

NOTE 10--As the interpretation of the phrase 'floor space' see *R (on the application of Horner) v Lancashire CC* [2007] EWCA Civ 784, [2008] JPL 209 (silo and arrangement of pipes had floor space).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(a) In general/491. Prohibition on granting planning permission without consideration of environmental information.

491. Prohibition on granting planning permission without consideration of environmental information.

The relevant planning authority¹, or the Secretary of State² (or, in relation to Wales, the National Assembly for Wales³), or an inspector⁴ must not grant planning permission⁵ pursuant to an application to which this provision applies unless it or he has first taken the environmental information⁶ into consideration, and must state in his or its decision that he or it has done so⁷.

This provision applies:

- 1911 (a) to every EIA application⁸ received⁹ by the authority with which it is lodged¹⁰;
and
- 1912 (b) to every EIA application lodged¹¹ by an interested planning authority¹².

Where the Secretary of State or the Assembly grants planning permission in contravention of this provision, the validity of that decision may be challenged on an appeal to the High Court¹³.

1 For these purposes, 'relevant planning authority' means the body to which it falls, fell, or would, but for a direction under the Town and Country Planning Act 1990 s 77 (as amended) (reference of applications to Secretary of State or National Assembly for Wales: see PARA 483 ante), fall to determine an application for

planning permission for the development in question: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1).

2 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

4 For the meaning of 'inspector' see PARA 488 note 5 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For these purposes, 'environmental information' means the environmental statement, including any further information, any representations made by any body required by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development: reg 2(1). For the meaning of 'environmental statement' see PARA 497 post.

7 Ibid reg 3(2). As to the construction of reg 3(2) see *R (on the application of Richardson) v North Yorkshire County Council* [2003] EWHC 764 (Admin), [2004] 1 P & CR 361, [2003] All ER (D) 268 (Apr); affd [2003] EWCA Civ 1860, [2004] 2 All ER 41, [2004] 1 WLR 1920. It has been held that the Secretary of State is not required as a matter of law to ignore proposals for remedial measures included in proposals before him when deciding whether an environmental impact assessment is necessary; however, devising a condition to be attached to the planning permission which is capable of bringing the development below the relevant threshold does not necessarily lead to a decision that an environmental impact assessment is unnecessary: see *Gillespie v First Secretary of State* [2003] EWCA Civ 400, [2003] All ER (D) 407 (Mar). Local opposition and controversy in relation to a proposed development are not relevant in deciding whether an environmental impact assessment is required unless the proposals actually have an adverse environmental impact and the statutory criteria for requiring such assessment are met: *R (on the application of Lambert) v Southwark London Borough Council* [2003] All ER (D) 389 (Jul).

8 For these purposes, 'EIA application' means an application for planning permission for EIA development: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1). For the meaning of 'EIA development' see PARA 488 ante.

9 For these purposes, the date of receipt of an application by an authority is to be determined in accordance with the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(3) (time periods for decision: see PARA 532 post): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3(1).

10 Ie lodged on or after 14 March 1999: ibid regs 1(1), 3(1).

11 Ie lodged on or after 14 March 1999 under the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 or reg 4: see PARA 893 post.

12 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, regs 1(1), 2(1), 3(1).

13 See ibid reg 30; and PARA 47 note 6 ante.

UPDATE

491 Prohibition on granting planning permission without consideration of environmental information

TEXT AND NOTES--SI 1999/293 reg 3 substituted, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 5--Once an enforcement notice is issued and there is an appeal to the Secretary of State any consent given is development consent: *Ardagh Glass Ltd v Chester City Council* [2009] EWHC 745 (Admin), [2009] All ER (D) 111 (Apr) (retrospective planning permission could be granted as long as need to protect objective of EC Council Directive 85/337 was observed).

NOTE 6--Definition of 'environmental information' amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

NOTE 8--Definition of 'EIA application' substituted, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(b) Screening/492. Screening; in general.

(b) Screening

492. Screening; in general.

A direction of the Secretary of State¹ or, in relation to Wales, of the National Assembly for Wales² determines³ whether development⁴ is or is not EIA development⁵. The Secretary of State or the Assembly may direct that particular proposed development is exempted⁶ from the application of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁷ and must send a copy of any such direction to the relevant planning authority⁸. Subject to the above provisions, the occurrence of one of the following events, that is:

- 1913 (1) the submission by the applicant or appellant in relation to that development of a statement referred to by the applicant or appellant as an environmental statement⁹ for the purposes of the 1999 Regulations; or
- 1914 (2) the adoption by the relevant planning authority of a screening opinion¹⁰ to the effect that the development is EIA development,

determines¹¹ that development is EIA development¹².

Where a local planning authority or the Secretary of State or the Assembly has to decide whether Schedule 2 development¹³ is EIA development, the authority or Secretary of State or Assembly must take into account in making that decision such of the specified selection criteria¹⁴ as are relevant to the development¹⁵. Selection criteria are specified with regard to:

- 1915 (a) the characteristics of the development, which must be considered having regard, in particular to:

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- 177. (i) the size of the development;
- 178. (ii) the cumulation with other development;
- 179. (iii) the use of natural resources;
- 180. (iv) the production of waste;
- 181. (v) pollution and nuisances;
- 182. (vi) the risk of accidents, having regard in particular to substances or technologies used¹⁶;

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- 1916 (b) the location of the development; the environmental sensitivity of geographical areas likely to be affected by the development must be considered, having regard, in particular, to:

232

- 183. (i) the existing land use;
 - 184. (ii) the relative abundance, quality and regenerative capacity of natural resources in the area;
 - 185. (iii) the absorption capacity of the natural environment, paying particular attention to the following areas: wetlands; coastal zones; mountain and forest areas; nature reserves and parks; areas classified or protected under domestic or relevant Community legislation¹⁷; areas in which the environmental quality standards laid down in Community legislation have already been exceeded; densely populated areas; and landscapes of historical, cultural or archaeological significance¹⁸;
- 233
- 1917 (c) characteristics of the potential impact; the potential significant effects of development must be considered in relation to criteria set out under heads (a) and (b) above and having regard in particular to:
- 234
- 186. (i) the extent of the impact (geographical area and size of the affected population);
 - 187. (ii) the transfrontier nature of the impact;
 - 188. (iii) the magnitude and complexity of the impact;
 - 189. (iv) the probability of the impact;
 - 190. (v) the duration, frequency and reversibility of the impact¹⁹.
- 235

Where a local planning authority adopts a screening opinion or the Secretary of State or the Assembly makes a screening direction²⁰ to the effect that development is EIA development:

- 1918 (A) that opinion or direction must be accompanied by a written statement giving clearly and precisely the full reasons for that conclusion; and
- 1919 (B) the authority or the Secretary of State or Assembly, as the case may be, must send a copy of the opinion or direction and a copy of the written statement so required to the person who proposes to carry out, or who has carried out, the development in question²¹.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante; the text and notes 4-21 infra; and PARA 493 et seq post.

4 For the meaning of 'development' see PARA 217 ante.

5 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(3). As to the appropriate course of action to be taken by an inspector hearing a planning appeal who finds himself in disagreement with the Secretary of State's screening direction see *Evans v First Secretary of State* [2003] EWCA Civ 1523 at [23]-[24], [2003] All ER (D) 58 (Nov) per Simon Brown J.

6 Ie in accordance with EC Council Directive 85/337 (OJ L175, 05.07.85, p 40), art 2(3) (as amended) (which provides that member states may, in exceptional cases, exempt a specific project in whole or in part from the provisions laid down in the Directive) but without prejudice to art 7 (as substituted) (which provides for the exchange of information and consultation between member states where a member state is aware that a project is likely to have significant effects on the environment in another member state or where a member state likely to be significantly affected so requests).

7 le the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended).

8 Ibid reg 4(4). For the meaning of 'relevant planning authority' see PARA 491 note 1 ante. Any notice or other document to be sent, served or given under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) may be served or given in a manner specified in the Town and Country Planning Act 1990 s 329 (as amended) (service of notices: see PARA 54 ante); Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 29.

9 For the meaning of 'environmental statement' see PARA 497 post.

10 For these purposes, 'screening opinion' means a written statement of the opinion of the relevant planning authority as to whether development is EIA development: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1). It is not appropriate to engage in a paperchase in order to assemble documents which collectively might be said to be a composite screening opinion: *R (on the application of Lebus) v South Cambridgeshire District Council* [2002] EWHC 2009 (Admin) at [38], [2003] 2 P & CR 71, [2002] All ER (D) 96 (Aug) per Sullivan J. It is open to a planning authority having given a negative screening opinion subsequently to determine that the development is an EIA development: *Fernback v Harrow London Borough Council* [2001] EWHC 278 (Admin), [2001] 18 EG 173 (CS).

11 See note 3 supra.

12 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(1), (2).

13 For the meaning of 'Schedule 2 development' see PARA 490 ante.

14 le the selection criteria set out in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(5), Sch 3: see heads (1)-(3) in the text.

15 Ibid reg 4(5).

16 Ibid Sch 3 para 1.

17 le areas designated by member states pursuant to EC Council Directive 79/409 (OJ L103, 25.04.1979, p 01) (as amended) on the conservation of wild birds and EC Council Directive 92/43 (OJ L206, 22.07.1992, p 07) (as amended) on the conservation of natural habitats and of wild fauna and flora: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 728; **WATER AND WATERWAYS** vol 101 (2009) PARAS 674, 679.

18 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, Sch 3 para 2.

19 Ibid Sch 3 para 3.

20 For these purposes, 'screening direction' means a direction made by the Secretary of State or the National Assembly for Wales as to whether development is EIA development: ibid reg 2(1). The Secretary of State or the Assembly may make a screening direction irrespective of whether he or it has received a request to do so (reg 4(7)); and may direct that particular development of a description mentioned in reg 2(1), Sch 2 para 2, Table col 1 (see PARA 490 ante at heads (1)-(14) in the text) is EIA development in spite of the fact that none of the conditions contained in sub-paras (a) and (b) of the definition of 'Schedule 2 development' in reg 2(1) (see PARA 490 ante) is satisfied in relation to that development (reg 4(8)). Policy guidance issued to local planning authorities in England indicates that the Secretary of State may use the power under reg 4(8) in exceptional cases with regard to small developments which nevertheless give rise to significant environmental effects: see ODPM Circular 02/99 *Environmental Impact Assessment* paras 31, 77. The Secretary of State is not, however, obliged to make a case by case examination of whether an environmental impact assessment ought to be carried out: *Berkeley v Secretary of State for the Environment, Transport and Regions (No 3)* [2001] EWCA Civ 1012, [2001] 1 P & CR 264, [2001] All ER (D) 345 (Jun); distinguished in *R (on the application of Newsum) v Welsh Assembly (No 2)* [2005] EWHC 538 (Admin), [2005] 16 EG 144 (CS), [2005] All ER (D) 76 (Apr). The Secretary of State or the Assembly must send a copy of any screening direction to the relevant planning authority: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(9).

21 Ibid reg 4(6).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

492 Screening; in general

TEXT AND NOTES 6-8--SI 1999/293 reg 4(4), (4A) substituted for reg 4(4), in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(b) Screening/493. Requests for screening opinions of the local planning authority.

493. Requests for screening opinions of the local planning authority.

A person who is minded to carry out development¹ may request the relevant planning authority² to adopt a screening opinion³. A request for a screening opinion must be accompanied by:

- 1920 (1) a plan sufficient to identify the land⁴;
- 1921 (2) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- 1922 (3) such other information or representations as the person making the request may wish to provide or make⁵.

An authority receiving a request for a screening opinion must, if it considers that it has not been provided with sufficient information to adopt an opinion, notify in writing the person making the request of the points on which it requires additional information⁶. An authority must adopt a screening opinion within three weeks beginning with the date of receipt of a request made pursuant to the above provisions or such longer period as may be agreed in writing with the person making the request⁷. An authority which adopts a screening opinion pursuant to this provision must forthwith send a copy to the person who made the request⁸.

- 1 For the meaning of 'development' see PARA 217 ante.
- 2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.
- 3 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 5(1). For the meaning of 'screening opinion' see PARA 492 note 10 ante.
- 4 For these purposes, 'the land' means the land on which the development would be carried out or, in relation to development already carried out, has been carried out: *ibid* reg 2(1). For the meaning of 'development' see PARA 217 ante.
- 5 *Ibid* reg 5(2).
- 6 *Ibid* reg 5(3). As to service of notices see PARA 492 note 8 ante.
- 7 *Ibid* reg 5(4).
- 8 *Ibid* reg 5(5). Failure to comply with reg 5(5) does not, however, invalidate the screening opinion: see *Younger Homes (Northern) Ltd v First Secretary of State* [2004] EWCA Civ 1060, [2004] All ER (D) 01 (Jul).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

493 Requests for screening opinions of the local planning authority

TEXT AND NOTES 4, 5--SI 1999/293 reg 5(2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(b) Screening/494. Requests for screening directions of the Secretary of State or the Assembly.

494. Requests for screening directions of the Secretary of State or the Assembly.

Where a relevant planning authority¹:

- 1923 (1) fails to adopt a screening opinion² within the relevant period³; or
- 1924 (2) adopts an opinion to the effect that the development⁴ is EIA development⁵,

the person who requested the opinion may request the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ to make a screening direction⁸. The person may make such a request even if the authority has not received additional information⁹ which is sought¹⁰.

A person who so requests the Secretary of State or the Assembly to make a screening direction must submit with his request:

- 1925 (a) a copy of his request to the relevant planning authority¹¹ and the documents which accompanied it;
- 1926 (b) a copy of any notification¹² which he has received and of any response;
- 1927 (c) a copy of any screening opinion he has received from the authority and of any accompanying statement of reasons; and
- 1928 (d) any representations that he wishes to make¹³.

When a person so makes a request he must send to the relevant planning authority a copy of that request and of any representations he makes to the Secretary of State or to the Assembly¹⁴.

The Secretary of State or the Assembly must, if he or it considers that he or it has not been provided with sufficient information to make a screening direction, notify in writing the person making the request of the points on which he or the Assembly requires additional information, and may request the relevant planning authority to provide such information as it can on any of those points¹⁵. The Secretary of State or the Assembly must make a screening direction within three weeks beginning with the date of receipt of a request pursuant to the above provisions or such longer period as he or it may reasonably require¹⁶ and must send a copy of any screening direction so made forthwith to the person who made the request¹⁷.

1 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

2 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

3 I.e. the relevant period mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 5(4): see PARA 493 ante.

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'EIA development' see PARA 488 ante.

6 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

7 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

8 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 5(6). For the meaning of 'screening direction' see PARA 492 note 20 ante.

9 I.e. additional information which is sought under *ibid* reg 5(3): see PARA 493 ante.

10 *Ibid* reg 5(7).

11 I.e. his request under *ibid* reg 5(1): see PARA 493 ante.

12 I.e. any notification under *ibid* reg 5(3): see PARA 493 ante.

- 13 Ibid reg 6(1). As to sending documents etc see PARA 492 note 10 ante.
- 14 Ibid reg 6(2).
- 15 Ibid reg 6(3).
- 16 Ibid reg 6(4).
- 17 Ibid reg 6(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(c) Procedures concerning Applications for Planning Permission/495. Application made to a local planning authority without an environmental statement.

(c) Procedures concerning Applications for Planning Permission

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

495. Application made to a local planning authority without an environmental statement.

Where it appears to the relevant planning authority¹ that:

- 1929 (1) an application for planning permission² which is before it for determination is a Schedule 1 application³ or Schedule 2 application⁴; and
- 1930 (2) the development⁵ in question has not been the subject of a screening opinion⁶ or screening direction⁷; and
- 1931 (3) the application is not accompanied by a statement referred to by the applicant as an environmental statement⁸ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁹,

the relevant provisions¹⁰ apply as if the receipt or lodging of the application were a request¹¹ for a screening opinion¹².

Where an EIA application¹³ which is before a local planning authority¹⁴ for determination is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of the 1999 Regulations, the authority must notify the applicant in writing that the submission of an environmental statement is required¹⁵. An applicant receiving such a notification may, within three weeks beginning with the date of the notification, write to the authority stating:

- 1932 (a) that he accepts its view and is providing an environmental statement; or
- 1933 (b) unless the Secretary of State¹⁶ or, in relation to Wales, the National Assembly for Wales¹⁷ has made a screening direction in respect of the development, that he is writing to the Secretary of State or to the Assembly to request a screening direction¹⁸.

If the applicant does not write to the authority in accordance with heads (a) and (b) above, then unless the Secretary of State or the Assembly has made a screening direction to the effect that the development is not EIA development, the permission sought is deemed to be refused at the end of the relevant three-week period, and the deemed refusal:

- 1934 (i) is treated as a decision of the authority for the purposes of entry in the register of applications¹⁹; but
- 1935 (ii) does not give rise to an appeal to the Secretary of State or the Assembly by virtue of the statutory right to appeal²⁰ against planning decisions and failure to take such decisions²¹.

An authority which has given a notification that the submission of an environmental statement is required²² must, unless the Secretary of State or the Assembly makes a screening direction to the effect that the development is not EIA development, determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with the requirements²³ concerning publicity²⁴.

1 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 'Schedule 1 application' means an application for planning permission for Schedule 1 development: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1). For the meaning of 'Schedule 1 development' see PARA 489 ante.

4 'Schedule 2 application' means an application for planning permission for Schedule 2 development: *ibid* reg 2(1). For the meaning of 'Schedule 2 development' see PARA 490 ante.

5 For the meaning of 'development' see PARA 217 ante.

6 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

7 For the meaning of 'screening direction' see PARA 492 note 20 ante.

8 For the meaning of 'environmental statement' see PARA 497 post.

9 *Ie* for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 496 et seq post.

10 *Ie* *ibid* reg 5(3), (4): see PARA 493 ante.

11 Ie under *ibid* reg 5(1): see PARA 493 ante.

12 *Ibid* reg 7(1).

13 For the meaning of 'EIA application' see PARA 491 note 8 ante.

14 As to local planning authorities see PARA 28 et seq ante.

15 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(2). An authority must notify the applicant in accordance with reg 7(2) within three weeks beginning with the date of receipt of the application or such longer period as may be agreed in writing with the applicant; but where the Secretary of State or, in relation to Wales, the National Assembly for Wales, after the expiry of that period of three weeks or of any longer period so agreed, makes a screening direction to the effect that the development is EIA development, the authority must so notify the applicant within seven days beginning with the date the authority received a copy of that screening direction: reg 7(3). For the meaning of 'EIA development' see PARA 488 ante.

16 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

17 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

18 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(4). A person who requests a screening direction pursuant to reg 7(4)(b) (see head (b) in the text) must send to the Secretary of State or to the Assembly with his request copies of: (1) his application for planning permission; (2) all documents sent to the authority as part of the application; and (3) all correspondence between the applicant and the authority relating to the proposed development, and reg 6(2)-(5) (see PARA 494 ante) applies to a request under reg 7 (as so modified) as it applies to a request made pursuant to reg 5(6) (see PARA 494 ante): reg 7(7).

19 Ie for the purposes of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(4)(c): see PARA 467 ante.

20 Ie by virtue of the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 post.

21 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(5).

22 Ie a notification in accordance with *ibid* reg 7(2): see the text and notes 14-15 supra.

23 Ie comply with *ibid* reg 14(5): see PARA 502 post.

24 *Ibid* reg 7(6).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the

Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

495 Application made to a local planning authority without an environmental statement

TEXT AND NOTES--SI 1999/293 reg 7 substituted, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTES 3, 4--Definitions of 'Schedule 1 application' and 'Schedule 2 application' substituted, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(c) Procedures concerning Applications for Planning Permission/496. Application referred to the Secretary of State or to the Assembly without an environmental statement.

496. Application referred to the Secretary of State or to the Assembly without an environmental statement.

Where it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that an application for planning permission³ which has been referred to him or to it for determination⁴:

- 1936 (1) is a Schedule 1 application⁵ or Schedule 2 application⁶; and
- 1937 (2) the development⁷ in question has not been the subject of a screening opinion⁸ or screening direction⁹; and
- 1938 (3) the application is not accompanied by a statement referred to by the applicant as an environmental statement¹⁰ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹¹,

the relevant provisions¹² apply as if the referral of the application were a request made by the applicant¹³ for a screening direction¹⁴.

Where it appears to the Secretary of State or to the Assembly that an application which has been referred to him or to it for determination is an EIA application¹⁵ and is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of the 1999 Regulations, he or the Assembly must notify the applicant in writing that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority¹⁶. An applicant who receives such a notification may within three weeks beginning with the date of the notification write to the Secretary of State or to the Assembly stating that he proposes to provide an environmental statement¹⁷. If the applicant does not write in accordance with this provision, the Secretary of State or the Assembly is under no duty to deal with the application; and at the end of the three week period he or the Assembly must inform the applicant in writing that no further action is being taken on the application¹⁸.

Where the Secretary of State or the Assembly has given a notification that the submission of an environmental statement is required¹⁹, he or the Assembly must determine the relevant application only by refusing planning permission if the applicant does not submit an environmental statement and comply with the requirements²⁰ concerning publicity²¹.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 As to the reference of applications to the Secretary of State or the Assembly for determination see the Town and Country Planning Act 1990 s 77 (as amended); and PARA 483 ante.

5 For the meaning of 'Schedule 1 application' see PARA 495 note 3 ante.

6 For the meaning of 'Schedule 2 application' see PARA 495 note 4 ante.

7 For the meaning of 'development' see PARA 217 ante.

8 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

9 For the meaning of 'screening direction' see PARA 492 note 20 ante.

10 For the meaning of 'environmental statement' see PARA 497 post.

11 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 497 et seq post.

12 Ie ibid reg 6(3), (4): see PARA 494 ante.

13 Ie under ibid reg 5(6): see PARA 494 ante.

14 Ibid reg 8(1)

15 For the meaning of 'EIA application' see PARA 491 note 8 ante.

16 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 8(2). The Secretary of State or the Assembly must notify the applicant in accordance with reg 8(2) within three weeks beginning with the date he or it received the application or such longer period as he or it may reasonably require: reg 8(3). As to service of notices etc see PARA 492 note 8 ante.

17 Ibid reg 8(4).

18 Ibid reg 8(5).

19 Ie a notification under ibid reg 8(2): see the text and notes 15-16 supra.

20 Ie comply with ibid reg 14(5): see PARA 502 post.

21 Ibid reg 8(6). The decision as to whether an environmental statement must be submitted cannot be made by a planning officer unless the power to do so is expressly delegated to him: *R v St Edmundsbury Borough Council, ex p Walton* [1999] Env LR 879, [1999] 3 PLR 51.

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to

England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

496 Application referred to the Secretary of State or to the Assembly without an environmental statement

TEXT AND NOTES 1-14--SI 1999/293 reg 8(1) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 16--SI 1999/293 reg 8(3A) added, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

TEXT AND NOTES 19-21--SI 1999/293 reg 8(6) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(d) Preparation of Environmental Statements/497. Meaning of 'environmental statement'.

(d) Preparation of Environmental Statements

497. Meaning of 'environmental statement'.

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹, 'environmental statement' means a statement:

1939 (1) that includes such of the information referred to in heads (a) to (g) below as is reasonably required to assess the environmental effects of the development² and which the applicant can, having regard in particular to current knowledge and methods of assessment, reasonably be required to compile; but

1940 (2) that includes at least the information referred to in heads (i) to (v) below³.

The information mentioned in head (1) above is:

1941 (a) a description of the development, including in particular a description of the physical characteristics of the whole development and the land-use requirements during the construction and operational phases, a description of the main characteristics of the production processes, for instance, nature and quantity of the materials used, and an estimate, by type and quantity, of expected residues

- and emissions (water, air and soil pollution, noise, vibration, light, heat, radiation, etc) resulting from the operation of the proposed development;
- 1942 (b) an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects;
- 1943 (c) a description of the aspects of the environment likely to be significantly affected by the development, including, in particular, population, fauna, flora, soil, water, air, climatic factors, material assets, including the architectural and archaeological heritage, landscape and the inter-relationship between the above factors;
- 1944 (d) a description of the likely significant effects of the development on the environment, which should cover the direct effects and any indirect, secondary, cumulative, short, medium and long-term, permanent and temporary, positive and negative effects of the development, resulting from the existence of the development, the use of natural resources and the emission of pollutants, the creation of nuisances and the elimination of waste, and the description by the applicant of the forecasting methods used to assess the effects on the environment;
- 1945 (e) a description of the measures envisaged to prevent, reduce and where possible offset any significant adverse effects on the environment;
- 1946 (f) a non-technical summary of the information provided under heads (a) to (e) above;
- 1947 (g) an indication of any difficulties (technical deficiencies or lack of know-how) encountered by the applicant in compiling the required information⁴.

The information mentioned in head (2) above is:

- 1948 (i) a description of the development comprising information on the site, design and size of the development;
- 1949 (ii) a description of the measures envisaged in order to avoid, reduce and, if possible, remedy significant adverse effects;
- 1950 (iii) the data required to identify and assess the main effects which the development is likely to have on the environment;
- 1951 (iv) an outline of the main alternatives studied by the applicant or appellant and an indication of the main reasons for his choice, taking into account the environmental effects;
- 1952 (v) a non-technical summary of the information provided under heads (i) to (iv) above⁵.

It is inappropriate to approach an environmental statement on the basis that activities are included in it unless expressly excluded⁶.

1. See for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 498 et seq post.

2. For the meaning of 'development' see PARA 217 ante.

3. Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1).

4. Ibid reg 2(1), Sch 4 Pt I (paras 1-7).

5. Ibid Sch 4 Pt II (paras 1-5). As to the interrelationship between the requirements set out in the text and information required to be given to the Environment Agency under the Pollution Prevention and Control (England and Wales) Regulations 2000, SI 2000/1973 (as amended), see *Kent v First Secretary of State* [2004] EWHC 2953 (Admin), [2004] All ER (D) 52 (Dec).

6 See *R (on the application of Gregan) v Hartlepool Borough Council* [2003] EWHC 3278 (Admin) at [75], [2003] All ER (D) 258 (Dec) per Sullivan J (planning permission for the dismantling and refurbishment of 'marine structures and equipment', expressly incorporating a number of documents, including an environmental statement by reference to which permitted activities were to be defined; held that a ship was not a 'marine structure' for the purposes of the planning permission and there was nothing in the environmental statement to suggest that 'marine structure' should be given a wider meaning; the dismantling of ships was not a permitted activity).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

497 Meaning of 'environmental statement'

NOTE 5--SI 2000/1973 replaced: Environmental Permitting (England and Wales) Regulations 2007, SI 2007/3538.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(d) Preparation of Environmental Statements/498. Scoping opinions of the local planning authority.

498. Scoping opinions of the local planning authority.

A person who is minded to make an EIA application¹ may ask the relevant planning authority² to state in writing its opinion as to the information to be provided in the environmental statement³ (a 'scoping opinion')⁴. Such a request must include:

- 1953 (1) a plan sufficient to identify the land⁵;
- 1954 (2) a brief description of the nature and purpose of the development⁶ and of its possible effects on the environment; and
- 1955 (3) such other information or representations as the person making the request may wish to provide or make⁷.

An authority receiving such a request must, if it considers that it has not been provided with sufficient information to adopt a scoping opinion, notify the person making the request of the points on which it requires additional information⁸. An authority may not adopt a scoping opinion in response to such a request until it has consulted the person who made the request and the consultation bodies⁹, but must¹⁰, within five weeks beginning with the date of receipt of that request or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request¹¹. Where, however, a person has, at the same time as making a request for a screening opinion¹², asked the authority for an opinion under the above provisions, and the authority has adopted a screening opinion to the effect that the development is EIA development¹³, the authority must, within five weeks beginning with the date on which that screening opinion was adopted or such longer period as may be agreed in writing with the person making the request, adopt a scoping opinion and send a copy to the person who made the request¹⁴.

Before adopting a scoping opinion the authority must take into account:

- 1956 (a) the specific characteristics of the particular development;
- 1957 (b) the specific characteristics of development of the type concerned; and
- 1958 (c) the environmental features likely to be affected by the development¹⁵.

An authority which has adopted a scoping opinion in response to a request under these provisions is not precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission¹⁶ for the same development as was referred to in the request¹⁷.

1 For the meaning of 'EIA application' see PARA 491 note 8 ante.

2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

3 For the meaning of 'environmental statement' see PARA 497 ante.

4 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, regs 2(1), 10(1).

5 For the meaning of 'the land' see PARA 493 note 4 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 10(2).

8 Ibid reg 10(3). As to service of notices etc see PARA 492 note 8 ante.

9 For these purposes, 'the consultation bodies' means: (1) any body which the relevant planning authority is required to consult, or would, if an application for planning permission for the development in question were before it, be required to consult by virtue of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 10 (as amended) (consultations before the grant of permission: see PARA 475 ante) or of any direction under art 10 (as amended); and (2) the following bodies if not referred to in head (1) supra: (a) any principal council for the area where the land is situated, if not the relevant planning authority; (b) where the land is situated in England, the Countryside Commission and English Nature; (c) where the land is situated in Wales, the Countryside Council for Wales; and (d) the Environment Agency: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1) (definition amended by virtue of the Countryside and Rights of Way Act 2000 s 73(2)). 'Principal council' has the meaning given by the Local Government Act 1972 s 270(1) (as amended) (general provisions as to interpretation: see LOCAL GOVERNMENT vol 69 (2009) PARA 23): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1). As to the bodies referred to in head (2)(b)-(c) supra see PARA 70 ante; and as to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

10 Ie subject to ibid reg 10(5): see the text and notes 12-14 infra.

- 11 Ibid reg 10(4).
- 12 Ie under ibid reg 5(1): see PARA 493 ante.
- 13 For the meaning of 'EIA development' see PARA 488 ante.
- 14 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 10(5).
- 15 Ibid reg 10(6).
- 16 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 17 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 10(9).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

498 Scoping opinions of the local planning authority

TEXT AND NOTES 5-7--SI 1999/293 reg 10(2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 9--Definition of 'the consultation bodies' further amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

TEXT AND NOTES 16, 17--SI 1999/293 reg 10(9) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(d) Preparation of Environmental Statements/499. Scoping directions of the Secretary of State or the Assembly.

499. Scoping directions of the Secretary of State or the Assembly.

Where a relevant planning authority¹ fails to adopt a scoping opinion² within the relevant period³, the person who requested the opinion may⁴ ask the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ to make a direction as to the information to be provided in the environmental statement⁷ (a 'scoping direction')⁸; and this applies notwithstanding that the authority may not have received additional information⁹ which it has sought¹⁰. A request so made must include:

- 1959 (1) a copy of the relevant request to the relevant planning authority¹¹;
- 1960 (2) a copy of any relevant notification¹² and of any response;
- 1961 (3) a copy of any relevant screening opinion¹³ received by the person making the request and of any accompanying statement of reasons; and
- 1962 (4) any representations that the person making the request wishes to make¹⁴.

When a person makes such a request he must send to the relevant planning authority a copy of that request, but that copy need not include the matters mentioned in heads (1) to (3) above¹⁵. The Secretary of State or the Assembly must notify in writing the person making the request of any points on which he or the Assembly considers the information so provided is insufficient to enable him or the Assembly to make a scoping direction and may request the relevant planning authority to provide such information as it can on any of those points¹⁶.

The Secretary of State or the Assembly may not make a scoping direction in response to such a request until he or it has consulted the person making the request and the consultation bodies¹⁷, but must, within five weeks beginning with the date of receipt of that request or such longer period as he or the Assembly may reasonably require, make a direction and send a copy to the person who made the request and to the relevant planning authority¹⁸. Before making a scoping direction the Secretary of State or the Assembly must take into account the specified¹⁹ matters²⁰.

Where the Secretary of State or the Assembly has made a scoping direction in response to a request under these provisions, neither he nor the Assembly nor the relevant planning authority is precluded from requiring of the person who made the request additional information in connection with any statement that may be submitted by that person as an environmental statement in connection with an application for planning permission²¹ for the same development²² as was referred to in the request²³.

1 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

2 For the meaning of 'scoping opinion' see PARA 498 ante.

3 I.e. the period mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 10(4) or (5): see PARA 498 ante.

4 I.e. under *ibid* reg 11(1): see the text and notes 11-14 *infra*.

5 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

7 For the meaning of 'environmental statement' see PARA 497 ante.

8 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, regs 2(1), 10(7).

9 I.e. under *ibid* reg 10(3): see PARA 498 ante.

- 10 Ibid reg 10(8).
- 11 Ie under ibid reg 10(1): see PARA 498 ante.
- 12 Ie under ibid reg 10(3): see PARA 498 ante.
- 13 For the meaning of 'screening opinion' see PARA 492 note 10 ante.
- 14 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 11(1).
- 15 Ibid reg 11(2).
- 16 Ibid reg 11(3).
- 17 For the meaning of 'the consultation bodies' see PARA 498 note 9 ante.
- 18 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 11(4).
- 19 Ie the matters specified in ibid reg 10(6): see PARA 498 ante.
- 20 Ibid reg 11(5).
- 21 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 22 For the meaning of 'development' see PARA 217 ante.
- 23 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 11(6).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

499 Scoping directions of the Secretary of State or the Assembly

TEXT AND NOTES 21-23--SI 1999/293 reg 11(6) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(d) Preparation of Environmental Statements/500. Procedure to facilitate preparation of environmental statements.

500. Procedure to facilitate preparation of environmental statements.

Any person who intends to submit an environmental statement¹ to the relevant planning authority² or the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁵ may give notice in writing⁶ to that authority or to the Secretary of State or the Assembly under these provisions⁷. Such a notice must include the information necessary to identify the land⁸ and the nature and purpose of the development⁹, and must indicate the main environmental consequences to which the person giving the notice proposes to refer in his environmental statement¹⁰.

The recipient of such a notice, or of a written statement made pursuant to the specified procedures concerning applications for planning permission¹¹, must:

- 1963 (1) notify the consultation bodies¹² in writing of the name and address of the person who intends to submit an environmental statement and of the duty imposed on the consultation bodies¹³ to make information available to that person; and
- 1964 (2) inform in writing the person who intends to submit an environmental statement of the names and addresses of the bodies so notified¹⁴.

The relevant planning authority and any body notified in accordance with heads (1) and (2) above must¹⁵, if requested by the person who intends to submit an environmental statement, enter into consultation with that person to determine whether the authority or body has in its possession any information which he or it considers relevant to the preparation of the environmental statement and, if it has, the authority or body must make that information available to that person¹⁶; but this provision does not require the disclosure of information which is capable of being treated as confidential¹⁷, or must¹⁸ be so treated¹⁹. A reasonable charge reflecting the cost of making the relevant information available may be made by an authority or body which makes information available in accordance with this provision²⁰.

1 For the meaning of 'environmental statement' see PARA 497 ante.

2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

3 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

4 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

5 ie under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 501 et seq post.

6 As to giving notice see PARA 492 note 8 ante.

7 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 12(1).

8 For the meaning of 'the land' see PARA 493 note 4 ante.

9 For the meaning of 'development' see PARA 217 ante.

10 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 12(2).

11 le made pursuant to ibid reg 7(4)(a) (see PARA 495 ante) or reg 8(4) (see PARA 496 ante) or reg 9(5) (appeals: see PARA 618 post).

12 For the meaning of 'the consultation bodies' see PARA 498 note 9 ante.

13 le under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 12(4) (as amended): see the text and notes 15-16 infra.

14 Ibid reg 12(3).

15 le subject to ibid reg 12(5): see the text and notes 17-19 infra.

16 Ibid reg 12(4) (reg 12(4), (6) amended by SI 2000/2867).

17 le under the Environmental Information Regulations 2004, SI 2004/3391, Pt 3 (regs 12-15): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH; WATER AND WATERWAYS vol 101 (2009) PARA 681.

18 See note 17 supra.

19 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 12(5); Interpretation Act 1978 s 17(2).

20 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 12(6) (as amended: see note 16 supra).

UPDATE

492-500 Screening; in general ... Procedure to facilitate preparation of environmental statements

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, in relation to England only, an undetermined ROMP application must be treated as if it were a ROMP application received by the authority with whom it is lodged on or after 15 November 2000, and SI 1999/293, subject to certain modifications, applies accordingly: see the Town and Country Planning (Environmental Impact Assessment) (Mineral Permissions and Amendment) (England) Regulations 2008, SI 2008/1556, reg 2. 'Undetermined ROMP application' means a ROMP application which was received by the authority with whom it was lodged before 15 November 2000 but which was not determined by 22 July 2008; 'ROMP application' means an application to a relevant mineral planning authority to determine the conditions to which a planning permission is to be subject under (1) the Planning and Compensation Act 1991 Sch 2 para 2(2) (PARA 720); (2) the Environment Act 1995 Sch 13 para 9(1) (see PARA 734); or the Environment Act 1995 Sch 14 para 6(1) (see PARA 750).

500 Procedure to facilitate preparation of environmental statements

NOTE 11--In relation to Wales, for 'reg 7(4)(a)' read 'reg 7(5)(a)': SI 1999/293 reg 12(3) (amended by SI 2008/2335).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B)

Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/501. Procedure where an environmental statement is submitted to a local planning authority.

(e) Procedure on Submission of Environmental Statements; Publicity

501. Procedure where an environmental statement is submitted to a local planning authority.

When an applicant making an EIA application¹ submits to the relevant planning authority² a statement which he refers to as an environmental statement³ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁴, he must provide the authority with three additional copies of the statement for transmission to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ and, if at the same time he serves a copy⁷ of the statement on any other body, he must:

- 1965 (1) serve with it a copy of the application and any plan submitted with the application, unless he has already served these documents on the body in question;
- 1966 (2) inform the body that representations may be made to the relevant planning authority; and
- 1967 (3) inform the authority of the name of every body whom he has so served and of the date of service⁸.

When a relevant planning authority receives in connection with an EIA application such a statement as is first mentioned above, the authority must:

- 1968 (a) send to the Secretary of State or to the Assembly, within 14 days of receipt of the statement, three copies of the statement and a copy of the relevant application and of any documents submitted with the application;
- 1969 (b) inform the applicant of the number of copies required to enable the authority to comply with head (c) below; and
- 1970 (c) forward to any consultation body which has not received a copy direct from the applicant a copy of the statement and inform any such consultation body that it may make representations⁹.

The applicant must send the copies required for the purposes of head (c) above to the relevant planning authority¹⁰.

The relevant planning authority may not determine the application until the expiry of 14 days from the last date on which a copy of the statement was served in accordance with these provisions¹¹.

1 For the meaning of 'EIA application' see PARA 491 note 8 ante.

2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

3 For the meaning of 'environmental statement' see PARA 497 ante.

4 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 502 et seq post.

5 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

7 As to service of documents etc see PARA 492 note 8 ante.

8 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 13(1).

9 Ibid reg 13(2).

10 Ibid reg 13(3).

11 Ibid reg 13(4).

UPDATE

501 Procedure where an environmental statement is submitted to a local planning authority

TEXT AND NOTES--SI 1999/293 reg 13(3A) added, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 1-9--SI 1999/293 reg 13(1), (2) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/502. Publicity where an environmental statement is submitted after the planning application.

502. Publicity where an environmental statement is submitted after the planning application.

Where an application for planning permission¹ has been made without a statement which the applicant refers to as an environmental statement² for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999³, and the applicant proposes to submit such a statement, he must, before submitting it, comply with the following requirements⁴:

1971 (1) the applicant must publish in a local newspaper circulating in the locality in which the land⁵ is situated a notice stating:

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191. (a) his name and that he is the applicant for planning permission and the name and address of the relevant planning authority⁶;

192. (b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ for determination or is the subject of an appeal to him or to the Assembly;

193. (c) the address or location and the nature of the proposed development⁹;

- 194. (d) that a copy of the application and of any plan and other documents submitted with it together with a copy of the environmental statement may be inspected by members of the public at all reasonable hours;
- 195. (e) an address in the locality in which the land is situated at which those documents may be inspected, and the latest date on which they will be available for inspection, being a date not less than 21 days later than the date on which the notice is published;
- 196. (f) an address, whether or not the same as that given under head (e) above, in the locality in which the land is situated at which copies of the statement may be obtained;
- 197. (g) that copies may be obtained there so long as stocks last;
- 198. (h) if a charge is to be made for a copy, the amount of the charge;
- 199. (i) that any person wishing to make representations about the application should make them in writing, before the date named in accordance with head (e) above, to the relevant planning authority or, in the case of an application referred to the Secretary of State or to the Assembly or in the case of an appeal, to the Secretary of State; and
- 200. (j) in the case of an application referred to the Secretary of State or the Assembly or of an appeal, the address to which representations should be sent¹⁰;

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- 1972 (2) the applicant must, unless he has not, and was not reasonably able to acquire, such rights as would enable him to do so, post on the land a notice containing the information specified in head (1) above, except that the date named as the latest date on which the documents will be available for inspection must be not less than 21 days later than the date on which the notice is first posted¹¹;

- 1973 (3) the notice mentioned in head (2) above must:

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- 201. (a) be left in position for not less than seven days in the 28 days immediately preceding the date of the submission of the statement; and
- 202. (b) be affixed firmly to some object on the land and sited and displayed in such a way as to be easily visible to, and readable by, members of the public without going on to the land¹².

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The statement, when submitted, must be accompanied by:

- 1974 (i) a copy of the notice mentioned in head (1) above certified by or on behalf of the applicant as having been published in a named newspaper on a date specified in the certificate; and

- 1975 (ii) a certificate by or on behalf of the applicant which states either:

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- 203. (A) that he has posted a notice on the land in compliance with these provisions and when he did so, and that the notice was left in position for not less than seven days in the 28 days immediately preceding the date of the submission of the statement, or that, without any fault or intention on his part, it was removed, obscured or defaced before seven days had elapsed and he took reasonable steps for its protection or replacement, specifying the steps taken; or
- 204. (B) that the applicant was unable to comply with heads (2) and (3) above because he did not have the necessary rights to do so; that he has taken such reasonable steps as are open to him to acquire those rights; and has been unable to do so, specifying the steps taken¹³.

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Where an applicant indicates that he proposes to provide such a statement and in such circumstances as are mentioned above, the relevant planning authority, the Secretary of State or the Assembly, or the inspector¹⁴, as the case may be, must, unless disposed to refuse the permission sought, suspend consideration of the application or appeal until receipt of the statement and the other documents mentioned in heads (i) and (ii) above and may not determine it during the period of 21 days beginning with the date of receipt of the statement and the other documents so mentioned¹⁵.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'environmental statement' see PARA 497 ante.

3 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 503 et seq post.

4 Ibid reg 14(1). Where it is proposed to submit an environmental statement in connection with an appeal, reg 14 applies with the substitution, except in reg (2)(a), of references to the appellant for references to the applicant: reg 14(8). As to appeals see PARA 598 et seq post.

5 For the meaning of 'the land' see PARA 493 note 4 ante.

6 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

7 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

8 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

9 For the meaning of 'development' see PARA 217 ante.

10 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 14(2).

11 Ibid reg 14(3).

12 Ibid reg 14(4).

13 Ibid reg 14(5). If any person issues a certificate which purports to comply with the requirements of reg 14(5)(b) (see head (ii) in the text) and which contains a statement which he knows to be false or misleading in a material particular, or recklessly issues a certificate which purports to comply with those requirements and which contains a statement which is false or misleading in a material particular, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale: reg 14(7). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

14 For the meaning of 'inspector' see PARA 488 note 5 ante.

15 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 14(6).

UPDATE

502 Publicity where an environmental statement is submitted after the planning application

TEXT AND NOTES 1-10--SI 1999/293 reg 14(1), (2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 10--SI 1999/293 reg 14(2A) added, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099; and amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 14, 15--SI 1999/293 reg 14(6) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/503. Provision of copies of environmental statements and further information for the Secretary of State or Assembly on referral or appeal.

503. Provision of copies of environmental statements and further information for the Secretary of State or Assembly on referral or appeal.

Where an applicant for planning permission¹ has submitted to the relevant planning authority² in connection with his application a statement which he refers to as an environmental statement³ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁴, or further information⁵, and:

- 1976 (1) the application is referred⁶ to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸; or
- 1977 (2) the applicant appeals⁹,

the applicant must supply the Secretary of State or the Assembly with three copies of the statement and, where relevant, the further information unless, in the case of a referred application, the relevant planning authority has done so when referring the application to him or to the Assembly¹⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

3 For the meaning of 'environmental statement' see PARA 497 ante.

4 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 504 et seq post.

5 For the meaning of 'further information' see ibid reg 19(1); and PARA 506 post.

6 Ie under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

7 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

8 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

9 Ie under the Town and Country Planning Act 1990 s 78 (as amended) (right to appeal against planning decisions and failure to take such decisions): see PARA 598 post.

10 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 15.

UPDATE

503 Provision of copies of environmental statements and further information for the Secretary of State or Assembly on referral or appeal

TEXT AND NOTES--SI 1999/293 reg 15 amended, in relation to England, by SI 2006/3295, SI 2008/2093, and in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/504. Procedure where an environmental statement is submitted to the Secretary of State or the Assembly.

504. Procedure where an environmental statement is submitted to the Secretary of State or the Assembly.

The following provisions apply where an applicant submits to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales², in relation to an EIA application³ which is before the Secretary of State or Assembly or before an inspector⁴ for determination or is the subject of an appeal to the Secretary of State or the Assembly, a statement which the applicant or appellant refers to as an environmental statement⁵ for the purposes⁶ of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁷. The applicant or appellant must submit four copies of the statement to the Secretary of State or the Assembly who must send one copy to the relevant planning authority⁸.

If at the same time as he submits a statement to the Secretary of State or the Assembly, the applicant or appellant serves a copy of it on any other body, he must comply with the requirements as to service of copies of the application and of any plan and the provision of specified information to that body⁹ and inform the Secretary of State or the Assembly¹⁰ of the name of every body whom he has so served and of the date of service¹¹.

The Secretary of State or the Assembly must:

- 1978 (1) inform the applicant or appellant of the number of copies required to enable him or it to comply with head (2) below; and
- 1979 (2) forward to any consultation body¹² which has not received a copy direct from the applicant a copy of the statement and inform any such consultation body that it may make representations¹³,

and the applicant or appellant must sent the copies required for the purposes of head (2) above to the Secretary of State or the Assembly¹⁴.

The Secretary of State or Assembly, or the inspector, may not determine the application until the expiry of 14 days from the last date on which a copy of the statement was served in accordance with the above provisions¹⁵.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

- 3 For the meaning of 'EIA application' see PARA 491 note 8 ante.
- 4 For the meaning of 'inspector' see PARA 488 note 5 ante.
- 5 For the meaning of 'environmental statement' see PARA 497 ante.
- 6 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 505 et seq post.
- 7 Ibid reg 16(1).
- 8 Ibid reg 16(2).
- 9 le he must comply with ibid reg 13(1)(a), (b) (see PARA 501 ante) as if the reference in reg 13(1)(b) to the relevant planning authority were a reference to the Secretary of State or to the Assembly: reg 16(3). For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.
- 10 le inform him or it of the matters mentioned in ibid reg 13(1)(c): see PARA 501 ante.
- 11 Ibid reg 16(3).
- 12 For the meaning of 'consultation body' see PARA 498 note 9 ante.
- 13 le the Secretary of State or the Assembly must comply with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 13(2) (except reg 13(2)(a)) (see PARA 501 ante) as if references therein to the relevant planning authority were references to the Secretary of State or the Assembly and, in the case of an appeal, references to the applicant were references to the appellant: reg 16(4) (as modified: see note 7 supra).
- 14 le the applicant or appellant must comply with ibid reg 13(3) (see PARA 501 ante) as if references therein to the relevant planning authority were references to the Secretary of State or the Assembly and, in the case of an appeal, references to the applicant were references to the appellant: reg 16(4) (as modified: see note 7 supra).
- 15 le the Secretary of State or Assembly, or the inspector, must comply with ibid reg 13(4) (see PARA 501 ante) as if it referred to him or to it instead of to the relevant planning authority: reg 16(4) (as modified: see note 7 supra).

UPDATE

504 Procedure where an environmental statement is submitted to the Secretary of State or the Assembly

TEXT AND NOTE 8--SI 1999/293 reg 16(2) amended in relation to England: SI 2006/3295.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/505. Availability of copies of environmental statements.

505. Availability of copies of environmental statements.

An applicant for planning permission¹ or an appellant who submits in connection with his application or appeal a statement which he refers to as an environmental statement² for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999³ must ensure that a reasonable number of copies of the statement are

available at the address named in the notices published or posted pursuant to the statutory requirements⁴ as the address at which such copies may be obtained⁵.

A reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of a statement so made available⁶.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'environmental statement' see PARA 497 ante.

3 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 506 et seq post.

4 Ie pursuant to the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8 (as amended) (see PARA 471 ante) or the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 14 (see PARA 502 ante).

5 Ibid reg 17.

6 Ibid reg 18.

UPDATE

505 Availability of copies of environmental statements

TEXT AND NOTES 1-5--SI 1999/293 reg 17 amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(e) Procedure on Submission of Environmental Statements; Publicity/506. Further information and evidence respecting environmental statements.

506. Further information and evidence respecting environmental statements.

Where the relevant planning authority¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³, or an inspector⁴, is dealing with an application or appeal in relation to which the applicant or appellant has submitted a statement which he refers to as an environmental statement⁵ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁶, and is of the opinion that the statement should contain additional information in order to be an environmental statement, it or he must notify the applicant or appellant in writing accordingly, and the applicant or appellant must provide that additional information ('further information')⁷. The following provisions apply in relation to further information, except in so far as the further information is provided for the purposes of an inquiry⁸ and the request for that information so made stated that it was to be provided for such purposes⁹:

- 1980 (1) the recipient of further information pursuant to the above provisions must publish in a local newspaper circulating in the locality in which the land¹⁰ is situated a notice stating:

- 205. (a) the name of the applicant for planning permission or the appellant, as the case may be, and the name and address of the relevant planning authority;
 - 206. (b) the date on which the application was made and, if it be the case, that it has been referred to the Secretary of State or the Assembly for determination or is the subject of an appeal to him or to it;
 - 207. (c) the address or location and the nature of the proposed development¹¹;
 - 208. (d) that further information is available in relation to an environmental statement which has already been provided;
 - 209. (e) that a copy of the further information may be inspected by members of the public at all reasonable hours;
 - 210. (f) an address in the locality in which the land is situated at which the further information may be inspected and the latest date on which it will be available for inspection, being a date not less than 21 days later than the date on which the notice is published;
 - 211. (g) an address, whether or not the same as that given pursuant to head (f) above, in the locality in which the land is situated at which copies of the further information may be obtained;
 - 212. (h) that copies may be obtained there so long as stocks last;
 - 213. (i) if a charge is to be made for a copy, the amount of the charge;
 - 214. (j) that any person wishing to make representations about the further information should make them in writing, before the date specified in accordance with head (f) above, to the relevant planning authority, the Secretary of State or the Assembly, or the inspector, as the case may be; and
 - 215. (k) the address to which representations should be sent¹²;
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- 1981 (2) the recipient of the further information must send a copy of it to each person to whom the statement to which it relates was¹³ sent¹⁴;
 - 1982 (3) where the recipient of the further information is the relevant planning authority it must send to the Secretary of State or the Assembly three copies of the further information¹⁵;
 - 1983 (4) the recipient of the further information may by notice in writing require the applicant or appellant to provide such number of copies of the further information as is specified in the notice, being the number required for the purposes of head (2) or head (3) above¹⁶;
 - 1984 (5) where information is so requested, the relevant planning authority, the Secretary of State or the Assembly, or the inspector, as the case may be, must suspend determination of the application or appeal, and may not determine it before the expiry of 14 days after the date on which the further information was sent to all persons to whom the statement to which it relates was sent or the expiry of 21 days after the date that notice of it was published in a local newspaper, whichever is the later¹⁷;
 - 1985 (6) the applicant or appellant who provides further information in accordance with these provisions must ensure that a reasonable number of copies of the information is available at the address named in the notice published pursuant to head (1) above as the address at which such copies may be obtained¹⁸;
 - 1986 (7) a reasonable charge reflecting printing and distribution costs may be made to a member of the public for a copy of the further information made available in accordance with head (6) above¹⁹.

The relevant planning authority or the Secretary of State or Assembly, or an inspector, may in writing require an applicant or appellant to produce such evidence as it or he may reasonably call for to verify any information in the applicant's or appellant's environmental statement²⁰.

- 1 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.
- 2 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.
- 3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.
- 4 For the meaning of 'inspector' see PARA 488 note 5 ante.
- 5 For the meaning of 'environmental statement' see PARA 497 ante.
- 6 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 507 et seq post.
- 7 Ibid regs 2(1), 19(1).
- 8 le an inquiry held under the Town and Country Planning Act 1990: see PARA 651 et seq post.
- 9 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 19(2).
- 10 For the meaning of 'the land' see PARA 493 note 4 ante.
- 11 For the meaning of 'development' see PARA 217 ante.
- 12 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 19(3).
- 13 le was sent in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended).
- 14 Ibid reg 19(4).
- 15 Ibid reg 19(5).
- 16 Ibid reg 19(6).
- 17 Ibid reg 19(7).
- 18 Ibid reg 19(8).
- 19 Ibid reg 19(9).
- 20 Ibid reg 19(10).

UPDATE

506 Further information and evidence respecting environmental statements

TEXT AND NOTES--SI 1999/293 reg 19 amended, in relation to England, by SI 2006/3295, SI 2008/2093, and, in relation to Wales, by SI 2006/3099, SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(f) Availability of Directions etc; Notification of Decisions/507. Availability of opinions, directions etc for inspection.

(f) Availability of Directions etc; Notification of Decisions

507. Availability of opinions, directions etc for inspection.

Where particulars of a planning application are placed on Part I of the register¹, the relevant planning authority² must take steps to secure that there is also placed on that Part a copy of any relevant:

- 1987 (1) screening opinion³;
- 1988 (2) screening direction⁴;
- 1989 (3) scoping opinion⁵;
- 1990 (4) scoping direction⁶;
- 1991 (5) notification given⁷ that an environmental statement⁸ is required;
- 1992 (6) direction that particular proposed development is exempted from the application of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁹;
- 1993 (7) environmental statement, including any further information¹⁰;
- 1994 (8) statement of reasons accompanying any of the above¹¹.

Where the relevant planning authority adopts a screening opinion or scoping opinion, or receives a request for a screening opinion¹² or a screening direction¹³, a copy of a screening direction, a scoping direction, or such a direction as is referred to in head (6) above before an application is made for planning permission for the development¹⁴ in question, the authority must take steps to secure that a copy of the opinion, request, or direction and any accompanying statement of reasons is made available for public inspection at all reasonable hours at the place where the appropriate register, or relevant section of that register, is kept; and copies of those documents must remain so available for a period of two years¹⁵.

1 For these purposes, 'register' means a register kept pursuant to the Town and Country Planning Act 1990 s 69 (as substituted) (see PARA 466 ante): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1).

2 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

3 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

4 For the meaning of 'screening direction' see PARA 492 note 20 ante.

5 For the meaning of 'scoping opinion' see PARA 498 ante.

6 For the meaning of 'scoping direction' see PARA 499 ante.

7 Ie under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(2) (see PARA 495 ante), reg 8(2) (see PARA 496 ante) or reg 9(4) (appeals: see PARA 618 post).

8 For the meaning of 'environmental statement' see PARA 497 ante.

9 Ie a direction under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 4(4): see PARA 492 ante.

10 For the meaning of 'further information' see PARA 506 ante.

11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 20(1). Failure to comply with reg 20(1) does not, however, invalidate a screening opinion or direction: see *Younger Homes (Northern) Ltd v First Secretary of State* [2004] EWCA Civ 1060, [2004] All ER (D) 01 (Jul); and see also *Ghadami v Harlow District Council* [2004] EWHC 1883 (Admin) at [47], [2005] LGR 24, [2004] All ER (D) 609 (Jul) per Richards J.

12 le a request under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 10(1): see PARA 498 ante.

13 le a request under ibid reg 11(2): see PARA 499 ante.

14 For the meaning of 'development' see PARA 217 ante.

15 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 20(2).

UPDATE

507 Availability of opinions, directions etc for inspection

TEXT AND NOTES 1-11--SI 1999/293 reg 20(1) amended, in relation to England, by SI 2006/3295, SI 2008/2093, and, in relation to Wales, by SI 2006/3099, SI 2008/2335.

TEXT AND NOTES 12-15--SI 1999/293 reg 20(2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(f) Availability of Directions etc; Notification of Decisions/508. Duties to inform the public and the Secretary of State or the Assembly of final decisions.

508. Duties to inform the public and the Secretary of State or the Assembly of final decisions.

Where an EIA application¹ is determined by a local planning authority², the authority must:

1995 (1) in writing³, inform the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ of the decision;

1996 (2) inform the public of the decision, by publishing a notice in a newspaper circulating in the locality in which the land⁶ is situated, or by such other means as are reasonable in the circumstances; and

1997 (3) make available for public inspection at the place where the appropriate register⁷, or relevant section of that register, is kept a statement containing:

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216. (a) the content of the decision and any conditions attached thereto;

217. (b) the main reasons and considerations on which the decision is based; and

218. (c) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development⁸.

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Where an EIA application is determined by the Secretary of State or the Assembly, or by an inspector⁹, the Secretary of State or the Assembly must notify the relevant planning authority¹⁰ of the decision and provide the authority with such a statement as is mentioned in head (3) above¹¹. The relevant planning authority must, as soon as reasonably practicable after receipt

of such a notification, comply with heads (2) and (3) above in relation to the decision so notified as if it were a decision of the authority¹².

- 1 For the meaning of 'EIA application' see PARA 491 note 8 ante.
- 2 As to local planning authorities see PARA 28 et seq ante.
- 3 As to sending documents etc see PARA 492 note 8 ante.
- 4 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.
- 5 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.
- 6 For the meaning of 'the land' see PARA 493 note 4 ante.
- 7 For these purposes, 'appropriate register' means the register on which particulars of an application for planning permission for the relevant development have been placed or would fall to be placed if such an application were made: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1). For the meaning of 'register' see PARA 507 note 1 ante; and for the meaning of 'planning permission' see PARA 43 note 6 ante.
- 8 Ibid reg 21(1). The fact that the requirement in reg 21(1) focuses on the availability of information after the decision has been made means that a breach of reg 21 should not necessarily lead to the quashing of the decision itself; it is, in principle, capable of being remedied through a mandatory order requiring the authority to make available a statement at the place, and containing the information, specified in reg 21: see *R (on the application of Richardson) v North Yorkshire County Council* [2003] EWHC 764 (Admin), [2004] 1 P & CR 361, [2003] All ER (D) 268 (Apr).
- 9 For the meaning of 'inspector' see PARA 488 note 5 ante.
- 10 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.
- 11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 21(2).
- 12 Ibid reg 21(3).

UPDATE

508 Duties to inform the public and the Secretary of State or the Assembly of final decisions

TEXT AND NOTES 1-8--SI 1999/293 reg 21(1) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(g) Special Cases/509. Development by a local planning authority.

(g) Special Cases

509. Development by a local planning authority.

Where the relevant planning authority¹ is also, or would be, the applicant, whether alone or jointly with any other person, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999² apply to a Schedule 1 application³ or Schedule 2 application⁴, or proposed application, subject to prescribed modifications⁵.

An authority which is minded to make a planning application in relation to which it would be the relevant planning authority may adopt a screening opinion⁶ or request the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸, in writing⁹ to make a screening direction¹⁰.

A relevant planning authority which proposes to carry out development¹¹ which it considers may be:

- 1998 (1) permitted development of a specified description¹²; or
- 1999 (2) development for which permission would be granted but for the restriction of the grant of permission by old simplified planning zone schemes or enterprise zone orders¹³,

may adopt a screening opinion or request the Secretary of State or the Assembly to make a screening direction¹⁴.

A request under the above provisions must be accompanied by:

- 2000 (a) a plan sufficient to identify the land¹⁵;
- 2001 (b) a brief description of the nature and purpose of the development and of its possible effects on the environment; and
- 2002 (c) such other information or representations as the authority may wish to provide or make¹⁶.

An authority making such a request must send to the Secretary of State or the Assembly any additional information he or it may request in writing to enable him or it to make a direction¹⁷.

1 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

2 The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 510 et seq post.

3 For the meaning of 'Schedule 1 application' see PARA 495 note 3 ante.

4 For the meaning of 'Schedule 2 application' see PARA 495 note 4 ante.

5 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 22(1). The prescribed modifications are as follows (reg 22(1)(a)-(f)):

29 (1) subject to reg 22(1)(b), (2), (3), regs 5, 6 (see PARAS 493-503 ante) do not apply;

30 (2) reg 7(2)-(7) (see PARA 495 ante) does not apply, and reg 7(1) applies as if the reference to reg 5(3) were omitted;

31 (3) regs 10,11 (see PARAS 498-499 ante) do not apply;

32 (4) reg 12(1)-(3) (see PARA 500 ante) does not apply, and reg 12(4) applies to any consultation body from whom the relevant planning authority requests assistance as it applies to a body notified in accordance with reg 12(3);

33 (5) save for the purposes of reg 16(3), (4) (see PARA 504 ante), reg 13 (see PARA 501 ante) applies as if for reg 13(1), there were substituted: '(1) When a relevant planning authority making an EIA application lodge a statement which they refer to as an environmental statement for the purposes of these Regulations, they shall (a) serve a copy of that statement, the relevant

application and any plan submitted with it on each consultation body; (b) inform each consultation body that representations may be made to the relevant planning authority; and (c) send to the Secretary of State [or to the Assembly] within 14 days of lodging the statement three copies of the statement and a copy of the relevant application and of any documents submitted with the application.'; and as if reg 13(2), (3) were omitted;

34 (6) reg 16 (see PARA 504 ante) applies as if reg 16(2) were omitted.

6 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

7 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

8 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

9 As to sending documents etc see PARA 492 note 8 ante.

10 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 22(2). For the meaning of 'screening direction' see PARA 492 note 20 ante. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 6(3), (4) (see PARA 494 ante) applies to such a request as it applies to a request made pursuant to reg 5(6): reg 22(2).

11 For the meaning of 'development' see PARA 217 ante.

12 Ie development of a description specified in the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 (as amended) (see PARA 265 et seq ante) other than development of a description specified in art 3(12) (as amended) (see PARA 255 ante).

13 Ie but for the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 23: see PARA 510 post.

14 Ibid reg 22(3) (as modified: see note 10 supra). Regulation 6(3), (4) (see PARA 494 ante) applies to such a request as it applies to a request made pursuant to reg 5(6): reg 22(3).

15 For the meaning of 'the land' see PARA 493 note 4 ante.

16 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 22(4).

17 Ibid reg 22(5).

UPDATE

509 Development by a local planning authority

TEXT AND NOTES--In relation to England, as to the restriction of the grant of planning permission by local development order see SI 1999/293 reg 24A (added by SI 2006/3295).

NOTE 5--SI 1999/293 reg 22(1) amended, in relation to England, by SI 2006/3295, SI 2008/2093, and, in relation to Wales, by SI 2006/3099, SI 2008/2335.

TEXT AND NOTES 6-10--SI 1999/293 reg 22(2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Assessment of Environmental Impact/(g) Special Cases/510. Restriction of grant of permission by old simplified planning zone schemes or enterprise zone orders.

510. Restriction of grant of permission by old simplified planning zone schemes or enterprise zone orders.

Any adoption or approval of a simplified planning zone scheme¹, order designating an enterprise zone² or approval of a modified scheme in relation to an enterprise zone³ which had effect immediately before 24 March 1999 to grant planning permission⁴ ceased, on and after that date, to have effect to grant planning permission for Schedule 1 development⁵, and ceased to have effect to grant planning permission for Schedule 2 development⁶ unless either:

- 2003 (1) the relevant planning authority⁷ has adopted a screening opinion⁸; or
- 2004 (2) the Secretary of State⁹ or, in relation to Wales, the National Assembly for Wales¹⁰ has made a screening direction¹¹,

to the effect that the particular proposed development is not EIA development¹². This provision does not, however, affect the completion of any development¹³ begun before that date¹⁴.

1 As to making simplified planning zone schemes see PARA 428 et seq ante.

2 As to the designation of enterprise zones see PARA 1495 post.

3 As to the modification of enterprise zone schemes see PARA 1499 post.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 For the meaning of 'Schedule 1 development' see PARA 489 ante.

6 For the meaning of 'Schedule 2 development' see PARA 490 ante.

7 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

8 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

9 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

10 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

11 For the meaning of 'screening direction' see PARA 492 note 20 ante.

12 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 23(1). For the meaning of 'EIA development' see PARA 488 ante.

13 For the meaning of 'development' see PARA 217 ante.

14 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 23(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(g) Special Cases/511. Restriction of grant of permission by new simplified planning zone schemes or enterprise zone orders.

511. Restriction of grant of permission by new simplified planning zone schemes or enterprise zone orders.

After 14 March 1999, no:

- 2005 (1) adoption or approval of a simplified planning zone scheme¹;
- 2006 (2) order designating an enterprise zone made²; or
- 2007 (3) modified scheme in relation to an enterprise zone approved³,

grants planning permission⁴:

- 2008 (a) for EIA development⁵; or
- 2009 (b) for Schedule 2 development⁶ unless that grant is made subject to the prior adoption of a screening opinion⁷ or prior making of a screening direction⁸ that the particular proposed development is not EIA development⁹.

1 As to making simplified planning zone schemes see PARA 428 et seq ante.

2 As to the designation of enterprise zones see PARA 1495 post.

3 As to the modification of enterprise zone schemes see PARA 1499 post.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 For the meaning of 'EIA development' see PARA 488 ante.

6 For the meaning of 'Schedule 2 development' see PARA 490 ante.

7 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

8 For the meaning of 'screening direction' see PARA 492 note 20 ante.

9 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 24.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(g) Special Cases/512. Unauthorised development; in general.

512. Unauthorised development; in general.

The provision made by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹ with regard to:

- 2010 (1) prohibition on the grant, on an appeal against an enforcement notice, of planning permission for unauthorised EIA development²;
- 2011 (2) screening opinions of the local planning authority before the issue of an enforcement notice³;
- 2012 (3) screening directions of the Secretary of State⁴ or, in relation to Wales, of the National Assembly for Wales⁵ after service of a 'regulation 25 notice'⁶;

- 2013 (4) provision of information after service of such a notice as is mentioned in head (3) above⁷;
- 2014 (5) enforcement appeals to the Secretary of State or the Assembly without a screening opinion or screening direction⁸;
- 2015 (6) enforcement appeals to the Secretary of State or the Assembly without an environmental statement⁹;
- 2016 (7) the procedure on an enforcement appeal where an environmental statement is submitted to the Secretary of State or the Assembly¹⁰;
- 2017 (8) further information and evidence respecting environmental statements provided under heads (1) to (7) above¹¹;
- 2018 (9) publicity for such environmental statements or further information¹²; and
- 2019 (10) public inspection of relevant documents¹³;

is discussed in other parts of this title¹⁴.

1 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante.

2 See *ibid* reg 25(1); and PARA 611 post.

3 See *ibid* reg 25(2)-(5); and PARA 561 post.

4 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

5 As to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

6 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(6); and PARA 561 post. For the meaning of 'regulation 25 notice' see PARA 561 post.

7 See *ibid* reg 25(7), (8); and PARA 561 post.

8 See *ibid* reg 25(9)-(11); and PARA 619 post.

9 See *ibid* reg 25(12); and PARA 619 post.

10 See *ibid* reg 25(13); and PARA 620 post.

11 See *ibid* reg 25(14)-(15); and PARA 620 post.

12 See *ibid* reg 25(16)-(18); and PARA 620 post.

13 See *ibid* reg 25(19)-(21); and PARAS 561, 610-611, 619-620 post.

14 See PARAS 561, 610-611, 619-620 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(g) Special Cases/513. ROMP applications; in general.

513. ROMP applications; in general.

The application of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹ to ROMP applications² is discussed below³.

1 le the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 514 et seq post.

2 le to applications to determine the conditions to which certain planning permissions relating to minerals are to be subject: see PARA 741 et seq post. For the meaning of 'ROMP application' see PARA 741 post.

3 See PARA 741 et seq post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(h) Development with Significant Transboundary Effects/514. Development in England and Wales likely to have significant effects in another EEA state.

(h) Development with Significant Transboundary Effects

514. Development in England and Wales likely to have significant effects in another EEA state.

Where it comes to the attention of the Secretary of State¹ or, in relation to Wales, to the attention of the National Assembly for Wales² that development proposed to be carried out in England or Wales is the subject of an EIA application³ and is likely to have significant effects on the environment in another EEA state⁴, or where another EEA state likely to be significantly affected by such development so requests, the Secretary of State or the Assembly must:

- 2020 (1) send to the EEA state as soon as possible and no later than their date of publication in the London Gazette referred to in head (2) below, the specified particulars⁵ and, if he or the Assembly thinks fit, the specified information⁶; and
- 2021 (2) publish the information in head (1) above in a notice placed in the London Gazette indicating the address where additional information is available; and
- 2022 (3) give the EEA state a reasonable time in which to indicate whether it wishes to participate in the procedure for which the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁷ provide⁸.

Where an EEA state indicates, in accordance with head (3) above, that it wishes to participate in the procedure for which the 1999 Regulations provide, the Secretary of State or the Assembly must as soon as possible send to that EEA state the following information:

- 2023 (a) a copy of the application concerned;
- 2024 (b) a copy of the environmental statement⁹ in respect of the development¹⁰ to which that application relates; and
- 2025 (c) relevant information regarding the procedure under the 1999 Regulations,

but only to the extent that such information has not been provided to the EEA state earlier in accordance with head (1) above¹¹. The Secretary of State or the Assembly, in so far as he or it is concerned, must also arrange for the particulars and information referred to above to be made available, within a reasonable time, to the specified authorities¹² and the public concerned in the territory of the EEA state likely to be significantly affected¹³ and must ensure that those authorities and the public concerned are given an opportunity, before planning permission¹⁴ for

the development is granted, to forward to the Secretary of State or the Assembly, within a reasonable time, their opinion on the information supplied¹⁵.

The Secretary of State or the Assembly must¹⁶:

- 2026 (i) enter into consultations with the EEA state concerned regarding, inter alia, the potential significant effects of the development on the environment of that EEA state and the measures envisaged to reduce or eliminate such effects; and
- 2027 (ii) determine in agreement with the other EEA state a reasonable period of time for the duration of the consultation period¹⁷.

Where an EEA state has been consulted in accordance with heads (i) and (ii) above, on the determination of the application concerned the Secretary of State or the Assembly must inform the EEA state of the decision and must forward to it a statement of:

- 2028 (A) the content of the decision and any conditions attached thereto;
- 2029 (B) the main reasons and considerations on which the decision is based; and
- 2030 (C) a description, where necessary, of the main measures to avoid, reduce and, if possible, offset the major adverse effects of the development¹⁸.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 For the meaning of 'EIA application' see PARA 491 note 8 ante.

4 'EEA state' means a state party to the Agreement on the European Economic Area: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1) (definition added, and reg 27 amended, by SI 2000/2867).

5 I.e. the particulars mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 27(2) (as amended). Those particulars are (1) a description of the development, together with any available information on its possible significant effect on the environment in another EEA state, and information on the nature of the decision which may be taken: reg 27(2) (as amended: see note 4 supra).

6 I.e. the information referred to in *ibid* reg 27(3) (as amended): see the text and notes 9-11 *infra*.

7 I.e. the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 *et seq* ante, PARA 515 *post*.

8 *Ibid* reg 27(1) (as amended: see note 4 supra).

Regulation 27 (as so amended) applies to unauthorised EIA development as if for reg 27(1)(a) there were substituted: '(a) on consideration of an appeal under [the Town and Country Planning Act 1990] section 174 the Secretary of State [or the Assembly] is of the opinion that the matters which are alleged to constitute the breach of planning control comprise or include EIA development and that the development has or is likely to have significant effects on the environment in another EEA state; or': reg 26(1)(a) (as so amended). As to appeals under the Town and Country Planning Act 1990 s 174 (as amended) against enforcement notices see PARA 603 *et seq* *post*; and as to unauthorised EIA development see PARA 512 ante.

9 For the meaning of 'environmental statement' see PARA 497 ante.

10 For the meaning of 'development' see PARA 217 ante.

11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 27(3) (as amended: see note 4 supra). Regulation 27 (as so amended) applies to unauthorised EIA development as if in reg 27(3)(a) the words 'a copy of the application concerned' were replaced by the words 'a description of the development concerned' and in reg 27(3)(b) the words 'to which that application relates' were omitted: reg 26(1)(b), (c).

12 le the authorities referred to in EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 6(1) (substituted by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)) (ie the authorities likely to be concerned by the project by reason of their specific environmental responsibilities which have been designated by member states as authorities to be consulted for this purpose, either in general terms or on a case by case basis).

13 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 27(4)(a) (as amended: see note 4 supra).

14 For the meaning of 'planning permission' see PARA 43 note 6 ante.

15 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 27(4)(b) (as modified and amended: see note 4 supra).

16 le in accordance with EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 7(4) (substituted by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)).

17 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 27(5) (as and amended: see note 4 supra).

18 Ibid reg 27(6) (as amended: see note 4 supra). Regulation 27 (as so amended) applies to unauthorised EIA development as if in reg 27(6) the word 'application' was replaced by the word 'appeal': reg 26(1)(d).

UPDATE

514 Development in England and Wales likely to have significant effects in another EEA state

TEXT AND NOTES 9-11--SI 1999/293 reg 27(3) further amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 12, 13--SI 1999/293 reg 27(4)(a) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

TEXT AND NOTE 18--SI 1999/293 reg 27(6) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/A. RELEVANT CONSIDERATIONS/(B) Assessment of Environmental Impact/(h) Development with Significant Transboundary Effects/515. Projects in another EEA state likely to have significant transboundary effects.

515. Projects in another EEA state likely to have significant transboundary effects.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² receives³ from another EEA state⁴ information which that EEA state has gathered from the developer of a proposed project in that EEA state which is likely to have significant effects on the environment in England and Wales, the Secretary of State or the Assembly must⁵:

- 2031 (1) enter into consultations with that EEA state regarding, inter alia, the potential significant effects of the proposed project on the environment in England and Wales and the measures envisaged to reduce or eliminate such effects; and
- 2032 (2) determine in agreement with that EEA state a reasonable period, before development consent for the project is granted, during which members of the public in England and Wales may submit representations⁶ to the competent authority in that EEA state⁷.

The Secretary of State or the Assembly, in so far as he or it is concerned, must also:

- 2033 (a) arrange for the information referred to in head (1) above to be made available, within a reasonable time, both to the authorities in England and Wales which he or the Assembly considers are likely to be concerned by the project by reason of their specific environmental responsibilities, and to the public concerned in England and Wales; and
- 2034 (b) ensure that those authorities and the public concerned in England and Wales are given an opportunity, before development consent for the project is granted, to forward to the competent authority in the relevant EEA state, within a reasonable time, their opinion on the information supplied⁸.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 Ie pursuant to EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 7(2) (substituted by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)).

4 For the meaning of 'EEA state' see PARA 514 note 4 ante.

5 Ie in accordance with EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 7(4) (substituted by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)).

6 Ie pursuant to EC Council Directive 85/337 (OJ L175, 05.07.85, p 40) art 7(3)(b) (substituted by EC Council Directive 97/11 (OJ L73, 14.03.97, p 05)).

7 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 28(1) (reg 28 amended by SI 2000/2867).

8 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 28(2) (as amended: see note 7 supra).

UPDATE

515 Projects in another EEA state likely to have significant transboundary effects

TEXT AND NOTES--SI 1999/293 reg 28(1), (2) further amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/B. DECLINING DETERMINATION OF APPLICATIONS/516. Power of local planning authority to decline to determine subsequent application.

B. DECLINING DETERMINATION OF APPLICATIONS

516. Power of local planning authority to decline to determine subsequent application.

Partly as from a day to be appointed in relation to Wales¹, a local planning authority² may decline to determine a relevant application³ if:

- 2035 (1) any of the statutory conditions is satisfied; and
- 2036 (2) the authority thinks there has been no significant change in the relevant considerations⁴ since the relevant event⁵.

The statutory conditions are:

- 2037 (a) that in the period of two years ending with the date on which the application mentioned above is received the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ has refused a similar application⁸ referred⁹ to him or to it¹⁰;
- 2038 (b) that in that period the Secretary of State or the Assembly has dismissed an appeal against the refusal of a similar application or an appeal against a failure to take a decision¹¹ in respect of a similar application¹²;
- 2039 (c) that in that period the local planning authority has refused more than one similar application and there has been no appeal to the Secretary of State or the Assembly against any such refusal¹³.

Until the provisions set out above are brought into force in relation to Wales, however, and in respect of applications which are received by the local planning authority in Wales before before that date¹⁴ and in England before 24 August 2005¹⁵, the following provisions apply. A local planning authority may decline to determine an application for planning permission for the development of any land if:

- 2040 (i) within the period of two years ending with the date on which the application is received, the Secretary of State or the Assembly has refused a similar application¹⁶ referred to him or to it¹⁷ or has dismissed an appeal against the refusal of a similar application¹⁸; and
- 2041 (ii) in the opinion of the authority there has been no significant change since the refusal or, as the case may be, dismissal mentioned in head (i) above in the development plan, so far as material to the application, or in any other material considerations¹⁹.

1 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. The provisions set out in the text were brought into force in relation to England on 24 August 2005 (see the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 2; and PARA 4 note 8 ante) but at the date at which this title states the law, no such day had been appointed for their commencement in relation to Wales.

2 As to local planning authorities see PARA 28 et seq ante.

3 For these purposes, a relevant application is: (1) an application for planning permission for the development of any land; (2) an application for approval in pursuance of the Town and Country Planning Act 1990 s 60(2) (see PARA 254 ante); s 70A(5) (s 70A substituted by the Planning and Compulsory Purchase Act 2004 s 43(1), partly as from a day to be appointed in relation to Wales: see note 1 supra). For the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'development' see PARA 217 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

4 For these purposes, the relevant considerations are: (1) the development plan so far as material to the application; (2) any other material considerations: Town and Country Planning Act 1990 s 70A(6) (as substituted: see note 3 supra). For the meaning of 'development plan' see PARA 91 ante; and as to material considerations see PARA 485 ante.

5 Ibid s 70A(1) (as substituted: see note 3 supra). For these purposes, the relevant event is: (1) for the purposes of s 70A(2), (4) (as so substituted) (see heads (a), (c) in the text), the refusal of the similar application; (2) for the purposes of s 70A(3) (as so substituted) (see head (b) in the text), the dismissal of the appeal: s 70A(7) (as so added and substituted).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 70A (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 An application for planning permission is similar to another application if, and only if, the local planning authority thinks that the development and the land to which the applications relate are the same or substantially the same: Town and Country Planning Act 1990 s 70A(8) (as substituted: see note 3 supra).

9 Ie under ibid s 76A (as added) (major infrastructure projects in England: see PARA 481 ante) or s 77 (as amended) (see PARA 483 ante).

10 Ibid s 70A(2) (as substituted (see note 3 supra).

11 Ie under the Town and Country Planning Act 1990 s 78(2) (as amended): see PARA 598 post.

12 Ibid s 70A(3) (as substituted: see note 3 supra).

13 Ibid s 70A(4) (as substituted: see note 3 supra).

14 See the Planning and Compulsory Purchase Act 2004 s 43(5).

15 See note 1 supra.

16 For these purposes, an application for planning permission for the development of any land is only to be taken to be similar to a later application if the development and the land to which the applications relate are in the opinion of the local planning authority the same or substantially the same: Town and Country Planning Act 1990 s 70A(2) (as added by the Planning and Compensation Act 1991 s 17(1)).

17 Ie under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

18 The reference in head (i) in the text to an appeal against the refusal of an application includes an appeal under ibid s 78(2) (as amended) in respect of an application: s 70A(3) (as added: see note 16 supra).

19 Ibid s 70A(1) (as added: see note 16 supra).

UPDATE

516 Power of local planning authority to decline to determine subsequent application

TEXT AND NOTES 1-13--Town and Country Planning Act 1990 s 70A(4A), (4B) added: Planning Act 2008 Sch 7 para 2(1), (3).

NOTE 4--See *R (on the application of Jeeves) v Gravesham BC* [2006] EWHC 1249 (Admin), [2007] 1 P & CR 246 (existence and terms of guidance on the interpretation of the 1990 Act s 70A was a relevant consideration).

TEXT AND NOTE 13--Town and Country Planning Act 1990 s 70A(4) amended: Planning Act 2008 Sch 7 para 2(1), (2) (in force in relation to England).

FOR DEVELOPMENT/(v) Determination of Applications/B. DECLINING DETERMINATION OF APPLICATIONS/517. Power to decline to determine overlapping application.

517. Power to decline to determine overlapping application.

As from a day to be appointed¹, and in relation only to applications received by the authority after that day², a local planning authority³ may decline to determine an application for planning permission⁴ for the development⁵ of any land⁶ which is made at a time when any of the statutory conditions applies in relation to a similar application⁷. The statutory conditions are:

2042 (1) that a similar application is under consideration by the local planning authority and the determination period⁸ for that application has not expired⁹;

2043 (2) that a similar application is under consideration¹⁰ by the Secretary of State¹¹ or, in relation to Wales, by the National Assembly for Wales¹² and the Secretary of State or the Assembly has not issued his or its decision¹³;

2044 (3) that a similar application:

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219. (a) has been granted by the local planning authority;

220. (b) has been refused by that authority; or

221. (c) has not been determined by that authority within the determination period,

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2045 and the time within which an appeal could be made¹⁴ to the Secretary of State or to the Assembly has not expired¹⁵.

The determination of applications received by the local planning authority before the appointed day may be refused under the original statutory provisions which are set out in heads (i) and (i) of the previous paragraph¹⁶.

1. ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2. See the Planning and Compulsory Purchase Act 2004 s 43(5).

3. As to local planning authorities see PARA 28 et seq ante.

4. For the meaning of 'planning permission' see PARA 43 note 6 ante.

5. For the meaning of 'development' see PARA 217 ante.

6. For the meaning of 'land' see PARA 43 note 6 ante.

7. Town and Country Planning Act 1990 s 70B(1) (s 70B substituted by the Planning and Compulsory Purchase Act 2004 s 43(1), as from a day to be appointed: see note 1 supra). An application for planning permission is similar to another application if, and only if, the local planning authority thinks that the development and the land to which the applications relate are the same or substantially the same: Town and Country Planning Act 1990 s 70B(5) (as so substituted).

8. For these purposes, the determination period is: (1) the period prescribed by the development order for the determination of the application; or (2) such longer period as the applicant and the authority have agreed for the determination of the application: *ibid* s 70B(6) (as substituted: see note 7 supra). For the meaning of 'development order' see PARA 252 ante.

9. *Ibid* s 70B(2) (as substituted: see note 7 supra).

10. ie in pursuance of *ibid* s 76A (as added) (see PARA 481 ante) or s 77 (as amended) (see PARA 483 ante) or on an appeal under s 78 (as amended) (see PARA 598 post).

11. As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Town and Country Planning Act 1990 s 70B (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Town and Country Planning Act 1990 s 70B(3) (as substituted: see note 7 supra).

14 Ie under ibid s 78 (as amended): see PARA 598 post.

15 Ibid s 70B(4) (as substituted: see note 7 supra).

16 See ibid s 70A (as originally added); and PARA 516 ante.

UPDATE

517 Power to decline to determine overlapping application

TEXT AND NOTES 1-15--Town and Country Planning Act 1990 s 70B(4A), (4B) added: Planning Act 2008 Sch 7 para 3(1), (3).

TEXT AND NOTES 1-7--Town and Country Planning Act 1990 s 70B(1) amended, s 70B(7) added: Planning Act 2008 Sch 7 para 3(1), (2), (4) (in force in relation to England).

TEXT AND NOTE 1--Day appointed is 6 April 2009: SI 2009/384.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/B. DECLINING DETERMINATION OF APPLICATIONS/518. Duty not to entertain application which does not comply with statutory requirements.

518. Duty not to entertain application which does not comply with statutory requirements.

Partly as from a day to be appointed¹, the local planning authority² may not entertain any application in respect of which the Town and Country Planning Act 1990 or any provision made under it imposes a requirement as to:

- 2046 (1) the form or manner in which the application must be made;
- 2047 (2) the form or content of any document or other matter which accompanies the application,

if the application fails to comply with the requirement³.

1 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 note 8 ante.

2 As to local planning authorities see PARA 28 et seq post.

3 Town and Country Planning Act 1990 s 327A(1), (2) (added by the Planning and Compulsory Purchase Act 2004 s 42(5), partly as from a day to be appointed: see note 1 supra). As to the form and content of applications for planning permission see the Town and Country Planning Act 1990 s 62 (as prospectively substituted); and PARA 448 ante.

UPDATE

518 Duty not to entertain application which does not comply with statutory requirements

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1061 (England), SI 2007/1369 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(A) Outline Planning Permission/519. Outline planning permission to be granted subject to statutory conditions.

C. DECISION ON APPLICATION

(A) OUTLINE PLANNING PERMISSION

519. Outline planning permission to be granted subject to statutory conditions.

'Outline planning permission' means planning permission¹ granted, in accordance with the provisions of a development order², with the reservation for subsequent approval by the local planning authority³ or, as the case may be, by the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵, of matters not particularised in the application ('reserved matters')⁶.

Where outline planning permission is granted for development⁷ consisting in or including the carrying out of building⁸ or other operations, it must be granted⁹ subject to conditions to the effect:

- 2048 (1) that, in the case of any reserved matter¹⁰, application for approval must be made not later than the expiration of three years¹¹ beginning with the date of the grant of outline planning permission¹²; and
- 2049 (2) in relation to England where the application is received after 24 August 2005, and, as from a day to be appointed¹³, in relation to Wales, that the development to which the permission relates must be begun¹⁴ not later than the expiration of two years¹⁵ from the final approval of the reserved matters¹⁶ or, in the case of approval on different dates, the final approval of the last such matter to be approved¹⁷; or
- 2050 (3) in relation to applications in England received before 24 August 2005, and at the date at which this title states the law in relation to Wales, that the development to which the permission relates must be begun not later than the expiration of five years¹⁸ from the date of the grant of outline planning permission or, if later, that it must be begun as set out in head (2) above¹⁹.

If outline planning permission is granted without the conditions so required, it is deemed to have been granted subject to those conditions²⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development order' see PARA 252 ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 92 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 92(1). When granting outline planning permission the local planning authority is not required to give full particulars as it is unlikely that all particulars would be available on an outline planning permission application: *R v Rochdale Metropolitan Borough Council, ex p Tew* [1999] 3 PLR 74. See also *R v Rochdale Metropolitan Borough Council, ex p Milne* (2000) 81 P & CR 27 (full knowledge does not require every available piece of information). An off-site mitigation measure imposed by the Secretary of State is not a 'reserved matter' for these purposes: *R (on the application of Murray) v Hampshire County Council* [2003] All ER (D) 174 (May), CA.

When consideration is being given to the impact on the environment in the context of a planning decision, it is permissible for the decision-maker to contemplate the likely decisions that others will take in relation to details where those others have the interests of the environment as one of their objectives; the decision-maker is not, however, entitled to leave the assessment of likely impact to a future occasion simply because he contemplates that the future decision-maker will act competently. Constraints must be placed on the planning permission within which future details can be worked out, and the decision-maker must form a view about the likely details and their impact on the environment: *Smith v Secretary of State for the Environment, Transport and the Regions* [2003] EWCA Civ 262 at [33], [2003] 2 P & CR 162, [2003] All ER (D) 36 (Mar) per Waller LJ.

7 For the meaning of 'development' see PARA 217 ante.

8 For the meaning of 'building operations' see PARA 218 ante.

9 le subject to the Town and Country Planning Act 1990 s 92(2)-(6) (as amended): see the text and notes 10-21 infra.

10 See *R v Bromley London Borough Council, ex p Sievers* (1980) 41 P & CR 294, DC.

11 The authority concerned with the terms of an outline planning permission may, in applying the Town and Country Planning Act 1990 s 92(2) (as amended), substitute, or direct that there be substituted, for the periods of three years or two years referred to therein such other periods respectively, whether longer or shorter, as the authority considers appropriate: s 92(4) (amended in relation to England only by the Planning and Compulsory Purchase Act 2004 s 51(2)(c), (6) in respect of applications received by the authority after 24 August 2005; prospectively amended in relation to Wales, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). For other purposes (ie in relation to Wales and in relation to applications in England received before that date), the Town and Country Planning Act 1990 s 92(4) (as originally enacted) also refers to the period of five years.

The authority may also specify, or direct that there be specified, separate periods under ibid s 92(2)(a) (see head (1) in the text) in relation to separate parts of the development to which the planning permission relates; and, if the authority does so, the condition required by s 92(2)(b) (as amended) (see heads (2) in the text) must then be framed correspondingly by reference to those parts, instead of by reference to the development as a whole: s 92(5).

In considering whether to exercise its powers under s 92(4) (as amended), s 92(5), the authority must have regard to the provisions of the development plan and to any other material considerations: s 92(6). For these purposes, 'the authority concerned' means (1) the local planning authority or the Secretary of State or the Assembly, in the case of planning permission granted by them; (2) in the case of planning permission deemed to be granted under s 90(1) (as amended) (see PARA 238 ante), the department on whose direction planning permission is deemed to be granted; and (3) in the case of planning permission deemed to be granted under s 90(2) (see PARA 238 ante), the relevant Secretary of State: see s 93(1). For the meaning of 'development plan' see PARA 91 ante; and as to material considerations see PARAS 477-485 ante.

12 Town and Country Planning Act 1990 s 92(2)(a).

13 See note 17 infra.

14 As to when development has been begun for these purposes see PARA 221 ante. See also *Agecrest Ltd v Gwynedd County Council* [1998] JPL 325 (for work to be considered to have been begun as part of a development to which planning permission relates, an intention to develop when the work was carried out must be found); distinguished in *Coghurst Wood Leisure Park Ltd v Secretary of State for Transport, Local*

Government and the Regions and Rother District Council [2002] EWHC 1091 (Admin), [2002] All ER (D) 458 (May), [2003] JPL 206.

15 As to the alteration of this period see note 11 *supra*.

16 For these purposes, a reserved matter is treated as finally approved (1) where an application for approval is granted; or (2) in a case where the application is made to the local planning authority and on an appeal to the Secretary of State or the Assembly against the authority's decision on the application the Secretary of State or the Assembly grants the approval, when the appeal is determined: Town and Country Planning Act 1990 s 93(2). In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 93(2) has effect with the omission of s 93(2)(b) and the word 'or' immediately preceding it: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

17 Town and Country Planning Act 1990 s 92(2)(b) (amended in relation to England only by the Planning and Compulsory Purchase Act 2004 s 51(2), (a), (b), (6); prospectively amended in relation to Wales, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed).

18 See note 11 *supra*.

19 Town and Country Planning Act 1990 s 92(2)(b) (as originally enacted).

Where a local planning authority grants planning permission, the fact that any of the conditions of the permission are required by the provisions of the Town and Country Planning Act 1990 s 91 (as amended) (see PARA 537 post) or s 92 (as amended) to be imposed, or are deemed thereby to be imposed, does not prevent the conditions being the subject of an appeal under s 78 (as amended) (see PARA 598 post) against the decision of the authority: s 93(3). In the case of planning permission, whether outline or other, which has conditions attached to it by or under s 91 (as amended) or s 92 (as amended): (1) development carried out after the date by which the conditions require it to be carried out is treated as not authorised by the permission; and (2) an application for approval of a reserved matter, if it is made after the date by which the conditions require it to be made, is treated as not made in accordance with the terms of the permission: s 93(4).

In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 93(3) is to be omitted: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

Without prejudice to the generality of the Planning (Consequential Provisions) Act 1990 ss 3-5, Sch 3 paras 1, 2, notwithstanding the repeal by that Act of the Town and Country Planning Act 1971 s 292(1), Sch 24 (as amended), the provisions of Sch 24 (as amended) continue to have effect, in so far as they are not specifically reproduced in the Planning (Consequential Provisions) Act 1990 Sch 3 and remain capable of having effect, with any reference in those provisions to any provision of the repealed enactments which is reproduced in the consolidating Acts being taken, so far as the context otherwise permits, as including a reference to the corresponding provision of those Acts: Planning (Consequential Provisions) Act 1990 Sch 3 para 3. For the meaning of 'the repealed enactments' and 'the consolidating Acts' see PARA 2 note 5 *ante*.

20 Town and Country Planning Act 1990 s 92(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(A) Outline Planning Permission/520. Reserved matters.

520. Reserved matters.

Where an application is made to the local planning authority¹ for outline planning permission², the authority may grant permission subject to a condition specifying reserved matters³ for the authority's subsequent approval⁴.

Where the authority which is to determine an application for outline planning permission is of the opinion that, in the circumstances of the case, the application ought not to be considered separately from all or any of the reserved matters, it must within the period of one month

beginning with the receipt of the application notify the applicant that the authority is unable to determine the application unless further details are submitted, specifying the further details the authority requires⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'outline planning permission' see PARAS 467 note 5, 519 ante. Notwithstanding the requirements relating to reserved matters, an outline planning permission is a complete grant of planning permission and may not be varied after the date on which it is granted: *Lewis Thirkwell Ltd v Secretary of State for the Environment* [1978] JPL 844; *Centre Hotels (Cranston) Ltd v Secretary of State for the Environment and Hammersmith and Fulham London Borough Council* [1982] JPL 108.

3 For the meaning of 'reserved matters' see PARAS 467 note 4, 519 ante.

4 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 3(1). Where subsequent approval of detailed proposals for access within the boundaries of the site is so required, a local planning authority may not make approval conditional on the acquisition by the developer of rights outside the land currently under his control: *Medina Borough Council v Proberun Ltd* (1990) 61 P & CR 77, sub nom *Proberun Ltd v Secretary of State for the Environment* [1990] 3 PLR 79, CA. A planning authority is not required to consider the need for an assessment of environmental impact at the reserved matters application stage: *R v Hammersmith and Fulham London Borough Council, ex p Trustees of the Council for the Protection of Rural England (London Branch)* (1999) 81 P & CR 73, CA. See also *R (on the application of Barker) v Bromley London Borough Council* [2001] EWCA Civ 1766, [2002] 2 P & CR 96. Approval of reserved matters, where such approval is only one of the conditions imposed on a grant of outline planning permission, may not amount to a discharge of all the conditions: see *Darlington Borough Council v Lingfield Properties Ltd* [2004] EWHC 3185 (QB), [2005] All ER (D) 190 (Feb).

5 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 3(2).

UPDATE

520 Reserved matters

TEXT AND NOTES--Where layout is a reserved matter the application for outline planning permission must state the approximate location of buildings, routes and open spaces included in the development proposed: SI 1995/419 art 3(3) (art 3(3)-(5) added, in relation to England, by SI 2006/1062, and, in relation to Wales, by SI 2008/2336). Where scale is a reserved matter the application for outline planning permission must state the upper and lower limit for the height, width and length of each building included in the development proposed: SI 1995/419 art 3(4). Where access is a reserved matter the application for outline planning permission must state the area or areas where access points to the development proposed will be situated: art 3(5).

NOTE 4--Where it becomes apparent at the reserved matters application stage that a project is likely to have significant effects on the environment, EEC Council Directive 85/337 is to be interpreted as requiring an environmental impact assessment to be carried out at that stage: Case C-290/03 *R (on the application of Barker) v Bromley LBC* [2006] QB 764, ECJ. *Barker*, cited, reversed: [2006] UKHL 52, [2006] 3 WLR 1209.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(A) Outline Planning Permission/521. Application for approval of reserved matters; in general.

521. Application for approval of reserved matters; in general.

An application¹ for approval of reserved matters²:

- 2051 (1) must be made in writing to the local planning authority³ and must give sufficient information to enable the authority to identify the outline planning permission⁴ in respect of which it is made;
- 2052 (2) must include such particulars, and be accompanied by such plans, as are necessary to deal with the matters reserved in the outline planning permission; and
- 2053 (3) must, except where the authority indicates that a lesser number is required, or where the application is made using electronic communications⁵, be accompanied by three copies of the application and the plans and drawings submitted with it⁶.

Where a planning authority has determined at the outline planning stage that an environmental impact assessment⁷ is unnecessary and has granted outline planning permission subject to the reservation of certain matters for later approval, it need not require such an assessment in relation to the approval of reserved matters⁸.

1 More than one application may be made in respect of different reserved matters, or as alternatives to the same reserved matters, or in respect of different parts of the site: *Heron Corpn Ltd v Manchester City Council* [1978] 3 All ER 1240, [1978] 1 WLR 937, CA.

2 For the meaning of 'reserved matters' see PARAS 467 note 4, 519 ante.

3 As to local planning authorities see PARA 28 et seq ante. As to applications relating to county matters see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(1)(c), (2); and PARA 478 ante.

4 For the meaning of 'outline planning permission' see PARAS 467 note 5, 519 ante.

5 For the meaning of 'electronic communications' see PARA 451 ante.

6 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4 (amended in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156). As to the procedure for lodging the application see PARA 450 ante.

The local planning authority is not entitled to refuse an application for approval of reserved matters on grounds other than the reserved matter or matters which go to the principle of the development itself: *Hamilton v West Sussex County Council* [1958] 2 QB 286, [1958] 2 All ER 174. The authority is, however, entitled to treat an application in respect of reserved matters as a fresh application for planning permission if it shows an alteration in the nature of the development for which the outline permission was granted: *Shemara Ltd v Luton Corpn* (1967) 18 P & CR 520; *Calcaria Construction Co (York) Ltd v Secretary of State for the Environment* (1974) 27 P & CR 435; cf *Hamilton v West Sussex County Council* supra. See also *Chalgray Ltd v Secretary of State for the Environment* (1976) 33 P & CR 10 (application in respect of reserved matters showed new access). The question whether conditions may be imposed on the approval of reserved matters was left open in *Chelmsford Corpn v Secretary of State for the Environment* (1971) 22 P & CR 880; cf *R v Newbury District Council, ex p Stevens and Partridge* (1992) 65 P & CR 438 (local planning authority has power to give conditional approval of a reserved matter).

7 Ie an assessment under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 487 et seq ante.

8 See *R (on the application of the Noble Organisation Ltd) v Thanet District Council* [2005] EWCA Civ 782, (2005) Times, 26 August, [2005] All ER (D) 322 (Jun).

Conditional Grant of Planning Permission/522. Conditional grant of planning permission; in general.

(B) CONDITIONAL GRANT OF PLANNING PERMISSION

522. Conditional grant of planning permission; in general.

Conditions may be imposed¹ on the grant of planning permission²:

- 2054 (1) for regulating the development³ or use⁴ of any land⁵ under the control of the applicant, whether or not it is land in respect of which the application was made, or requiring the carrying out of works on any such land⁶, so far as appears to the local planning authority⁷ to be expedient for the purposes of or in connection with the development authorised by the permission⁸;
- 2055 (2) for requiring the removal of any buildings or works⁹ authorised by the permission, or the discontinuance of any use of land so authorised, at the end of a specified period, and the carrying out of any works required for the reinstatement of land at the end of that period¹⁰.

Where:

- 2056 (a) planning permission is granted for development consisting of or including the carrying out of building¹¹ or other operations subject to a condition that the operations shall be commenced not later than a time specified in the condition¹²; and
- 2057 (b) any building or other operations are commenced after the time so specified¹³,

the commencement and carrying out of those operations do not constitute development for which that permission was granted¹⁴. In general, operations carried out in breach of a condition cannot be relied upon as material operations capable of commencing the development¹⁵ for the statutory purposes¹⁶.

1 le without prejudice to the generality of the Town and Country Planning Act 1990 s 70(1); see PARA 486 ante.

2 le under ibid s 70 (as amended); see PARAS 484, 486 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'use' see PARA 221 note 4 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 The land need not be in the ownership of the applicant provided that he has the necessary rights over the land to comply with the proposed condition: *George Wimpey & Co Ltd v New Forest District Council* [1979] JPL 314. A condition in respect of land that is outside the application site or not under the control of the applicant is valid as long as compliance is possible: *Davenport v Hammersmith and Fulham London Borough Council* (1999) 78 P & CR 421, [1999] JPL 1122, DC.

7 As to local planning authorities see PARA 28 et seq ante.

8 Town and Country Planning Act 1990 s 72(1)(a). As to the imposition of conditions generally see PARA 523 post. At the date at which this title states the law, s 72(1)(a) is modified in its application, by virtue of s 299(2) (as amended; prospectively repealed: see PARA 454 ante), to the making and determination of applications in respect of Crown land for planning permission as follows: for the words 'any land under the control of the

applicant (whether or not it is land in respect of which the application was made)' there is to be substituted 'the land in respect of which the application is made': see the Town and Country Planning (Crown Land Applications) Regulations 1995, SI 1995/1139, reg 2, Schedule para 1.

The Town and Country Planning Act 1990 Sch 5 Pt I (paras 1-6) (as amended) (see PARA 711 et seq post) has effect for the purposes of making special provision with respect to the conditions which may be imposed on the grant of planning permission for development consisting of the winning and working of minerals or involving the depositing of refuse or waste materials: s 72(5) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 2). For these purposes, except in so far as the context otherwise requires, 'depositing of refuse or waste materials' includes the depositing of mineral waste: Town and Country Planning Act 1990 s 336(1) (definition added by the Planning and Compensation Act 1991 Sch 1 paras 1, 12(a)). For the meanings of 'the winning and working of minerals' and 'depositing of mineral waste' see PARA 16 notes 2-3 ante.

9 For the meaning of 'buildings or works' see PARA 43 note 9 ante. See also *Delta Design Ltd v Secretary of State for the Environment, Transport and the Regions* (1999) 80 P & CR 76, [2000] 4 PLR 1, CA.

10 Town and Country Planning Act 1990 s 72(1)(b). A planning permission granted subject to such a condition as is mentioned in s 72(1)(b) is referred to as 'planning permission granted for a limited period': s 72(2). Section 72(2) has effect subject to Sch 5 para 1(6)(a) (see PARA 711 post): s 72(5).

Where permission purported to be granted subject to its expiring on a specified date, it was construed as subject to a condition that the use would then be discontinued: *Truvox Ltd v Harrow Corp'n* (1959) 173 Estates Gazette 627; *Francis v Yiewsley and West Drayton UDC* [1958] 1 QB 478 at 493, [1957] 3 All ER 529 at 538, 539, CA, per Parker LJ.

Conditions cannot be enforced if permission for the development has already been granted by general development order (*East Barnet UDC v British Transport Commission* [1962] 2 QB 484, [1961] 3 All ER 878, DC; and see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1960] AC 260, [1959] 3 All ER 1, HL) or if permission was not required (*Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL). As to the effect of a failure to impose a condition regarding the cessation of use of land in respect of which temporary planning permission only has been sought see *I'm Your Man Ltd v Secretary of State for the Environment* (1998) 77 P & CR 251, [1998] All ER (D) 418 (permission granted without condition, in effect permanent). See also *Petter v Secretary of State for the Environment, Transport and the Regions* (1999) 79 P & CR 214, [1999] EGCS 42, CA (relevance of applicant being deprived of home and livelihood to question of whether a temporary planning permission in respect of a mobile home should be extended).

11 For the meaning of 'building operations' see PARA 218 ante.

12 Town and Country Planning Act 1990 s 72(3)(a). Section 73(3)(a) does not apply to a condition attached to a planning permission by or under s 91 (as amended) (see PARA 537 post) or s 92 (as amended) (see PARA 519 ante): s 72(4).

13 Ibid s 72(3)(b).

14 Ibid s 72(3).

15 Ie within the meaning of ibid s 56(2): see PARA 221 ante.

16 See *Henry Boot Homes Ltd v Bassetlaw District Council* [2002] EWCA Civ 983 at [37]-[39], [2003] 1 P & CR 372, [2002] All ER (D) 421 (Nov) and the authorities there cited.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(B) Conditional Grant of Planning Permission/523. Conditions which may be imposed.

523. Conditions which may be imposed.

The power to impose conditions on the grant of planning permission¹, although wide, is not unlimited². In particular, a condition must have a planning purpose³, must fairly and reasonably relate to the permitted development⁴, and must be such as a reasonable planning authority

could properly impose⁵. Furthermore, a condition must be certain in the sense of being capable of being given a sensible or ascertainable meaning⁶. If a condition is declared by the court⁷ to be invalid, the planning permission itself will be a nullity unless the offending condition can be severed from the permission, although a condition which is fundamental or important cannot be severed⁸.

A condition may restrict the use of premises according to the personal circumstances of the occupier, and may in its application continue indefinitely⁹.

The local planning authority must state in writing the reasons for imposing any conditions¹⁰; and in the construction or interpretation of a condition the reasons thus stated should be regarded¹¹.

1 le under the Town and Country Planning Act 1990 s 72 (as amended): see PARA 522 ante.

2 *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554 at 572, [1958] 1 All ER 625 at 633, CA, per Lord Denning (on appeal [1960] AC 260, [1959] 3 All ER 1, HL); *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636, [1960] 3 All ER 503, HL; *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL. A condition duplicating an existing statutory prohibition is unnecessary and should not be imposed: *Westminster City Council v Secretary of State for the Environment* [1991] 2 PLR 44. Where a condition requires the making of an application, the question of whether certain documents amount to such an application is, in the absence of specific rules, one of fact and degree to be answered by the judge: *Tesco Stores Ltd v North Norfolk District Council* (1999) 78 P & CR 359, CA. See also *R v Bristol City Council, ex p Anderson* (1999) 79 P & CR 358, [1999] COD 532, CA.

For relevant guidance issued to local planning authorities in England and Wales prior to the transfer of functions in Wales to the National Assembly for Wales see ODPM (ex-DOE) Circular 11/95, Welsh Office Circular 35/95: *The Use of Conditions in Planning Permission*. For suggested models of acceptable and unacceptable conditions see Appendices A, B; and as to the status of such guidance see PARA 9 ante.

3 'Planning purposes' may include the provisions of the development plan: *Newbury District Council v Secretary of State for the Environment* [1981] AC 578 at 618, [1980] 1 All ER 731 at 754, HL, per Lord Scarman. A condition may not be imposed for some ulterior purpose, however desirable that purpose may seem in the public interest: *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554 at 572, [1958] 1 All ER 625 at 633, CA, per Lord Denning; *Newbury District Council v Secretary of State for the Environment* supra at 599 and at 739 per Lord Dilhorne and at 619 and 755 per Lord Scarman. See also *Nourish v Adamson* [1998] JPL 859 (condition intended to protect appearance of local countryside was valid). Where no application is made under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante) to challenge the making of a condition imposed by the Secretary of State, the court will proceed on the basis that the condition means what, on its face, it manifestly does mean: *R v Stratford upon Avon District Council, ex p Lane* [1998] PLCR 148. It is only appropriate to impose a condition on a grant of planning permission if permission can be granted subject to that condition: see *Tapecrow Ltd v First Secretary of State* [2005] All ER (D) 51 (May) at [18] per James Goudie QC (sitting as a deputy judge of the High Court).

4 *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554, [1958] 1 All ER 625, CA; *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL (condition requiring the demolition of buildings after the expiry of a specified period held not fairly and reasonably to relate to permission to use the buildings as warehouses). Cf *Al and P (Stratford) Ltd v Tower Hamlets London Borough Council* (1975) 237 Estates Gazette 416 (condition requiring the use of existing office accommodation to be restricted to ancillary office use upheld); *Penwith District Council v Secretary of State for the Environment* (1977) 34 P & CR 269, DC (permission given for an extension to an existing factory with conditions relating to the premises as a whole); *Peak Park Joint Planning Board v Secretary of State for the Environment* (1979) 39 P & CR 361 (conditions proposed for a new limestone quarry restricted the working of an existing quarry); *R v South Northamptonshire District Council, ex p Crest Homes plc* [1994] 3 PLR 47, CA (council entitled to ask developer for costs where residential development made additional infrastructure necessary); *Tarmac Heavy Building Materials UK Ltd v Secretary of State for the Environment, Transport and the Regions* (1999) 79 P & CR 260 (condition requiring removal of a concrete-making plant after specified period not fairly and reasonably related to planning permission to use site for sand and gravel extraction). If a total change of use is only justified in so far as it enables maintenance of a listed building's appearance, a condition requiring demolition must be said to relate to the development: *Delta Design Ltd v Secretary of State for the Environment, Transport and the Regions* (1999) 80 P & CR 76, [2000] 4 PLR 1, CA. In the case of a planning permission granted subject to the construction of a motorway link that is subsequently cancelled, the revocation of that permission will not amount to an effective embargo on all development on that site: *R v Secretary of State for the Environment, Transport and the Regions, ex p Kohlerdome Corp Ltd* [1999] EGCS 30.

5 *Associated Provincial Picture Houses Ltd v Wednesbury Corp*n [1948] 1 KB 223 at 233, [1947] 2 All ER 680 at 685, CA, per Lord Greene MR. A condition is unreasonable if (1) it requires the applicant to take on at his own expense a significant part of the duties of the local planning authority or to dedicate land to the public use (*Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA (condition required the applicant to construct a service road and make it available for use by neighbouring landowners); *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* [1974] QB 720, [1974] 2 All ER 643, DC (condition required houses to be built by the applicant to be let to tenants nominated by the local authority); *Britannia (Cheltenham) Ltd v Secretary of State for the Environment and Tewkesbury Council* [1978] JPL 554 (dedication of land to public use; appeal dismissed on different grounds sub nom *Robert Hitchins Builders Ltd v Secretary of State for the Environment and Tewkesbury District Council* [1979] JPL 534, CA); *MJ Shanley Ltd v Secretary of State for the Environment and South Bedfordshire District Council* [1982] JPL 380, DC (proposed provision of open space for public use); *Bradford City Metropolitan Council v Secretary of State for the Environment* (1986) 53 P & CR 55, [1986] 1 EGLR 199, CA (condition that developers should widen road at their own expense as part of planning permission manifestly unreasonable)); (2) if it takes away the substance of the permission (*Kent County Council v Secretary of State for the Environment* (1976) 33 P & CR 70 at 79 per Sir Douglas Franks QC sitting as a deputy judge); or (3) if compliance with the condition is not within the applicant's control (*Hayns v Secretary of State for the Environment* (1977) 36 P & CR 317 (provision of vision splays on land not under control of applicant)). However, the mere fact that a condition has no reasonable prospect of being fulfilled does not, by itself, mean that planning permission must be refused (*British Railways Board v Secretary of State for the Environment* [1994] JPL 32, HL) but the underlying requirement that a condition must be reasonable remains (*Carter Commercial Developments Ltd v Secretary of State for the Environment* [2002] EWHC 1200 (Admin), [2003] JPL 35). See also *Kingsway Investments (Kent) Ltd v Kent County Council* [1969] 2 QB 332, [1969] 1 All ER 601, CA (reversed sub nom *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72, [1970] 1 All ER 70, HL); *Pedgrift v Oxfordshire County Council* (1991) 63 P & CR 246, CA. As to the relationship between environmental and planning controls see *R v Kenet District Council, ex p Somerfield Property Co Ltd* [1999] JPL 361. A negative condition (a 'Grampian condition') may, however, be imposed to the effect eg that development of the site is not to be begun until works have been carried out on other land: *Grampian Regional Council v City of Aberdeen District Council* (1983) 47 P & CR 633, HL (decided under the equivalent Scottish legislation); and see *George Wimpey & Co Ltd v New Forest District Council* [1979] JPL 314; cf *Merritt v Secretary of State for the Environment, Transport and the Regions* [2000] 3 PLR 125 (policy against granting planning permission subject to Grampian condition not to be applied as a mandatory requirement); *R (on the application of Orchard (Development) Holdings plc) v First Secretary of State* [2005] All ER (D) 09 (Jul) ('Grampian' condition proposed by claimant too imprecise). Quaere whether a planning authority can assert that a condition it has itself imposed is unreasonable: *Pedgrift v Oxfordshire County Council* supra at 258-259 per Staughton LJ.

As to whether a condition is unreasonable if it interferes with private rights of ownership see *Hall & Co Ltd v Shoreham-by-Sea UDC* supra at 7 and at 247 per Willmer LJ; *R v Hillingdon London Borough Council, ex p Royco Homes Ltd* supra at 731 and at 651 per Widgery CJ.

Subject to the requirement that conditions must fairly relate to the permitted development, there appears to be no principle requiring a local planning authority to refrain from conditions abrogating existing use rights: *Kingston-upon-Thames Royal London Borough Council v Secretary of State for the Environment* [1974] 1 All ER 193 at 196, [1973] 1 WLR 1549 at 1553, DC, per Lord Widgery CJ, distinguishing *Minister of Housing and Local Government v Hartnell* [1965] AC 1134, [1965] 1 All ER 490, HL. See also *Prosser v Minister of Housing and Local Government* (1968) 67 LGR 109, DC. As to conditions requiring the suppression of an existing use of another site see *Pyx Granite Co Ltd v Ministry of Housing and Local Government* [1958] 1 QB 554 at 573, [1958] 1 All ER 625 at 633, CA, per Lord Denning, approving Selected Appeals VII/12 (permission for factory on new site; condition requiring closure of existing works improper). A condition may be imposed restricting the use of premises to a particular use to the exclusion of other uses within the same use class: *City of London Corp v Secretary of State for the Environment* (1971) 23 P & CR 169.

A condition should not be lightly set aside on grounds of unreasonableness; a benevolent construction is to be given to the discretion exercised by a public representative body in carrying out functions entrusted by Parliament: *Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735 at 760, [1964] 2 All ER 627 at 637, HL, per Lord Guest; cf *Kruse v Johnson* [1898] 2 QB 91, DC (reasonableness of byelaws); and see LOCAL GOVERNMENT VOL 69 (2009) PARA 564.

6 As a planning permission is a public document, it is essential that any obligation contained in it is clearly and expressly imposed; there is no room for imposing a condition by implication: see *Sevenoaks District Council v First Secretary of State* [2004] EWHC 771 (Admin), [2004] 14 EG 141 (CS), [2004] All ER (D) 421 (Mar). A condition will be void if it is incapable of being given a definite or ascertainable meaning; mere ambiguity does not invalidate a condition: *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636, [1960] 3 All ER 503, HL (condition requiring cottages to be occupied by members of the agricultural population upheld). In *MJ Shanley Ltd v Secretary of State for the Environment and South Bedfordshire District Council* [1982] JPL 380, DC a proposed condition that the first opportunity to buy houses be given to local people was held to be invalid and unenforceable because it did not give any indication as to the method or terms on which the first opportunity was to be offered. See also *David Lowe & Sons Ltd v Musselburgh Corp*n 1974 SLT 5, Ct of Sess (condition fixing the ratio of private houses to local authority houses void for uncertainty); *Alderson v Secretary of State for the Environment* (1984) 49 P & CR 307, 270 Estates Gazette 225, CA; *Slough Industrial Estates Ltd v Secretary of*

State for the Environment [1986] 2 EGLR 201, 280 Estates Gazette 1257 (conditions requiring local occupation upheld). The doctrine of contra proferentes does not apply to the interpretation of planning conditions (*Crisp from the Fens Ltd v Rutland County Council* (1950) 114 JP 105, 48 LGR 210, CA); rather, they should be construed in a benevolent manner (*Carter Commercial Developments Ltd v Secretary of State for the Environment* [2002] EWHC 1200 (Admin), [2003] JPL 35). The fact that there may be practical difficulties in enforcing a condition does not render it invalid: *Bizony v Secretary of State for the Environment* [1976] JPL 306; *Kent County Council v Secretary of State for the Environment* (1976) 33 P & CR 70. It is doubtful whether the equitable remedy of rectification is in principle available in respect of a notification of planning consent: *Fisher v Wychavon District Council* [2001] JPL 694, [2000] All ER (D) 1755, CA. As to the desirability of interpreting a condition in a common sense way see *Northampton Borough Council v First Secretary of State* [2005] EWHC 168 (Admin) at [26], [2005] All ER (D) 97 (Feb) per Sullivan J. As to the correction of errors in decisions by the Secretary of State or an inspector see the Planning and Compulsory Purchase Act 2004 s 56; and PARA 56 ante.

7 A decision of a local planning authority to impose a condition may be challenged either by way of appeal to the Secretary of State or the National Assembly for Wales under the Town and Country Planning Act 1990 s 78(1)(a) (see PARA 598 post) or by way of application to the High Court for judicial review (see PARA 650 post). The Secretary of State or the Assembly may reverse or vary any part of the decision of the local planning authority: see s 79(1)(b); and PARA 601 post. Where the original owner of land has failed to use his statutory right of appeal against the imposition of a condition, it is not appropriate for a successor in title to challenge the imposition of the condition by an application for judicial review: see *R v Elmbridge Borough Council, ex p Health Care Corp Ltd and Prime Commercial Properties* (1991) 63 P & CR 260.

8 See eg *Hall & Co Ltd v Shoreham-by-Sea UDC* [1964] 1 All ER 1, [1964] 1 WLR 240, CA; *Kent County Council v Kingsway Investments (Kent) Ltd* [1971] AC 72, [1970] 1 All ER 70, HL; *Newbury District Council v Secretary of State for the Environment* [1981] AC 578, [1980] 1 All ER 731, HL; *Allnatt London Properties Ltd v Middlesex County Council* (1964) 62 LGR 304 (defendants suggested no grounds on which permission might have been refused); *Pedgrift v Oxfordshire County Council* (1991) 63 P & CR 246, CA; *Mouchell Superannuation Fund Trustees v Oxfordshire County Council* [1992] 1 PLR 97, CA.

9 *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636, [1960] 3 All ER 503, HL (condition was designed to restrict occupation to agricultural workers). See also *Epping Forest District Council v Scott* (1985) 53 P & CR 79, [1986] JPL 603, DC; *Peak Park Joint Planning Board v Secretary of State for the Environment* [1991] 1 PLR 98; *R (on the application of Donovan) v First Secretary of State* [2004] EWHC 224 (Admin), [2004] All ER (D) 403 (Feb). Conditions restricting occupancy to gypsies and limiting the duration of the permission to three years from the date of the grant were upheld in *Doncaster Metropolitan Borough Council v First Secretary of State* [2003] EWHC 995 (Admin), [2003] All ER (D) 289 (Mar), despite the inspector's failure to impose a personal use condition. Occupancy conditions on commercial or industrial property are generally undesirable: see *Times Investment Ltd v Secretary of State for the Environment* (1990) 61 P & CR 98, [1990] 3 PLR 111, CA. Planning permission granted subject to a condition that the permission enures solely for the benefit of the occupier does not mean that the future use of the building after the alteration and the occupier's first occupation is restricted to the occupier: *Knott v Secretary of State for the Environment* (1996) 75 P & CR 65, [1997] JPL 713.

10 See PARA 534 post. Failure to state the reasons for a condition does not render the condition invalid: *Brayhead (Ascot) Ltd v Berkshire County Council* [1964] 2 QB 303, [1964] 1 All ER 149, DC.

11 *Crisp from the Fens Ltd v Rutland County Council* (1950) 114 JP 105, 48 LGR 210, CA; *Fawcett Properties Ltd v Buckingham County Council* [1961] AC 636 at 680, [1960] 3 All ER 503 at 519, HL; and see *McGahan v Windsor and Maidenhead Rural Borough Council* [2002] EWHC 1551 (Admin), (2002) Times, 30 July, [2002] All ER (D) 190 (Jul).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(C) Development without Compliance with Conditions Previously Attached/524. Determination of application to develop land without compliance with conditions previously attached.

(C) DEVELOPMENT WITHOUT COMPLIANCE WITH CONDITIONS PREVIOUSLY ATTACHED

524. Determination of application to develop land without compliance with conditions previously attached.

The following provisions apply to applications for planning permission¹ for the development² of land³ without complying with conditions subject to which a previous planning permission was granted⁴.

On such an application the local planning authority⁵ must consider only the question of the conditions subject to which planning permission should be granted, and:

- 2058 (1) if the authority decides that planning permission should be granted subject to conditions differing from those subject to which the previous permission was granted, or that it should be granted unconditionally, the authority must grant planning permission accordingly; and
- 2059 (2) if the authority decides that planning permission should be granted subject to the same conditions as those subject to which the previous permission was granted, the authority must refuse the application⁶.

The above provisions do not, however, apply if the previous planning permission was granted subject to a condition as to the time within which the development to which it related was to be begun and that time has expired without the development having been begun⁷.

Subject to transitional provisions⁸, and partly as from a day to be appointed in relation to Wales⁹, however, planning permission must not be granted under the above provisions to the extent that it has effect to change a condition subject to which a previous planning permission was granted by extending the time within which:

- 2060 (a) a development must be started;
- 2061 (b) an application for approval of reserved matters¹⁰ must be made¹¹.

In considering an appeal against a refusal to grant planning permission without compliance with conditions previously attached, an inspector has a discretion to consider whether or not it was originally appropriate to impose the condition, but must consider whether the condition is justified at the time that he determines the appeal¹².

1 For the meaning of 'planning permission' see PARA 43 note 9 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Town and Country Planning Act 1990 s 73(1). As to the grant of planning permission subject to conditions see PARAS 522-523 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 73(2). When considering an application under s 73(2), a local planning authority must consider the reason for and function of the planning permission conditions, and the degree to which they make a proposed development acceptable, which involves considering the relative impact on material planning considerations of adhering to the existing conditions, rather than allowing new conditions: *Allied London Property Investment Ltd v Secretary of State for the Environment* (1996) 72 P & CR 327. Where an application has been made under the Town and Country Planning Act 1990 s 73 (as amended), it is open to the council to reconsider the principle of the development: *R v Leicester City Council, ex p Powergen UK plc* (2000) 81 P & CR 47, CA; *Kebbell Development (t/a Kebbell Homes) v First Secretary of State* [2003] EWCA Civ 1855, [2003] All ER (D) 116 (Dec). The council may reconsider the principle of the development if the effect of granting the permission would be analogous to a renewal of permission: *Pye v Secretary of State for the Environment and North Cornwall District Council* [1999] PLCR 28. It has been held, in the context of planning permission granting mining rights (as to which see PARA 710 et seq post) that an application under the Town and

Country Planning Act 1990 s 73 (as amended) may challenge the lawfulness as well as the planning merits of a condition: see *Earthline Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599, [2003] 1 P & CR 393, [2002] All ER (D) 64 (Nov).

7 Town and Country Planning Act 1990 s 73(4). Section 73(4) refers to a previous planning permission and not an application for approval of reserved matters: *R v Secretary of State for the Environment, ex p Corby Borough Council* (1994) 68 P & CR 544.

8 The Planning and Compulsory Purchase Act 2004 s 51(3) (see note 11 infra) has effect only in relation to applications which are received by the local planning authority after its commencement: s 51(6). Furthermore, in relation to England only and during the period of one year beginning on 24 August 2005, s 51(3) has no effect in relation to an application to change, vary or discharge a condition subject to which a previous planning permission was granted before that date: see the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(2).

9 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121; at the date at which this title states the law, no such day had been appointed in relation to Wales.

10 Ie within the meaning of the Town and Country Planning Act 1990 s 92 (as amended): see PARA 519 ante.

11 Ibid s 73(5) (added by the Planning and Compulsory Purchase Act 2004 s 51(3), partly as from a day to be appointed: see note 9 supra).

12 *Sevenoaks District Council v Secretary of State for the Environment* (1994) 69 P & CR 87. As to appeals see PARA 598 et seq post.

UPDATE

524 Determination of application to develop land without compliance with conditions previously attached

TEXT AND NOTES--As to the duty of a local planning authority in England to consult specified persons before granting planning permission pursuant to the 1990 Act s 73 or replacement planning permission subject to a new time limit, see the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/419, art 10B (added by SI 2009/2261).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/ (D) Development Already Carried Out/525. Planning permission for development already carried out.

(D) DEVELOPMENT ALREADY CARRIED OUT

525. Planning permission for development already carried out.

On an application made to a local planning authority¹, the planning permission² which may be granted includes planning permission for development³ carried out:

- 2062 (1) without planning permission;
- 2063 (2) in accordance with planning permission granted for a limited period⁴; or
- 2064 (3) without complying with some condition subject to which planning permission was granted⁵,

before the date of the application⁶.

Planning permission for such development may be granted so as to have effect from:

- 2065 (a) the date on which the development was carried out; or
- 2066 (b) if it was carried out in accordance with planning permission granted for a limited period, the end of that period⁷.

In all respects save that the development has been commenced, an application for planning permission under these provisions is a conventional planning application and in dealing with it the local planning authority must have regard to the provisions of the development plan, so far as material, and to any other material considerations⁸. In the absence of any provision preventing the authority from considering the planning merits of the development proposed in the application, it is bound to consider the planning merits of permitting the development to continue⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'planning permission granted for a limited period' see PARA 522 note 10 ante.

5 As to the grant of planning permission subject to conditions see PARAS 522-523 ante. Although the need for a retrospective application under the Town and Country Planning Act 1990 s 73A (as added) may be triggered by the fact that there has been a breach of condition, the local planning authority, in considering the planning merits of the application, is not required to confine its attention to the appropriateness of the condition: *Wilkinson v Rosendale Borough Council* [2002] EWHC 1204 (Admin) at [51], [2003] JPL 82, [2002] All ER (D) 501 (May) per Sullivan J. See also *R v Leominster District Council, ex p Potheary* (1997) 76 P & CR 346, [1998] JPL 335, CA (planning authority entitled to take into account the fact that building was already in existence and also the likelihood of taking enforcement action to demolish it).

6 Town and Country Planning Act 1990 s 73A(1), (2) (s 73A added by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 16).

7 Town and Country Planning Act 1990 s 73A(3) (as added: see note 6 supra). As to the quashing of planning consent for the retention of a development already carried out see *Historic Buildings and Monuments Commission for England v Secretary of State for the Environment* [1997] 3 PLR 8 (replacement front door for unlisted 18th century house; application to quash consent refused).

8 As to material considerations see the Town and Country Planning Act 1990 s 70(2); and PARAS 484-485 ante.

9 See *Wilkinson v Rosendale Borough Council* [2002] EWHC 1204 (Admin) at [49]-[50], [2003] JPL 82, [2002] All ER (D) 501 (May) per Sullivan J.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/C. DECISION ON APPLICATION/(E) Departure Applications/526. In general.

(E) DEPARTURE APPLICATIONS

526. In general.

A local planning authority¹ may, in such cases and subject to such conditions as may be prescribed by directions given² by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴, grant permission for development⁵ which does not accord with the provisions of the development plan⁶ in force in the area in which the land to which the application relates is situated⁷. An application for planning permission for development which does not accord with one or more provisions of the development plan in force in the area in which the application site is situated is known as a 'departure application'⁸.

In 1999, the Secretary of State directed that a local planning authority is not to grant planning permission on a departure application unless it complies with any notification requirement imposed in relation to that application⁹ and the relevant period¹⁰ has expired or the Secretary of State has issued a decision¹¹. It may, however, grant planning permission on a departure application without complying with the notification requirements if the authority imposes such conditions on the permission as will ensure, in its opinion, that if the development is carried out in accordance with those conditions it will be in accordance with the provisions of the development plan¹².

1 As to local planning authorities see PARA 28 et seq ante.

2 I.e. under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended); see PARA 252 et seq ante. As to the giving of directions see art 27; and PARA 475 note 49 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

5 For the meaning of 'development' see PARA 217 ante.

6 For the meaning of 'development plan' see PARA 91 ante.

7 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 17.

8 See the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 1(2). The 1999 Directions are set out in ODPM (ex DOE) Circular 07/99 *The Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999* Annex 1.

9 See the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 2(1). The Secretary of State must be notified of a departure application which a local planning authority does not propose to refuse if it is for (1) development which consists of or includes the provision of more than 150 houses or flats or more than 5,000 square metres of gross retail, leisure, office or mixed commercial floor space; (2) development of land belonging to a planning authority by that authority or any other party, or for the development of any land by such an authority, whether alone or jointly with any other person; or (3) any other development which, by reason of its scale or nature or the location of the land, would significantly prejudice the implementation of the development plan's policies and proposals: see PARA 3.

10 I.e. the relevant period set out in the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 4. Where a copy of the application is sent to the Secretary of State pursuant to para 3 (see note 9 supra), that period is 21 days beginning with the date notified to the local planning authority by the Secretary of State as the date of receipt of the items specified in PARA 3; and if, before the expiry of that 21-day period, the Secretary of State has notified the local planning authority that he does not intend to issue a direction calling in the application under the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 ante), the local authority may proceed to determine the application: see the Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 4.

11 Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 3(1).

12 Town and Country Planning (Development Plans and Consultation) (Departures) Directions 1999 para 3(2). As to granting planning permission subject to conditions see PARAS 522-523 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(A) Timetable for Decisions by the Secretary of State/527. Time in which Secretary of State to take decisions; in general.

D. NOTIFICATION OF DECISION

(A) TIMETABLE FOR DECISIONS BY THE SECRETARY OF STATE

527. Time in which Secretary of State to take decisions; in general.

Schedule 2 to the Planning and Compulsory Purchase Act 2004¹ contains provisions about the time in which the Secretary of State² must take certain decisions³. Those provisions do not, however, apply in relation to any decision taken in the exercise of a function⁴ in relation to Wales if the function is exercisable in relation to Wales by the National Assembly for Wales⁵ by virtue of an order⁶ under the Government of Wales Act 1998⁷.

The Secretary of State may by order specify decisions or descriptions of decisions to which a timetable is not to apply⁸. A timetable is not to apply:

- 2067 (1) to a decision of the First Secretary of State⁹ on an appeal against a planning decision or failure to take such a decision¹⁰ which is to be made by a person appointed by him¹¹;
- 2068 (2) to a decision of the First Secretary of State on an appeal against a planning decision or failure to take such a decision¹² or a called-in application¹³ when connected with a decision:
- 248 222. (a) on an application referred to him under the provisions of the Town and Country Planning Act 1990 relating to major infrastructure projects¹⁴; or
- 223. (b) which is to be made by a person other than him¹⁵;
- 249 2069 (3) to a decision of the First Secretary of State to which the provisions of the Planning and Compulsory Purchase Act 2004 regarding connected decisions¹⁶ apply unless it is a decision falling within the specified descriptions¹⁷ of decision¹⁸.

1. I.e. the Planning and Compulsory Purchase Act 2004 s 55(1), Sch 2 (paras 1-8): see the text to note 8 infra; and PARA 528 et seq post.

2. As to the Secretary of State see PARA 19 ante.

3. Planning and Compulsory Purchase Act 2004 s 55(1).

4. For the meaning of 'function' see PARA 2 note 1 ante (definition applied by ibid s 117(1), (5)).

5. As to the exercise of planning functions by the National Assembly for Wales see PARA 20 ante.

6. I.e. an order under the Government of Wales Act 1998 s 22: see CONSTITUTIONAL LAW AND HUMAN RIGHTS. See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

7. Planning and Compulsory Purchase Act 2004 s 55(2).

8. Ibid Sch 2 para 3. As to the exercise of this power see the Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205; and the text and notes 9-18 infra.

9 For these purposes, any reference to 'the First Secretary of State' is, in relation to applications and appeals to which the Town and Country Planning Act 1990 s 266 (as amended) applies (applications for planning permission by statutory undertakers: see PARA 1013 post), to be treated as a reference to the First Secretary of State and the appropriate minister: Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, art 1(2), (3).

10 Ie a 'section 78 appeal'. 'Section 78 appeal' means an appeal under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 post): Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, art 1(2).

11 Ibid art 2(1). As to the determination of appeals by appointed persons see PARA 621 et seq post.

12 See note 10 supra.

13 'Called-in application' means an application for planning permission or for the approval of any local planning authority required under a development order which has been referred to the First Secretary of State under the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 ante): Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, art 1(2), (3).

14 Ie under the Town and Country Planning Act 1990 s 76A (as added): see PARA 481 ante.

15 Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, art 2(2).

16 Ie the Planning and Compulsory Purchase Act 2004 Sch 2 para 2: see PARA 528 post.

17 Ie unless it is a decision to which the Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, art 2(4) applies (see note 18 infra): art 2(3).

18 Ibid art 2(3). Subject to art 2(5), art 2(4) applies to any of the following decisions which are connected with a decision on a section 78 appeal or a called-in application: (1) a decision on an appeal against an enforcement notice under the Town and Country Planning Act 1990 s 174 (as amended) (see PARA 603 post); (2) a decision on an appeal under s 78 (as amended) as applied to applications for express consent for the display of advertisements by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15 (appeals to the Secretary of State: see PARA 833 post); (3) a decision on an appeal under the Town and Country Planning Act 1990 s 208 (as amended) (appeals against notices under s 207 (as amended) requiring the replacement of trees: see PARA 885 post); (4) a decision on a compulsory purchase order made by a local authority under s 226 (as amended) (compulsory acquisition of land for development etc: see PARAS 934-935 post) or by the First Secretary of State under s 228 (as amended) (compulsory acquisition of land by the First Secretary of State: see PARA 939 post); (5) a decision on an application for listed building consent or conservation area consent referred to the First Secretary of State under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post) or on an appeal to the First Secretary of State under s 20 (as amended) (see PARA 1186 post): Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205, arts 1(2), 2(4). Article 2(4) does not, however, apply to a decision which is connected with a decision on a section 78 appeal or a called-in application to which, by virtue of art 2(1) or (2) (see heads (1)-(2) in the text), a timetable is not to apply: art 2(5).

UPDATE

527 Time in which Secretary of State to take decisions; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(A)

Timetable for Decisions by the Secretary of State/528. Secretary of State to make timetable for decisions.

528. Secretary of State to make timetable for decisions.

The Secretary of State¹ must make one or more timetables for the purposes of decisions to which the relevant statutory provisions² apply³. Subject to the specified exclusions⁴, those provisions apply:

- 2070 (1) to any decision which must be taken by the Secretary of State on the reference of a planning application to him⁵ or on an appeal to him⁶ against a planning decision or a failure to take such a decision⁷;
- 2071 (2) to a decision not mentioned in head (1) above if each of the following two conditions applies⁸:
- 250 224. (a) that the Secretary of State thinks the decision is connected with a decision mentioned in head (1) above⁹;
- 225. (b) that the Secretary of State is either required by virtue of any enactment¹⁰ to take the decision or, in any other case, directs by virtue of a power under any enactment that the decision must be referred to him¹¹.
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A timetable may make different provision for different decisions or different descriptions of decision¹². It has effect from such time as the Secretary of State determines¹³, must set out the time within which the decision must be taken¹⁴ and may set out the time within which any other step to be taken for the purposes of the decision must be taken¹⁵.

A timetable made under these provisions must be published in such form and manner as the Secretary of State thinks appropriate¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 Ie the provisions of the Planning and Compulsory Purchase Act 2004 s 55(1), Sch 2 (paras 1-8): see the text and notes 3-15 infra; and PARA 529 et seq post.

3 Ibid Sch 2 para 4(1). Schedule 2 does not apply in relation to decisions taken by the National Assembly for Wales: see PARA 527 ante. Nor does it apply to specified decisions taken by the Secretary of State: see PARA 527 ante. Further, Sch 2 does not apply to a decision: (1) mentioned in Sch 2 para 2(1) or (2) which is to be taken on or after 1 April 2005 following the holding of an inquiry or hearing which closed before that date; (2) mentioned in Sch 2 para 2(1) or (2) which is to be taken on or after 1 April 2005 where (a) the decision relates to an appeal which is to be disposed of on the basis of written representations following a visit to the site which is the subject of the appeal; and (b) that visit took place before that date: Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Savings) Order 2005, SI 2005/204, art 4.

4 See PARA 527 ante.

5 Ie under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

6 Ie under ibid s 78 (as amended): see PARA 598 et seq post.

7 Planning and Compulsory Purchase Act 2004 Sch 2 para 1.

8 Ibid Sch 2 para 2(1).

9 Ibid Sch 2 para 2(2).

10 For the meaning of 'enactment' see PARA 2 note 11 ante (definition applied by ibid s 117(1), (5)).

11 Ibid Sch 2 para 2(3).

- 12 Ibid Sch 2 para 4(2).
- 13 Ibid Sch 2 para 4(3)(a).
- 14 Ibid Sch 2 para 4(3)(b).
- 15 Ibid Sch 2 para 4(3)(c).
- 16 Ibid Sch 2 para 4(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(A) Timetable for Decisions by the Secretary of State/529. Notice of timetable.

529. Notice of timetable.

The Secretary of State¹ must notify the following persons as soon as practicable of the published timetable² which applies to a decision³:

- 2072 (1) the applicant or appellant, as the case may be, in relation to the decision;
- 2073 (2) the local planning authority⁴ for the area to which the decision relates;
- 2074 (3) any other person who requests such notification⁵.

The Secretary of State may, however, direct that the timetable is subject to such variation⁶ as he specifies in the notice so given⁷. If the Secretary of State acts under this power, the notice so given must also specify the reasons for the variation⁸.

The timetable notified under these provisions is the applicable timetable⁹.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the duty to make a timetable see PARA 528 ante.
- 3 As to the decisions to which the duty to make a timetable applies see PARA 528 ante.
- 4 As to local planning authorities see PARA 28 et seq ante.
- 5 Planning and Compulsory Purchase Act 2004 s 55(1), Sch 2 para 5(1). Schedule 2 does not apply in relation to decisions taken by the National Assembly for Wales: see PARA 527 ante.
- 6 As to variation of the timetable see PARA 530 post.
- 7 Planning and Compulsory Purchase Act 2004 Sch 2 para 5(2).
- 8 Ibid Sch 2 para 5(3). As to the general duty to give reasons see Sch 2 para 7; and PARA 531 post.
- 9 Ibid Sch 2 para 5(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION

FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(A)
Timetable for Decisions by the Secretary of State/530. Variation of timetable.

530. Variation of timetable.

If, before the time at which any step must be taken in accordance with the applicable timetable¹, the Secretary of State² thinks that there are circumstances which are likely to prevent the taking of the step at that time, he may vary the applicable timetable accordingly³. If the Secretary of State so varies the applicable timetable, he must notify the specified persons⁴ of the variation and the reason for it⁵.

1 As to the applicable timetable see PARA 529 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Planning and Compulsory Purchase Act 2004 s 55(1), Sch 2 para 6(1), (2). Schedule 2 does not apply in relation to decisions taken by the National Assembly for Wales: see PARA 527 ante.

4 Ie the persons mentioned in ibid Sch 2 para 5(1): see PARA 529 ante.

5 Ibid Sch 2 para 6(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(A) Timetable for Decisions by the Secretary of State/531. Written reasons and annual report.

531. Written reasons and annual report.

If the Secretary of State¹ fails to take any step in accordance with the applicable timetable², or that timetable as varied³, he must give written reasons to the specified⁴ persons⁵.

The Secretary of State must lay before Parliament a report in respect of each year which reviews his performance under the provisions requiring him to make a timetable for decisions⁶ and explains any failure to comply with a timetable⁷. The report must be published in such form and manner as the Secretary of State thinks appropriate⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the applicable timetable see PARA 529 ante.

3 Ie varies under the Planning and Compulsory Purchase Act 2004 s 55(1), Sch 2 para 6: see PARA 530 ante.

4 Ie to the persons specified in ibid Sch 2 para 5(1): see PARA 529 ante.

5 Ibid Sch 2 para 7. Schedule 2 does not apply in relation to decisions taken by the National Assembly for Wales: see PARA 527 ante.

6 Ie under ibid Sch 2 (paras 1-8): see PARA 528 et seq ante.

7 Ibid Sch 2 para 8(1).

8 Ibid Sch 2 para 8(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(B) Decisions by Local Planning Authorities/532. Time periods for decision on application for planning permission or approval of reserved matters.

(B) DECISIONS BY LOCAL PLANNING AUTHORITIES

532. Time periods for decision on application for planning permission or approval of reserved matters.

Where a valid application for planning permission or for the approval of reserved matters¹ has been received² by a local planning authority³, the authority must within the specified period⁴ give the applicant notice of its decision⁵ or notice that the application has been referred to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷.

The period so specified is:

- 2075 (1) a period of eight weeks beginning with the date when the application was received by a local planning authority or, if it falls to an authority to determine an EIA application⁸, 16 weeks;
- 2076 (2) except where the applicant has already given notice of appeal to the Secretary of State or to the Assembly, such extended period as may be agreed in writing between the applicant and the local planning authority by which the application falls to be determined; or
- 2077 (3) where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured, the appropriate period specified in head (1) or head (2) above calculated without regard to any time between the date when the authority sent the applicant written notice of the dishonouring of the cheque and the date when the authority is satisfied that it has received the full amount of the fee⁹.

A local planning authority may not determine an application for planning permission¹⁰, where any notice of the application has been:

- 2078 (a) given by site display¹¹, before the end of the period of 21 days beginning with the date when the notice was first displayed by site display;
- 2079 (b) served on an owner of the land or a tenant of an agricultural holding¹² or an adjoining owner or occupier¹³, before the end of the period of 21 days beginning with the date when the notice was served on that person;
- 2080 (c) given by local advertisement¹⁴, before the end of the period of 14 days beginning with the date on which the notice was published¹⁵;

and, where more than one of the prescribed periods applies under heads (a) to (c) above, the local planning authority may not determine the application before the end of the later or latest of such periods¹⁶.

A local planning authority must provide such information about applications¹⁷, including information as to the manner in which any such application has been dealt with, as the Secretary of State or the Assembly may by direction require; and any such direction may include provision as to the persons to be informed and the manner in which the information is to be provided¹⁸.

1 le an application under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 4 (as amended) (approval of reserved matters: see PARA 521 ante) or under the Town and Country Planning (Applications) Regulations 1988, SI 1988/1812, reg 3 (as amended) (planning permission: see PARA 448 note 8 ante).

2 For these purposes, the date when the application was received is taken to be the date when each of the following events has occurred: (1) the application form or application in writing has been lodged with the authority mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 5(1) (as amended) (see PARA 450 ante); (2) any certificate or documents required by the Town and Country Planning Act 1990 or the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended), has or have been lodged with that authority; (3) where it falls to an authority to determine an EIA application, the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and (4) any fee to be paid in respect of the application has been paid to that authority and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment: art 20(3) (modified in relation to EIA applications by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 32(2)(b)). As to fees for planning applications see PARA 459 et seq ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 le the period specified in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(2): see heads (1)-(3) in the text. A decision given out of time may be voidable: *James v Minister of Housing and Local Government* [1965] 3 All ER 602 at 606, sub nom *James v Secretary of State for Wales* [1966] 1 WLR 135 at 142, CA, per Lord Denning MR (revsd in part sub nom *James v Minister of Housing and Local Government* [1968] AC 409, [1966] 3 All ER 964, HL). The option is, however, one for the court, not the parties: *Co-operative Retail Services Ltd v Taff-Ely Borough Council* (1979) 39 P & CR 223 at 246, CA, per Ormrod LJ; affd sub nom *A-G (ex rel Co-operative Retail Services Ltd) v Taff-Ely Borough Council* (1981) 42 P & CR 1, HL.

5 A notice given by an officer of the council stating that permission has been granted when in fact it has not been granted does not amount to permission: *Norfolk County Council v Secretary of State for the Environment* [1973] 3 All ER 673, [1973] 1 WLR 1400, DC; *Co-operative Retail Services Ltd v Taff-Ely Borough Council* (1979) 39 P & CR 223, CA (affd sub nom *A-G (ex rel Co-operative Retail Services Ltd) v Taff-Ely Borough Council* (1981) 42 P & CR 1, HL).

6 As to the Secretary of State see PARA 19 ante. See also PARA 451 note 13 ante.

7 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(1). As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

Where the applicant has submitted an environmental statement, and the local planning authority has decided to grant permission, the notice must include a statement that environmental information has been taken into account: see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 22(2); and PARA 534 post.

8 For the meaning of 'EIA application' see PARA 491 note 8 ante.

9 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(2) (modified in relation to EIA applications by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 32(2)(a)).

10 le subject to the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(6): see the text and note 16 infra.

11 le under ibid art 6 (as amended) (see PARA 469 ante) or art 8 (as amended) (see PARA 471 ante). For the meaning of 'by site display' see PARA 469 note 9 ante.

12 le under ibid art 6 (as amended): see PARA 469 ante.

13 le under ibid art 8 (as amended): see PARA 471 ante.

14 See note 11 supra. For the meaning of 'by local advertisement' see PARA 469 note 6 ante.

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(5). The periods in art 20(5) (as so added) are periods prescribed for the purposes of the Town and Country Planning Act

1990 s 71(1) (as substituted) (see PARA 473 ante): Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(5).

16 Ibid art 20(6).

17 See note 1 supra.

18 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(4).

UPDATE

532 Time periods for decision on application for planning permission or approval of reserved matters

TEXT AND NOTES 1-9--SI 1995/419 art 20(1)-(3), (3A), (3B) substituted for art 20(1)-(3) in relation to England: SI 2008/550.

TEXT AND NOTES 8, 9--SI 1999/293 reg 32(2)(a) substituted: SI 2006/3295 (England).

TEXT AND NOTES 17, 18--SI 1995/419 art 20(4) amended in relation to England: SI 2008/550.

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533. Applications made under planning condition.

Where an application has been made to a local planning authority¹ for any consent, agreement or approval required by a condition or limitation attached to a grant of planning permission², other than an application for approval of reserved matters³ or an application for approval of certain electronic communications development⁴, the authority must give notice to the applicant of its decision on the application within a period of eight weeks from the date when the application was received by that authority, or such longer period as may be agreed by the applicant and the authority in writing⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 As to the grant of planning permission subject to conditions or limitations see PARAS 522-523 ante.

3 For the meaning of 'reserved matters' see PARAS 467 note 4, 519 ante.

4 I.e. an application for approval under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 24 (as substituted and amended) (development by electronic communications code operators): see PARAS 394-396 ante.

5 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 21.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(v) Determination of Applications/D. NOTIFICATION OF DECISION/(B)

Decisions by Local Planning Authorities/534. Written notice of decision or determination relating to planning application.

534. Written notice of decision or determination relating to planning application.

In relation to England, when the local planning authority¹ gives notice of a decision or determination on an application for planning permission² or for approval of reserved matters³ and:

- 2081 (1) planning permission is granted, the notice must include a summary of the authority's reasons for the grant and a summary of the policies and proposals in the development plan⁴ which are relevant to the decision;
- 2082 (2) planning permission is granted subject to conditions⁵, the notice must include a summary of the authority's reasons for the grant together with a summary of the policies and proposals in the development plan which are relevant to the decision to grant permission and must also state clearly and precisely the authority's full reasons for each condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision;
- 2083 (3) planning permission is refused, the notice must state clearly and precisely the authority's full reasons⁶ for the refusal, specifying all policies and proposals in the development plan which are relevant to the decision; and
- 2084 (4) where the Secretary of State⁷ has given a direction restricting the grant of planning permission for the development⁸ for which application is made or where he or a government department⁹ has expressed the view that the permission should not be granted, either wholly or in part, or should be granted subject to conditions, the notice must give details of the direction or of the view expressed¹⁰.

In the case of notification required by head (2), head (3) or head (4) above, the notice must be accompanied by a notification in the prescribed terms¹¹ or substantially in those terms¹².

In relation to Wales, however, when the local planning authority gives notice of a decision or determination on an application for planning permission or for approval of reserved matters, and a permission or approval is granted subject to conditions or the application is refused, the notice must:

- 2085 (a) state clearly and precisely the authority's full reasons for the refusal or for any condition imposed, specifying all policies and proposals in the development plan which are relevant to the decision; and
- 2086 (b) where the National Assembly for Wales¹³ has given a direction restricting the grant of permission for the development for which application is made or where it or a government department has expressed the view that the permission should not be granted, either wholly or in part, or should be granted subject to conditions, give details of the direction or of the view expressed,

and must be accompanied by a notification in, or substantially in, the prescribed terms¹⁴.

Where the applicant for planning permission has submitted an environmental statement¹⁵ and the local planning authority has decided, having taken environmental information¹⁶ into consideration, to grant permission, whether unconditionally or subject to conditions, the notice given to the applicant¹⁷ must include a statement that environmental information has been taken into consideration by the authority¹⁸.

1 As to local planning authorities see PARA 28 et seq ante.

- 2 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 3 For the meaning of 'reserved matters' see PARAS 467 note 4, 519 ante.
- 4 For the meaning of 'development plan' see PARA 91 ante.
- 5 As to the grant of planning permission subject to conditions see PARAS 522-523 ante.
- 6 Failure to state reasons neither renders a condition invalid nor prevents the service of an enforcement notice in respect of a breach of the condition: *Brayhead (Ascot) Ltd v Berkshire County Council* [1964] 2 QB 303, [1964] 1 All ER 149, DC. There was formerly no general duty to give reasons for the grant of planning permission in the absence of conditions: see *R v Aylesbury Vale District Council, ex p Chaplin* (1997) 76 P & CR 207 [1998] JPL 49, CA. As to enforcement see PARA 551 et seq post.
- 7 As to the Secretary of State see PARA 19 ante.
- 8 For the meaning of 'development' see PARA 217 ante.
- 9 For the meaning of 'government department' see PARA 3 note 5 ante.
- 10 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 22(1)(a)-(d) (substituted in relation to England by SI 2003/2047). Simply to refer the public or interested parties to the planning application report and the minutes of the planning committee meeting is not sufficient compliance with the requirement to give a summary of reasons under head (1) or head (2) in the text: see *R (on the application of Chisnell) v Richmond-upon-Thames London Borough Council* [2005] EWHC 134 (Admin) at [40]-[42], [2005] 05 EG 203 (CS), [2005] All ER (D) 278 (Jan) per Newman J.
- 11 For the prescribed terms of the notification see the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(1), Sch 1 Pt 2 (as amended).
- 12 Ibid art 22(1) (as substituted: see note 10 supra).
- 13 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.
- 14 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 22(1) (as originally enacted; amended in relation to Wales by SI 2004/1434).
- 15 As to environmental statements see PARA 497 et seq ante.
- 16 For the meaning of 'environmental information' see PARA 491 note 6 ante (definition applied by the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 1(2)).
- 17 Ie under ibid art 20(1): see PARA 532 ante.
- 18 Ibid art 22(2).

UPDATE

534 Written notice of decision or determination relating to planning application

NOTES 1-10--The difference in statutory language is stark and significant: head (2) only requires summary reasons when permission is granted; full reasons are required under head (3) when permission is refused: *R (on the application of Ling (Bridlington) Ltd) v East Riding of Yorkshire Council* [2006] EWHC 1604 (Admin), [2007] JPL 396.

NOTE 6--The requirement to give reasons is not satisfied by the mere stating of the general policies on which the decision was based: *R (on the application of Midcounties Co-operative Ltd) v Forest of Dean DC* [2007] EWHC 1714 (Admin), [2007] 2 P & CR 576.

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535. Duty to draw attention to certain provisions for benefit of disabled.

At the date at which this title states the law, when planning permission¹ is granted for any development² which will result in the provision:

2087 (1) of a building³ or premises to which the public is to be admitted whether on payment or otherwise⁴;

2088 (2) of any of the following, being in each case premises in which persons are employed to work:

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226. (a) office premises, shop premises and railway premises to which the Offices, Shops and Railway Premises Act 1963⁵ applies;

227. (b) premises which are deemed to be such premises for the purposes of the 1963 Act; or

228. (c) factories⁶;

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2089 (3) of a building intended for the purposes of a university, university college or college, or of a school or hall of a university;

2090 (4) of a building intended for the purposes of an institution within the higher education sector⁷;

2091 (5) of a building intended for the purposes of a school⁸ or an institution which provides higher education⁹ or further education¹⁰, or both, and is maintained or assisted by a local education authority¹¹;

2092 (6) of a building intended for the purposes of an institution within the further education sector¹²,

the local planning authority¹³ granting the planning permission must draw the attention of the person to whom the permission is granted to specified statutory provisions¹⁴ relating to the disabled¹⁵.

The provisions set out above are, however, prospectively repealed by the Planning and Compulsory Purchase Act 2004, as from a day to be appointed¹⁶ under that Act¹⁷.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'building' see PARA 2 note 10 ante.

4 I.e a building or premises to which the Chronically Sick and Disabled Persons Act 1970 s 4 (as amended) applies: see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1067.

5 As to the Offices, Shops and Railway Premises Act 1963 see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 326 et seq.

6 I.e as defined by the Factories Act 1961 s 175 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 318 et seq.

7 le within the meaning of the Further and Higher Education Act 1992 s 91(5): see EDUCATION vol 15(2) (2006 Reissue) PARA 646.

8 For these purposes, 'school' has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) PARA 81): Town and Country Planning Act 1990 s 76(3) (substituted by the Education Act 1996 s 582(1), Sch 3 para 99).

9 For these purposes, 'higher education' has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) PARA 19): Town and Country Planning Act 1990 s 76(3) (as substituted: see note 8 supra).

10 For these purposes, 'further education' has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) PARA 18): Town and Country Planning Act 1990 s 76(3) (as substituted: see note 8 supra).

11 For these purposes, 'local education authority' has the same meaning as in the Education Act 1996 (see EDUCATION vol 15(1) (2006 Reissue) PARA 20): Town and Country Planning Act 1990 s 76(3) (as substituted: see note 8 supra).

12 le within the meaning of the Further and Higher Education Act 1992 s 91(3): see EDUCATION vol 15(1) (2006 Reissue) PARA 579.

13 As to local planning authorities see PARA 28 et seq ante.

14 le the local planning authority must draw the attention of the person to whom the permission is granted (1) in the case of such a building or premises as are mentioned in head (1) in the text, to the Chronically Sick and Disabled Persons Act 1970 s 4 (as amended) and s 7 (as substituted) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1067) and to the Code of Practice for Access of the Disabled to Buildings (British Standards Institution Code of Practice BS 5810: 1979) or any prescribed document replacing that code; (2) in the case of such premises as are mentioned in head (2) in the text, to the Chronically Sick and Disabled Persons Act 1970 s 7 (as substituted) and s 8A (as added and amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1066) and to that code or any such prescribed document replacing it; (3) in the case of such a building as is mentioned in heads (3)-(5) in the text, to the Chronically Sick and Disabled Persons Act 1970 s 7 (as substituted) and s 8 (as amended) (see SOCIAL SERVICES AND COMMUNITY CARE vol 44(2) (Reissue) PARA 1066) and to Design Note 18 *Access for Disabled People to Educational Buildings* published in 1984 on behalf of the Secretary of State, or any prescribed document replacing that note: Town and Country Planning Act 1990 s 76(2).

15 Ibid s 76(1), (2) (amended by the Further and Higher Education Act 1992 s 93, Sch 8 Pt II para 94).

16 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

17 See ibid ss 118(1), 120, Sch 6 paras 1, 4, Sch 9. At the date at which this title states the law, those repeals were not in force.

UPDATE

535 Duty to draw attention to certain provisions for benefit of disabled

TEXT AND NOTES 16, 17--Day now appointed and repeals in force in relation to England: SI 2006/1061.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(vi) Effect of Planning Permission/536. Effect of planning permission.

(vi) Effect of Planning Permission

536. Effect of planning permission.

Any grant of planning permission¹ to develop² land³ enures⁴, except in so far as the permission otherwise provides, for the benefit of the land and of all persons for the time being interested in it⁵.

Where planning permission is granted for the erection⁶ of a building⁷, the grant of permission may specify the purposes for which the building may be used⁸. If no purpose is so specified, the permission is to be construed as including permission to use the building for the purpose for which it is designed⁹.

In construing a planning permission, the general rule is that regard may be had only to the permission itself, including the reasons stated in it¹⁰. Where, however, the planning permission incorporates the application and other documents, they may be looked at to construe the planning permission and to ascertain its scope¹¹. Furthermore, where the validity of a planning permission is challenged, it is permissible to look at the background circumstances to see if the permission has been issued by mistake or without authority¹². A planning permission may be construed as imposing limitations on the permitted use of land and buildings¹³.

Where a condition of planning permission requires the carrying out of work in connection with the permitted development, that condition may be treated as planning permission to carry out works¹⁴.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'develop' see PARA 217 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Ie without prejudice to the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) as to the duration, revocation or modification of planning permission: see PARA 537 et seq post.

5 Ibid s 75(1). Where, however, an outline permission subject to a condition has been succeeded by a full permission subject to the same condition, and the second permission has been implemented, s 75 cannot assist a person wishing to carry out the development proposed in the outline permission where the development pursuant to the second permission has rendered the condition in the outline permission incapable of fulfilment: *Wealden District Council v Taylor* [1992] 1 PLR 42. A valid permission capable of implementation cannot be abandoned by the conduct of the person entitled to the benefit of the permission: *Pioneer Aggregates (UK) Ltd v Secretary of State for the Environment* [1985] AC 132, [1984] 2 All ER 358, HL.

6 For the meaning of 'erection' see PARA 2 note 10 ante.

7 For the meaning of 'building' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 s 75(2).

9 Ibid s 75(3). 'Designed' relates to the purpose for which it was intended: *Wilson v West Sussex County Council* [1963] 2 QB 764 at 778, [1963] 1 All ER 751 at 757, CA, per Wilmer LJ.

10 *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196, [1963] 1 All ER 459, CA; *Crisp from the Fens Ltd v Rutland County Council* (1950) 48 LGR 210, CA; *Irlam Brick Co v Warrington Borough Council* [1982] JPL 709. The use of an application to resolve a particular inconsistency or ambiguity in a planning permission does not mean it is incorporated into the permission: *R v Ashford Borough Council, ex p Shepway District Council* [1999] PLCR 12. See also *Slough Borough Council v Secretary of State for the Environment* (1995) 159 LG Rev 969, CA; *Polhill Garden Centre Ltd v Secretary of State for the Environment* [1998] JPL 1070.

11 *Wilson v West Sussex County Council* [1963] 2 QB 764, [1963] 1 All ER 751, CA; *Hamilton v West Sussex County Council* as reported in [1958] 2 All ER 174; *Kent v Guildford RDC* (1959) 11 P & CR 255, DC; *Slough Estates Ltd v Slough Borough Council (No 2)* [1971] AC 958, [1970] 2 All ER 216, HL; *Clwyd County Council v Secretary of State for Wales and Welsh Aggregates* [1982] JPL 696 (affd sub nom *Welsh Aggregates Ltd v Secretary of State for the Environment* [1983] JPL 50, CA). See also *R v Basildon District Council, ex p Martin Grant Homes Ltd* (1986) 53 P & CR 397.

12 *Norfolk County Council v Secretary of State for the Environment* [1973] 3 All ER 673, [1973] 1 WLR 1400, DC; *Co-operative Retail Services Ltd v Taff-Ely Borough Council* (1979) 39 P & CR 223, CA (affd sub nom *A-G (ex rel Co-operative Retail Services Ltd) v Taff-Ely Borough Council* (1981) 42 P & CR 1, HL); *Wivenhoe Port Ltd v Colchester Borough Council* [1985] JPL 396, CA.

13 *Wilson v West Sussex County Council* [1963] 2 QB 764, [1963] 1 All ER 751, CA (agricultural cottage); *Kwik Save Discount Group Ltd v Secretary of State for Wales* (1980) 42 P & CR 166, CA (shop for retail sale of motor vehicle accessories and petroleum products); *Williamson and Stevens v Cambridgeshire County Council* (1977) 34 P & CR 117, Lands Tribunal (gypsy caravan site); *Waverley District Council v Secretary of State for the Environment and Miller and Davies* [1982] JPL 105 (depot for cattle transport lorries); *Trio Thames Ltd v Secretary of State for the Environment and Reading Borough Council* [1984] JPL 183 (whether permission for use as restaurant with dining and dancing facilities authorised use as night club and restaurant a question of fact and degree). Where the local planning authority wishes to impose restrictions on the occupancy of buildings, an express condition to that effect should be imposed: *East Suffolk County Council v Secretary of State for the Environment* (1972) 70 LGR 595, DC. See also *Knott v Secretary of State for the Environment* [1997] JPL 713 (planning permission granted subject to a condition that permission enured solely for benefit of occupier did not mean that future use of building after alteration and occupier's first occupation was restricted to occupier). Cf, however, *Carpet Decor (Guildford) Ltd v Secretary of State for the Environment* (1981) 261 Estates Gazette 56, [1981] JPL 806 (use of vaults as a repository for the storage of documents; change to use for carpet storage was use as a repository and was thus within the same use class as the storage of documents; no planning permission required and inspector had no discretion to consider whether change of use was material).

14 *R v Derbyshire County Council, ex p North East Derbyshire District Council* (1979) 77 LGR 389, DC; *Irlam Brick Co v Warrington Borough Council* [1982] JPL 709 at 711 per Woolf J.

UPDATE

536 Effect of planning permission

TEXT AND NOTES 10, 11--There is a presumption that the grant of full planning permission approves associated plans and documents, but there is no such presumption where only outline permission is granted: *Barnett v Secretary of State for Communities and Local Government* [2009] EWCA Civ 476, [2010] 1 P & CR 149.

NOTE 10--See also *Secretary of State for Communities and Local Government v Bleaklow Industries Ltd* [2009] EWCA Civ 206, [2009] 2 P & CR 385, [2009] All ER (D) 188 (Mar).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(vii) Duration of Planning Permission/A. IN GENERAL/537. General condition limiting duration of planning permission.

(vii) Duration of Planning Permission

A. IN GENERAL

537. General condition limiting duration of planning permission.

Every planning permission¹ granted² or deemed to be granted³ must⁴ be granted or, as the case may be, is deemed to be granted, subject to the condition that the development⁵ to which it relates must be begun not later than the expiration of:

- 2093 (1) three years⁶ (subject to transitional provisions⁷ and partly as from a day to be appointed in relation to Wales⁸), beginning with the date on which the permission is granted or, as the case may be, deemed to be granted; or
- 2094 (2) such other period⁹, whether longer or shorter, beginning with that date as the authority concerned¹⁰ with the terms of planning permission may direct¹¹.

If planning permission is granted without the condition so required, it is deemed to have been granted subject to the condition that the development to which it relates must be begun not later than the expiration of three years¹² beginning with the date of the grant¹³. If, however, any proceedings are begun to challenge the validity of a grant of planning permission or of a deemed grant of planning permission, then, subject to transitional provisions¹⁴ and partly as from a day to be appointed in relation to Wales¹⁵, the period before the end of which the development to which the planning permission relates is required to be begun in pursuance of the above provisions must be taken to be extended by one year¹⁶.

Nothing in the above provisions applies to:

- 2095 (a) any planning permission granted by a development order¹⁷ or local development order¹⁸;
- 2096 (b) any planning permission granted for development carried out before the grant of that permission¹⁹;
- 2097 (c) any planning permission granted for a limited period²⁰;
- 2098 (d) any planning permission for development consisting of the winning and working of minerals²¹ or involving the depositing of mineral waste²² which is granted, or deemed to be granted, subject to a condition that the development to which it relates must be begun before the expiration of a specified period after:
- 254 229. (i) the completion of other development consisting of the winning and working of minerals already being carried out by the applicant for the planning permission; or
230. (ii) the cessation of depositing of mineral waste already being carried out by the applicant for the planning permission;
- 255 2099 (e) any planning permission granted by an enterprise zone scheme²³;
- 2100 (f) any planning permission granted by a simplified planning zone scheme²⁴; or
- 2101 (g) any outline planning permission²⁵.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 As to the granting of planning permission see PARA 486 ante.

3 As to deemed planning permissions see PARA 238 ante.

4 Ie subject to the provisions of the Town and Country Planning Act 1990 s 91(2)-(4) (as amended): see the text and notes 5-22 infra.

5 For the meaning of 'development' see PARA 217 ante.

6 Ie or, at the date at which this title states the law and in relation to Wales, five years: see the Town and Country Planning Act 1990 s 91(1)(a) (as originally enacted).

7 The Planning and Compulsory Purchase Act 2004 s 51(1) (see note 11 infra) has effect only in relation to applications which are received by the local planning authority after its commencement: see s 51(6). Section 51(1) came into force in relation to England only on 24 August 2005: see PARA 4 note 8 ante.

8 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed in relation to Wales.

9 Such period must be a period which the authority considers appropriate having regard to the provisions of the development plan and to any other material considerations: Town and Country Planning Act 1990 s 91(2). For the meaning of 'development plan' see PARA 91 ante; and as to material considerations see PARA 485 ante.

10 For the meaning of 'the authority concerned' see PARA 519 note 11 ante.

11 Town and Country Planning Act 1990 s 91(1) (s 91(1), (3) amended, and s 91(3A)-(3C) added, by the Planning and Compulsory Purchase Act 2004 s 51(1), partly as from a day to be appointed in relation to Wales: see note 8 supra). Nothing in the Town and Country Planning Act 1990 s 91 (as amended) prevents the development being begun from the time the permission is granted or deemed to be granted: s 91(3C) (as so added). As to when development has been begun for these purposes see PARA 221 ante. See also PARA 519 note 14 ante.

12 Ie or, at the date at which this title states the law and in relation to Wales, five years: see the Town and Country Planning Act 1990 s 91(3) (as originally enacted).

13 Ibid s 91(3) (as amended: see note 11 supra).

14 See note 7 supra.

15 See note 8 supra.

16 Town and Country Planning Act 1990 s 91(3A), (3B) (as added: see note 9 supra).

17 For the meaning of 'development order' see PARA 252 ante.

18 As to local development orders see PARA 419 et seq ante.

19 See PARA 525 ante.

20 For the meaning of 'planning permission granted for a limited period' see PARA 522 note 10 ante.

21 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

22 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

23 As to enterprise zone schemes see PARA 1491 et seq post.

24 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

25 Town and Country Planning Act 1990 s 91(4) (amended by the Planning and Compensation Act 1991 ss 23, 32, Sch 1 paras 1, 3, Sch 7 paras 8, 20; and by the Planning and Compulsory Purchase Act 2004 s 40(2)(g), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only (see PARA 4 note 8 ante)). Prior to the latter amendment being brought fully into force, the reference to a local development order in head (a) in the text is omitted. For the meaning of 'outline planning permission' see PARA 519 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(vii) Duration of Planning Permission/B. COMPLETION NOTICES/538. Termination of planning permission by reference to time limit; completion notices.

B. COMPLETION NOTICES

538. Termination of planning permission by reference to time limit; completion notices.

The following provisions apply where:

- 2102 (1) a planning permission¹ is subject to a condition² that the development³ to which the permission relates must be begun before the expiration of a particular period, that development has been begun within that period, but that period has elapsed without the development having been completed; or
- 2103 (2) development has been begun in accordance with planning permission under a simplified planning zone scheme⁴ but has not been completed by the time the area ceases to be a simplified planning zone⁵; or
- 2104 (3) development has been begun in accordance with planning permission under an enterprise zone scheme⁶ but has not been completed by the time the area ceases to be an enterprise zone⁷.

If the local planning authority⁸ is of the opinion that the development will not be completed within a reasonable period, it may serve a notice ('a completion notice') stating that the planning permission will cease to have effect at the expiration of a further period specified in the notice⁹. The period so specified must be not less than 12 months after the notice takes effect¹⁰.

A completion notice must be served:

- 2105 (a) on the owner¹¹ of the land¹²;
- 2106 (b) on the occupier of the land; and
- 2107 (c) on any other person who, in the opinion of the local planning authority, will be affected by the notice¹³.

The local planning authority may withdraw a completion notice at any time before the expiration of the period specified in it as the period at the expiration of which the planning permission is to cease to have effect¹⁴. If the authority does so, it must immediately give notice of the withdrawal to every person who was served with the completion notice¹⁵.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 le by virtue of the Town and Country Planning Act 1990 s 91 (as amended) (see PARA 537 ante) or s 92 (as amended) (see PARA 519 ante).

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'simplified planning zone scheme' see PARA 428 ante.

5 For the meaning of 'simplified planning zone' see PARA 426 ante.

6 As to enterprise zone schemes see PARA 1491 et seq post.

7 Town and Country Planning Act 1990 s 94(1).

8 As to local planning authorities see PARA 28 et seq ante; and as to the authority with power to serve a completion notice see PARA 215 ante.

9 Town and Country Planning Act 1990 s 94(2). As to the effect of completion notices see PARA 539 post; as to the service of notices see PARA 54 ante; and as to when development has been begun for these purposes see PARA 221 ante. Except to the extent that it applies to a completion notice served under s 96 by the Secretary of State or the National Assembly for Wales (see PARA 540 post), s 94 does not apply in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post): reg 5(1)(b).

10 Town and Country Planning Act 1990 s 94(3).

11 For the meaning of 'owner' see PARA 17 note 1 ante.

12 For the meaning of 'land' see PARA 2 note 10 ante.

13 Town and Country Planning Act 1990 s 94(4).

14 Ibid s 94(5).

15 Ibid s 94(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/ (vii) Duration of Planning Permission/B. COMPLETION NOTICES/539. Effect of completion notice.

539. Effect of completion notice.

A completion notice¹ does not take effect unless and until it is confirmed by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³. In confirming a completion notice the Secretary of State or the Assembly may substitute some longer period for that specified in the notice as the period at the expiration of which the planning permission⁴ is to cease to have effect⁵.

If, within such period as may be specified in a completion notice, which must not be less than 28 days from its service, any person on whom the notice is served so requires, the Secretary of State or the Assembly, before confirming the notice, must give him and the local planning authority⁶ an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose⁷.

If a completion notice takes effect, the planning permission referred to in it becomes invalid at the expiration of the period specified in the notice, whether the original period⁸ or a longer period substituted under the above provisions by the Secretary of State or the Assembly⁹.

1 For the meaning of 'a completion notice' see PARA 538 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Town and Country Planning Act 1990 s 95(1). As to the transfer of functions under s 95, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 Town and Country Planning Act 1990 s 95(2).

6 As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 s 95(3). In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 95(3) has effect with the substitution for the words 'him and the local planning authority' of the words 'that person': Town and Country Planning General Regulations 1992, SI 1992/1419, reg 5(1)(c), Sch 1.

8 I.e. the original period specified under the Town and Country Planning Act 1990 s 94(2): see PARA 538 ante.

9 Ibid s 95(4). Section 95(4) does not affect any permission so far as development carried out under it before the end of the period mentioned in s 95(4) is concerned: s 95(5). For the meaning of 'development' see PARA 217 ante. Except to the extent that it applies to a completion notice served under s 96 by the Secretary of State or the Assembly (see PARA 540 post), s 95 does not apply in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies: reg 5(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(vii) Duration of Planning Permission/B. COMPLETION NOTICES/540. Secretary of State's or Assembly's power to serve completion notices.

540. Secretary of State's or Assembly's power to serve completion notices.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² to be expedient that a completion notice³ should be served in respect of any land⁴, he or the Assembly may himself or itself serve such a notice⁵. The Secretary of State or the Assembly may not, however, serve such a notice without consulting⁶ the local planning authority⁷.

A completion notice served by the Secretary of State or the Assembly has the same effect as if it had been served by the local planning authority⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 96, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'a completion notice' see PARA 538 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 96(1). As to service of notices see PARA 54 ante.

6 For the meaning of 'consult' see PARA 2 note 1 ante.

7 Town and Country Planning Act 1990 s 96(3). For these purposes, any reference to the local planning authority in England is to be construed as a reference to the county planning authority or the district planning authority as the Secretary of State thinks appropriate: see s 1(5)(c) (as amended), Sch 1 para 20(2). Schedule 1 para 20(2) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities generally see PARA 28 et seq ante. As to county planning authorities and district planning authorities see PARA 28 ante; and as to the authorities with power to serve completion notices see PARA 215 ante.

In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 96(3) is to be omitted: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

8 Town and Country Planning Act 1990 s 96(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(viii) Revocation and Modification of Planning Permission/541. Local planning authority's power to revoke or modify planning permission.

(viii) Revocation and Modification of Planning Permission

541. Local planning authority's power to revoke or modify planning permission.

If it appears to the local planning authority¹ that it is expedient to revoke or modify any permission to develop land² granted on an application duly made³, the authority may by order revoke or modify the permission to such extent as it considers expedient⁴. In exercising its functions⁵ the authority must have regard to the development plan⁶ and to any other material considerations⁷.

The power so conferred may be exercised⁸:

2108 (1) where the permission relates to the carrying out of building⁹ or other operations, at any time before those operations have been completed;

2109 (2) where the permission relates to a change of the use¹⁰ of any land, at any time before the change has taken place¹¹.

The revocation or modification of permission for the carrying out of building or other operations does not affect so much of those operations as has previously been carried out¹².

1 For these purposes, references to the local planning authority are to be construed in relation to development consisting of the winning and working of minerals as references to the mineral planning authority: Town and Country Planning Act 1990 s 97(5) (amended by the Planning and Compensation Act 1991 ss 21, 84(6), Sch 1 paras 1, 4, Sch 19 Pt I). As to local planning authorities generally see PARA 28 et seq ante; for the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante; for the meaning of 'development' and 'develop' see PARA 217 ante; and for the meaning of 'mineral planning authority' see PARA 29 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Ie an application made under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

4 Ibid s 97(1). The power to revoke permission is not a duty but simply a power; nor is there a duty to consider revoking the permission: *R v Hammersmith and Fulham London Borough Council, ex p Council for the Protection of Rural England London Branch* [2000] 2 CMLR 1021. As to compensation for the revocation of planning permission see PARA 914 et seq post.

The Town and Country Planning Act 1990 Sch 5 Pt II (paras 7-9) (as amended) (see PARAS 712, 717 post) has effect for the purpose of making special provision with respect to the conditions that may be imposed by an order under s 97 (as amended) which revokes or modifies permission for development (1) consisting of the winning or working of minerals; or (2) involving the depositing of refuse or waste materials: s 97(6) (added by the Planning and Compensation Act 1991 Sch 1 paras 1, 4). For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

A local planning authority may not simply call back a planning permission once granted with a view to amendment or otherwise, but must follow the proper procedure: *R v Secretary of State for the Environment, ex p Reinisch* (1971) 22 P & CR 1022 at 1025 per Widgery LJ. It may, however, seek judicial review of the lawfulness of its own grant of planning permission to avoid paying compensation: *R v Bassetlaw District Council, ex p Oxbly* [1998] PLCR 283, CA; and cf *R v Restormel Borough Council, ex p Corbett* [2001] EWCA Civ 330, [2001] 1 PLR 108.

5 Ie its functions under the Town and Country Planning Act 1990 s 97(1): see the text and notes 1-4 supra. For the meaning of 'functions' see PARA 2 note 1 ante; and as to the local planning authorities exercising functions under s 97 (as amended) see PARA 214 ante.

6 For the meaning of 'development plan' see PARA 91 ante. As to material considerations see PARA 485 ante.

7 Town and Country Planning Act 1990 s 97(2).

8 It has been held under the equivalent Scottish provisions that the time at which the power is exercised is the date of the making of the order by the authority and not the date of its confirmation by the Secretary of State: *Caledonian Terminal Investments Ltd v Edinburgh Corpn* 1970 SC 271, Ct of Sess.

9 For the meaning of 'building operations' see PARA 218 ante.

10 For the meaning of 'use' see PARA 221 note 4 ante.

11 Town and Country Planning Act 1990 s 97(3).

12 Ibid s 97(4).

UPDATE

541 Local planning authority's power to revoke or modify planning permission

TEXT AND NOTES--A local planning authority in England may make a change to any planning permission relating to land in its area if it is satisfied that the change is not material: Town and Country Planning Act 1990 s 96A(1) (s 96A added by the Planning Act 2008 s 190(1), (2)). See further the Town and Country Planning Act 1990 s 96A(2)-(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(viii) Revocation and Modification of Planning Permission/542. Opposed cases.

542. Opposed cases.

An order for the revocation or modification of any permission to develop land¹ does not, unless unopposed², take effect unless it is confirmed by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴.

Where a local planning authority⁵ submits such an order to the Secretary of State or the Assembly for confirmation, it must serve notice on:

- 2110 (1) the owner⁶ of the land affected;
- 2111 (2) the occupier of the land affected; and
- 2112 (3) any other person who, in the authority's opinion, will be affected by the order⁷.

The notice must specify the period, not being less than 28 days from the service of the notice, within which any person on whom it is served may require the Secretary of State or the Assembly to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁸. If, within that period, such a person so requires, before the Secretary of State or the Assembly confirms the order, he or it must give such an opportunity both to that person and to the local planning authority⁹.

The Secretary of State or the Assembly may confirm an order so submitted either without modification or subject to such modifications as he or it considers expedient¹⁰.

¹ I.e. an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante. For the meaning of 'land' see PARA 2 note 10 ante.

² I.e. except as provided in ibid s 99: see PARA 543 post.

³ As to the Secretary of State see PARA 19 ante.

⁴ Town and Country Planning Act 1990 s 98(1). As to the transfer of functions under s 98, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

- 5 As to local planning authorities see PARA 28 et seq ante.
- 6 For the meaning of 'owner' see PARA 17 note 1 ante.
- 7 Town and Country Planning Act 1990 s 98(2). As to the service of notices see PARA 54 ante.
- 8 Ibid s 98(3), (5).
- 9 Ibid s 98(4). In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 98 has effect with the substitution in s 98(4) for the words 'both to him and the local planning authority' of the words 'to that person': Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.
- 10 Town and Country Planning Act 1990 s 98(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(viii) Revocation and Modification of Planning Permission/543. Unopposed cases.

543. Unopposed cases.

The following provisions apply where:

- 2113 (1) the local planning authority¹ has made an order revoking or modifying any permission to develop land²; and
- 2114 (2) the owner³ and the occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to it⁴.

Instead of submitting the order to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ for confirmation, the authority must advertise in the prescribed manner⁷ the fact that the order has been made; and the advertisement must specify:

- 2115 (a) the period, not being less than 28 days from the date the advertisement first appears, within which persons affected by the order may give notice to the Secretary of State or the Assembly that they wish for an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose; and
- 2116 (b) the period, not being less than 14 days from the expiration of the period referred to in head (a) above, at the expiration of which, if no such notice is given to the Secretary of State or the Assembly, the order may take effect without being confirmed by him or by it⁸.

The authority must also serve notice to the same effect on the persons mentioned in head (2) above⁹; and it must send a copy of any advertisement published to the Secretary of State or the Assembly not more than three days after the publication¹⁰.

If no person claiming to be affected by the order has given notice to the Secretary of State or Assembly under head (a) above within the period referred to in that head, and the Secretary of State or Assembly has not directed within that period that the order be submitted to him or to

it for confirmation, the order takes effect at the expiry of the period referred to in head (b) above, without being confirmed by the Secretary of State or Assembly as otherwise¹¹ required¹².

The above provisions do not, however, apply:

- 2117 (i) to an order revoking or modifying a planning permission granted or deemed to have been granted¹³ by the Secretary of State or the Assembly; or
- 2118 (ii) to an order modifying any conditions to which a planning permission is¹⁴ subject¹⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 Ie an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante. For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'owner' see PARA 17 note 1 ante.

4 Town and Country Planning Act 1990 s 99(1).

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 99, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 A local planning authority must advertise the fact that an order has been made to which the Town and Country Planning Act 1990 s 99(2) applies by publishing an advertisement in the prescribed form or a form substantially to the like effect in a newspaper circulating in the locality: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 17(1). For the prescribed form of advertisement see reg 17(1), Sch 3 Pt 1. For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 s 99(2), (4), (5).

9 Town and Country Planning Act 1990 s 99(3). For the prescribed form of notice see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 17(2), Sch 3 Pt 2. A form substantially to the like effect may be used: reg 17(2). As to the service of notices see PARA 54 ante.

10 Town and Country Planning Act 1990 s 99(6).

11 Ie as required by ibid s 98(1): see PARA 542 ante.

12 Ibid s 99(7).

13 Ie under ibid Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) or Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq post).

14 Ie by virtue of ibid s 91 (as amended) (see PARA 537 ante) or s 92 (as amended) (see PARA 519 ante).

15 Ibid s 99(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(7) DISCRETIONARY PERMISSION FOR DEVELOPMENT/(viii) Revocation and Modification of Planning Permission/544. Revocation or modification of planning permission by the Secretary of State or the Assembly.

544. Revocation or modification of planning permission by the Secretary of State or the Assembly.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that it is expedient that an order should be made revoking or modifying any permission to develop land³, he or the Assembly may himself or itself make such an order⁴; but may not make such an order without consulting⁵ the local planning authority⁶.

Where the Secretary of State or the Assembly proposes to make such an order, he or it must serve notice on the local planning authority⁷. The notice must specify the period, which must not be less than 28 days from the date of its service, within which the authority may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁸. If, within that period, the authority so requires, before the Secretary of State or the Assembly makes the order, he or it must give the authority such an opportunity⁹.

Such an order which is made has the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State or by the Assembly¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 100 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 In an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante. For the meaning of 'land' see PARA 2 note 10 ante.

4 Ibid s 100(1). The provisions of Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) and of any regulations made under the Town and Country Planning Act 1990 with respect to the procedure to be followed in connection with the submission by the local planning authority of an order under s 97 (as amended) and its confirmation by the Secretary of State or the Assembly have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State or Assembly to make such an order and its making by him or by the Assembly: s 100(7). Section 97(5), (6) (as amended and added respectively) applies for the purposes of s 100 (as amended) as it applies for the purposes of s 97 (as amended): s 100(8) (substituted by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 5).

When deciding whether to revoke or modify a permission, the Secretary of State may not consider the cost of paying compensation as a material consideration: *Alnwick District Council v Secretary of State for the Environment, Transport and the Regions* (1999) 79 P & CR 130.

5 For the meaning of 'consult' see PARA 2 note 1 ante.

6 Town and Country Planning Act 1990 s 100(3). In England, the local planning authority which the Secretary of State is so required to consult, or to serve with a notice of his proposals under s 100(4) (see the text and note 7 infra), is the county planning authority or the district planning authority, as he thinks appropriate; and references in s 100(2)-(4) to the local planning authority are to be construed accordingly: see s 1(5)(c) (as amended), Sch 1 para 20(1). Schedule 1 para 20(1) does not, however, apply in Greater London: Sch 1 para 21(1). As to local planning authorities generally see PARA 28 et seq ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to county planning authorities and district planning authorities see PARA 28 ante.

In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies (see PARA 893 post), the Town and Country Planning Act 1990 s 100 (as amended) has effect with the omission of s 100(3)-(6): Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

7 Town and Country Planning Act 1990 s 100(4). See also note 6 supra. As to the service of notices see PARA 54 ante.

8 Ibid s 100(5). See also note 6 supra.

9 Ibid s 100(6). See also note 6 supra.

10 Ibid s 100(2). See also note 6 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(8) CONTROL OF EXISTING USES; IN GENERAL/(i) Certificates of Lawfulness/545. Application for certificate of lawfulness of existing use etc; in general.

(8) CONTROL OF EXISTING USES; IN GENERAL

(i) Certificates of Lawfulness

545. Application for certificate of lawfulness of existing use etc; in general.

If any person wishes to ascertain whether any existing use¹ of buildings² or other land³ is lawful⁴, he may make an application for the purpose to the local planning authority⁵ specifying the land and describing the use, and the local planning authority, if provided with information satisfying it of the lawfulness of the use at the time of the application, must issue a certificate to that effect⁶. These provisions are discussed in more detail in a later part of this title⁷.

1 For the meaning of 'use' see PARA 221 note 4 ante.

2 For the meaning of 'building' see PARA 2 note 10 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 As to whether uses etc are lawful at any time see the Town and Country Planning Act 1990 s 191(2) (s 191 substituted by the Planning and Compensation Act 1991 s 10(1)); and PARA 586 post.

5 As to local planning authorities see PARA 28 et seq ante.

6 See the Town and Country Planning Act 1990 s 191(1), (4) (as substituted); and PARA 586 post.

7 See PARA 586 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(8) CONTROL OF EXISTING USES; IN GENERAL/(ii) Discontinuance Orders; in general/546. Orders requiring discontinuance of use or alteration or removal of buildings or works.

(ii) Discontinuance Orders; in general

546. Orders requiring discontinuance of use or alteration or removal of buildings or works.

If, having regard to the development plan¹ and to any other material considerations, it appears to a local planning authority² that it is expedient in the interests of the proper planning of its area, including the interests of amenity³:

2119 (1) that any use⁴ of land⁵ should be discontinued, or that any conditions should be imposed on the continuance of a use of land; or

2120 (2) that any buildings or works⁶ should be altered or removed,

the authority may by order:

- 2121 (a) require the discontinuance of that use; or
- 2122 (b) impose such conditions as may be specified in the order on the continuance of it; or
- 2123 (c) require such steps as may be so specified to be taken for the alteration or removal of the buildings or works,

as the case may be⁷.

Where the requirements of such an order will involve the displacement of persons residing in any premises, it is the duty of the local planning authority, in so far as there is no other residential accommodation suitable to the reasonable requirements of those persons available on reasonable terms, to secure the provision of such accommodation in advance of the displacement⁸.

The provisions set out above do not apply to the use of any land for development consisting of the winning and working of minerals⁹ or involving the depositing of refuse or waste materials¹⁰ except as specially¹¹ provided¹².

1 For the meaning of 'development plan' see PARA 91 ante.

2 As to local planning authorities see PARA 28 et seq ante; and as to the local planning authorities exercising functions under the Town and Country Planning Act 1990 s 102 (as amended) (see the text and notes 3-8 infra; and PARA 547 post) see PARA 214 ante.

3 For these purposes, 'amenity' is not limited to present amenity but includes past or future amenity: *Re Lamplugh* (1967) 19 P & CR 125. As to the meaning of 'amenity' generally see PARA 158 note 8 ante.

4 For the meaning of 'use' see PARA 221 note 4 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

7 Town and Country Planning Act 1990 s 102(1). Section 102(1)(a) and s 102(1)(b) (see heads (1)-(2) in the text) are to be regarded as alternatives: see *Re Lamplugh* (1967) 19 P & CR 125 (decided under previous legislation). As to planning permission granted by such an order see PARA 547 post; as to confirmation of the order see PARA 549 post; as to the right to serve a purchase notice where such an order is made see PARA 966 post; as to compensation see PARA 923 post; for special provisions in relation to mineral workings etc see PARA 746 et seq post; and as to enforcement of a discontinuance order see PARAS 596-597 post. A discontinuance order is registrable as a local land charge: see LAND CHARGES. A local planning authority is not bound to make a discontinuance order where the requisite circumstances exist and may instead encourage a voluntary discontinuance eg by granting planning permission for residential development in an area which will be incompatible with an existing industrial use: see *R v Exeter City Council, ex p JL Thomas & Co Ltd* [1991] 1 QB 471, [1990] 1 All ER 413. As to the power to impose conditions on an existing planning permission see eg *R (on the application of Harlow) v South Cambridgeshire District Council* [2005] EWHC 173 (Admin), [2005] All ER (D) 419 (Feb) (no requirement in that case for the local planning authority to have considered the imposition of conditions).

8 Town and Country Planning Act 1990 s 102(6). The duty is sufficiently discharged if temporary bed and breakfast accommodation is secured pending discussions on permanent accommodation: *R v East Hertfordshire District Council, ex p Smith* (1990) 22 HLR 176; affd (1991) 23 HLR 26, CA.

9 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

10 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

11 Ie except as provided in the Town and Country Planning Act 1990 s 102(8), Sch 9 (as amended): see PARA 757 note 9 post.

12 See *ibid* s 102(8) (as amended); and PARA 756 post.

UPDATE

546 Orders requiring discontinuance of use or alteration or removal of buildings or works

NOTE 7--It is relevant to a decision under the Town and Country Planning Act 1990 s 102 that compensation would be payable if a discontinuance order is made: *R (on the application of Usk Valley Conservation Group) v Brecon Beacons National Park Authority* [2010] EWHC 71 (Admin), [2010] All ER (D) 194 (Jan), QB (planning permission invalid on numerous grounds).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(8) CONTROL OF EXISTING USES; IN GENERAL/(ii) Discontinuance Orders; in general/547. Planning permission granted by discontinuance order.

547. Planning permission granted by discontinuance order.

A discontinuance order¹ may grant planning permission² for any development³ of the land⁴ to which the order relates, subject to such conditions as may be specified in the order⁵; and the planning permission which may be so granted includes planning permission, subject to such conditions as may be specified in the order, for development carried out before the date on which the order was submitted⁶ to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ for confirmation⁹.

The provisions set out above do not apply to the use of any land for development consisting of the winning and working of minerals¹⁰ or involving the depositing of refuse or waste materials¹¹ except as specially¹² provided¹³.

1 Ie an order under the Town and Country Planning Act 1990 s 102 (as amended): see the text and notes 2-9 infra; and PARA 546 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 102(2). Section 97 (as amended) (see PARA 541 ante) applies in relation to any planning permission granted by an order under s 102 (as amended) as it applies in relation to planning permission granted by the local planning authority on an application made under Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante): s 102(3). Subject to s 103(8) (see PARA 549 post), in the case of planning permission granted by such an order, the authority referred to in s 91(1)(b) (see PARA 537 ante) and s 92(4) (as amended) (see PARA 519 ante) is the local planning authority making the order: s 102(7). As to local planning authorities see PARA 28 et seq ante; and as to the local planning authorities exercising functions under s 102 (as amended) see PARA 214 ante.

6 Ie under *ibid* s 103: see PARAS 548-549 post.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 ss 102, 103 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 102(4) (s 102(4), (5) substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 21). Planning permission for such development may be granted so as to have effect from (1) the date on which the development was carried out; or (2) if it was carried out in accordance with planning permission granted for a limited period, the end of that period: Town and Country Planning Act 1990 s 102(5) (as so substituted). For the meaning of 'planning permission granted for a limited period' see PARA 522 note 10 ante.

10 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

11 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

12 Ie except as provided in the Town and Country Planning Act 1990 s 102(8), Sch 9 (as amended): see PARA 757 note 9 post.

13 See *ibid* s 102(8) (as amended); and PARA 756 post.

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548. Procedure for making orders; objections.

Where a local planning authority¹ submits a discontinuance order² to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ for his or its confirmation⁵, the authority must serve notice on:

- 2124 (1) the owner⁶ of the land⁷ affected;
- 2125 (2) the occupier of that land; and
- 2126 (3) any other person who in the opinion of the authority will be affected by the order⁸.

The notice must specify the period, not being less than 28 days from the service of the notice, within which any person on whom it is served may require the Secretary of State or the Assembly to give him an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁹; and, if within that period such a person so requires, before the Secretary of State or Assembly confirms the order, he or it must give such an opportunity both to that person and to the local planning authority¹⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 Ie an order under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 103, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Ie under the Town and Country Planning Act 1990 s 103: see the text and notes 6-10 infra; and PARA 549 post.

6 For the meaning of 'owner' see PARA 17 note 1 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 s 103(3). In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies, the Town and Country Planning Act 1990 s 103 has effect save that in s 103(5) for the words 'both to him and the local planning authority' there are to be substituted the words 'to that person': Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

9 Town and Country Planning Act 1990 s 103(4), (6). As to the service of notices see PARA 54 ante.

10 Ibid s 103(5).

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549. Confirmation of orders by the Secretary of State or the Assembly.

A discontinuance order¹ does not take effect unless it is confirmed by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³, either without modification or subject to such modifications as he or it considers expedient⁴. The power of the Secretary of State or the Assembly so to confirm an order subject to modifications includes power:

- 2127 (1) to modify any provision of the order granting planning permission⁵;
- 2128 (2) to include in the order any grant of planning permission which might have been included in the order as submitted to him or to the Assembly⁶.

Where an order has been so confirmed by the Secretary of State or the Assembly, the local planning authority⁷ must serve a copy of the order on the owner⁸ and occupier of the land⁹ to which the order relates¹⁰.

1 Ie an order under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 103, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 s 103(1). As to the application of s 103 in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 548 note 8 ante. The Secretary of State does not have to apply an onerous burden of proof in considering whether to approve a discontinuance order; he merely has to be satisfied that the making of the order is expedient in the interests of the proper planning of the area: see *Chant v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 1440 (Admin), [2002] All ER (D) 11 (Jul).

5 Ie as mentioned in the Town and Country Planning Act 1990 s 102(2)-(5) (as amended): see PARA 547 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

6 Ibid s 103(2). Where the Secretary of State or the Assembly exercises the powers under s 103(2) in confirming an order granting planning permission, he or it is the authority referred to in s 91(1)(b) (see PARA 537 ante) and s 92(4) (as amended) (see PARA 519 ante): s 103(8).

7 As to local planning authorities see PARA 28 et seq ante.

8 For the meaning of 'owner' see PARA 17 note 1 ante.

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Town and Country Planning Act 1990 s 103(7). As to challenging the validity of an order see PARA 43 ante; as to service of a purchase notice where such an order is made see PARA 966 post; as to compensation see PARA 923 post; as to the special provisions in relation to mineral workings etc see PARA 746 et seq post; and as to enforcement of discontinuance orders see PARAS 596-597 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/4. DEVELOPMENT CONTROL; IN GENERAL/(8) CONTROL OF EXISTING USES; IN GENERAL/(ii) Discontinuance Orders; in general/550. Secretary of State's or Assembly's power to make discontinuance orders.

550. Secretary of State's or Assembly's power to make discontinuance orders.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that it is expedient that a discontinuance order should be made³, he or the Assembly may himself or itself make such an order⁴. He or it may not, however, do so without consulting⁵ the local planning authority⁶ and must, where he or the Assembly proposes to make such an order, serve notice on that authority⁷. The notice must specify the period, not being less than 28 days from the date of service of the notice, within which the authority may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁸; and, if within that period the authority so requires, before the Secretary of State or the Assembly makes the order, he or it must give the authority such an opportunity⁹.

Such an order made by the Secretary of State or the Assembly has the same effect as if it had been made by the local planning authority and confirmed by the Secretary of State or the Assembly¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 104, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 ante.

4 Ibid s 104(1). In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies, the Town and Country Planning Act 1990 s 104 (as so modified) has effect with the omission of s 104(3)-(7): Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

5 For the meaning of 'consult' see PARA 2 note 1 ante.

6 Town and Country Planning Act 1990 s 104(3). In England, the local planning authority which the Secretary of State is so required to consult, or to serve with notice of his proposals under s 104(4), is the county planning authority or the district planning authority as he thinks appropriate; and references to the local planning authority in s 104(2)-(4) are to be construed accordingly: see s 1(5) (as amended), Sch 1 para 20(1). Schedule 1 para 20(1) does not, however, apply in Greater London: Sch 1 para 21(1). As to local planning authorities generally see PARA 28 et seq ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to county and district planning authorities see PARA 28 ante.

7 Ibid s 104(4).

8 Ibid s 104(5), (7). As to the service of notices see PARA 54 ante.

9 Ibid s 104(6).

10 Ibid s 104(2). The provisions of Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) and of any regulations made under the Town and Country Planning Act 1990 with respect to the procedure to be followed in connection with the submission by the local authority of any order under s 102 (as amended), its confirmation by the Secretary of State or the Assembly and the service of copies of it as confirmed have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State or the Assembly to make such an order, its making by him or by it and the service of copies of the order: s 104(8). See PARAS 548-549 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (1) INTRODUCTION/551. Meaning of 'breach of planning control' and 'taking enforcement action'.

5. ENFORCEMENT; IN GENERAL

(1) INTRODUCTION

551. Meaning of 'breach of planning control' and 'taking enforcement action'.

For the purposes of the Town and Country Planning Act 1990:

- 2129 (1) carrying out development¹ without the required planning permission²; or
- 2130 (2) failing to comply with any condition or limitation subject to which planning permission has been granted,

constitutes a breach of planning control³; and

- 2131 (a) the issue of an enforcement notice⁴; or
- 2132 (b) the service of a breach of condition notice⁵,

constitutes taking enforcement action⁶.

1 For the meaning of 'development' see PARA 217 ante.

2 For these purposes, 'planning permission' includes permission under the Town and Country Planning Act 1947 Pt III (ss 12-36) (repealed), the Town and Country Planning Act 1962 Pt III (ss 12-44) (repealed) or the Town and Country Planning Act 1971 Pt III (ss 22-53) (repealed): Town and Country Planning Act 1990 s 171A(3) (s 171A added by the Planning and Compensation Act 1991 s 4(1)). For the meaning of 'planning permission' generally see PARA 43 note 6 ante.

3 Town and Country Planning Act 1990 s 171A(1) (as added: see note 2 supra).

4 Ie as defined in ibid s 172 (as substituted): see PARA 561 post.

5 Ie as defined in ibid s 187A (as added): see PARA 583 post.

6 Ibid s 171A(2) (as added: see note 2 supra). Local planning authorities in England are expected to have regard to the policy guidance contained in *PPG18--Enforcing Planning Control* in deciding whether enforcement action is expedient to remedy a breach of planning control, where earlier attempts to do so by informal negotiation have proved unsuccessful: see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* para 10. As to policy guidance generally see PARA 9 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (1) INTRODUCTION/552. Time limits.

552. Time limits.

Where there has been a breach of planning control¹ consisting in the carrying out without planning permission² of building³, engineering⁴, mining⁵ or other operations in, on, over or under land⁶, no enforcement action may be taken⁷ after the end of the period of four years beginning with the date on which the operations were substantially completed⁸.

Where there has been a breach of planning control consisting in the change of use of any building⁹ to use as a single dwelling house, no enforcement action may be taken after the end of the period of four years beginning with the date of the breach¹⁰.

In the case of any other breach of planning control, no enforcement action may be taken after the end of the period of ten years beginning with the date of the breach¹¹.

The above provisions do not, however, prevent:

- 2133 (1) the service of a breach of condition notice¹² in respect of any breach of planning control if an enforcement notice¹³ in respect of the breach is in effect; or
- 2134 (2) taking further enforcement action in respect of any breach of planning control if, during the period of four years ending with that action being taken, the local planning authority has taken or purported to take enforcement action in respect of that breach¹⁴.

1 For the meaning of 'breach of planning control' see PARA 551 ante.

2 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

3 For the meaning of 'building operations' see PARA 218 ante.

4 For the meaning of 'engineering operations' see PARA 219 ante.

5 For the meaning of 'mining operations' see PARA 220 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 For the meaning of 'taking enforcement action' see PARA 551 ante.

8 Town and Country Planning Act 1990 s 171B(1) (s 171B added by the Planning and Compensation Act 1991 s 4(1)). A holistic approach is to be adopted to the construction of the Town and Country Planning Act 1990 s 171B(1) (as so added) and regard must be had to the totality of the operations which the person originally contemplated and intended to carry out: see *Sage v Secretary of State for the Environment, Transport and the Regions* [2003] UKHL 22, [2003] 2 All ER 689, [2003] 1 WLR 983; applied in *Brown v First Secretary of State* [2003] EWHC 2800 (Admin), [2003] All ER (D) 252 (Nov); *R (on the application of Dennis) v Sevenoaks District Council* [2004] EWHC 2758 (Admin), [2005] JPL 791, [2004] All ER (D) 223 (Nov). Although a breach of a planning condition becomes immune from enforcement proceedings because of the length of time it has continued, subsequent breaches will not also enjoy immunity: see *St Anselm Development Co Ltd v First Secretary of State* [2003] EWHC 1592 (Admin), [2004] 1 P & CR 404, [2003] All ER (D) 200 (Jun).

For transitional provisions which applied until 27 July 1992 see the Planning and Compensation Act 1991 (Commencement No 5 and Transitional Provisions) Order 1991, SI 1991/2905, art 5(1)(a); the Planning and Compensation Act 1991 (Commencement No 11 and Transitional Provisions) Order 1992, SI 1992/1630, art 2.

9 For the meaning of 'building' see PARA 2 note 10 ante.

10 Town and Country Planning Act 1990 s 171B(2) (as added: see note 8 supra). See *Moore v Secretary of State for the Environment* (1998) 77 P & CR 114, CA, in which it was held (1) for a building to be a 'dwelling house', it does not have to be occupied as a permanent residence by one or more persons; and (2) a self-

contained unit of residential accommodation does not cease to be classed as a dwelling house merely because it is managed, together with other such units, for the overall commercial purpose of providing holiday or other temporary lettings; applied in *Bloomfield v Secretary of State for the Environment, Transport and the Regions* [1999] EGCS 38. See also *R (on the application of Lee) v First Secretary of State* [2003] EWHC 2139 (Admin), [2003] 38 LS Gaz R 36, [2003] All ER (D) 21 (Sep) (caravans inside a barn used for residential accommodation; use for more than four years but less than ten; held that it did not follow from the fact that the caravans were not part of the building that their 'use' was not part of the 'use' of the building; that use was as a dwelling house, although that would not necessarily be the case where the caravans were merely stored, or used for some occasional purpose); *Van Dyck v Secretary of State for the Environment, Doncaster Borough Council v Secretary of State for the Environment* (1992) 91 LGR 459, [1993] 1 EGLR 186, CA (if a whole house is divided into two flats, then it is perfectly possible to find within the terms of the statute in respect of each new flat a change of use of part of the building (the original whole house) to use as a single dwelling house). See also *Arun District Council v First Secretary of State* [2005] All ER (D) 38 (Oct) (planning permission granted for building of extension to form accommodation for a dependent relative, subject to conditions that it would only be occupied by the relative and that upon vacation the extension would at no time be occupied or disposed of as a separate independent unit; the extension was later rented out to students; held that this was not a change of use subject to the four-year time limit for enforcement under the Town and Country Planning Act 1990 s 171B(2) (as added) but a breach of condition subject to the ten-year limit under s 171B(3) (as added) (see the text and note 11 infra).

11 Town and Country Planning Act 1990 s 171B(3) (as added: see note 8 supra). The test is (1) whether there has been a continuous breach of the planning control throughout each year for the necessary period of 10 years (*North Devon District Council v Secretary of State for the Environment* [1998] PLCR 356; *Lynch v Secretary of State for the Environment* [1999] JPL 354); (2) to compare the present use with the previous use, or use at the earliest time within the time limit, and assess whether there has been any material change since that time (*Thurrock Borough Council v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 128, [2001] All ER (D) 286 (Feb); affd [2002] EWCA Civ 226, [2002] All ER (D) 373 (Feb)). The defence is not available for the offence under the Town and Country Planning Act 1990 s 224(3) (as amended) of unlawfully displaying advertisements: see *Wyatt v Jarrad* [1998] 2 PLR 81, DC; and PARA 830 post.

For transitional provisions which applied until 27 July 1992 see the Planning and Compensation Act 1991 (Commencement No 5 and Transitional Provisions) Order 1991, SI 1991/2905, art 5(1)(b); the Planning and Compensation Act 1991 (Commencement No 11 and Transitional Provisions) Order 1992, SI 1992/1630, art 2. As to local planning authorities see PARA 28 et seq ante.

12 For the meaning of 'breach of condition notice' see PARA 583 post.

13 If, in the case of any breach of planning control, the time for issuing an enforcement notice had expired, before 2 January 1992, by virtue of the Town and Country Planning Act 1990 s 172(4)(b) (as originally enacted), nothing in s 171B (as added) enables any enforcement action to be taken in respect of that breach: Planning and Compensation Act 1991 s 4(2); Planning and Compensation Act 1991 (Commencement No 5 and Transitional Provisions) Order 1991, SI 1991/2905, art 3. For the meaning of 'enforcement notice' see PARA 561 post.

14 Town and Country Planning Act 1990 s 171B(4) (as added: see note 8 supra); *William Boyer (Transport) Ltd v Secretary of State for the Environment* (1996) 160 LG Rev 387, CA. The Town and Country Planning Act 1990 171B(4)(b) (as so added) may be used by a planning authority where two enforcement notices contain differing descriptions of the same development: *Jarmain v Secretary of State for the Environment, Transport and the Regions* [2000] 2 PLR 126, CA; distinguished in *Fidler v First Secretary of State* [2003] EWHC 2003 (Admin), [2003] All ER (D) 17 (Oct) affd [2004] EWCA Civ 1295, 148 Sol Jo LB 1214, [2004] All ER (D) 141 (Oct)). See also *Sanders v First Secretary of State* [2004] EWHC 1194 (Admin), [2004] All ER (D) 407 (May).

A defendant in criminal proceedings can, however, challenge the validity of a breach of condition notice on the grounds that it was not served within the time limit set out in the Town and Country Planning Act 1990 s 171B(3) (as added): see *Dilieto v Ealing London Borough Council* [2000] QB 381, [1998] 2 All ER 885, DC.

The Town and Country Planning Act 1990 s 171B(4)(b) (as so added) (see head (2) in the text) does not permit the taking of further enforcement action in respect of any breach of planning control where, immediately before the commencement of that provision, the local planning authority could not have issued an enforcement notice relating to that breach (Planning and Compensation Act 1991 (Commencement No 5 and Transitional Provisions) Order 1991, SI 1991/2905, art 5(2)); but this does not apply where any proceedings under the Town and Country Planning Act 1990 in respect of the breach pursuant to the issue or purported issue of an enforcement notice by the local planning authority had not been finally determined before the commencement of the Town and Country Planning Act 1990 s 171B(4)(b) (as so added) (Planning and Compensation Act 1991 (Commencement No 5 and Transitional Provisions) Order 1991, SI 1991/2905, art 5(3)).

UPDATE

552 Time limits

NOTES 8, 10--See *Welwyn Hatfield BC v Secretary of State for Communities and Local Government* [2010] EWCA Civ 26, [2010] 13 EG 84, [2010] All ER (D) 199 (Jan).

NOTES 8, 11--See *Sumner v Secretary of State for Communities and Local Government* [2010] EWHC 372 (Admin), [2010] All ER (D) 44 (Mar).

NOTES 8, 14--See *Rastrum Ltd v Secretary of State for Communities and Local Government* [2009] EWHC 184 (Admin), [2009] All ER (D) 35 (Feb); and PARA 586.

NOTE 10--*Arun*, cited, reversed: [2006] EWCA Civ 1172, [2007] 1 WLR 523.

NOTE 14--*Fidler*, cited, reported at [2004] EWCA Civ 1295, [2005] JPL 510.

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553. Register of enforcement notices, stop notices and breach of condition notices; in general.

Every district planning authority¹, every local planning authority² for an area in Wales and the council of every metropolitan district³ or London borough⁴ must keep, in such manner as may be prescribed by a development order⁵, a register containing such information as may be so prescribed with respect to:

- 2135 (1) enforcement notices⁶;
- 2136 (2) stop notices⁷; and
- 2137 (3) breach of condition notices⁸,

which relate to land⁹ in its area¹⁰.

A development order may make provision:

- 2138 (a) for the entry relating to any enforcement notice, stop notice or breach of condition notice, and everything relating to any such notice, to be removed from the register in such circumstances as may be specified in the order; and
- 2139 (b) for requiring a county planning authority¹¹ to supply to a district planning authority such information as may be so specified with regard to enforcement notices issued and stop notices and breach of condition notices served by the county planning authority¹².

Every register so kept must be available for inspection by the public at all reasonable hours¹³.

1 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 As to metropolitan district councils see PARA 28 note 6 ante.

4 For the meaning of 'London borough' see PARA 28 note 7 ante.

5 For the meaning of 'development order' see PARA 252 ante.

6 For the meaning of 'enforcement notice' see PARA 561 post.

7 For the meaning of 'stop notice' see PARA 577 post.

8 For the meaning of 'breach of condition notice' see PARA 583 post.

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Town and Country Planning Act 1990 s 188(1) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 30(a), Sch 19 Pt I; and by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(5)). As to the contents of the register see PARA 554 post.

In relation to special enforcement notices the Town and Country Planning Act 1990 s 188 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

11 As to county planning authorities see PARA 28 ante.

12 Town and Country Planning Act 1990 s 188(2) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 30(b), (c)). See also note 10 supra.

13 Town and Country Planning Act 1990 s 188(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (1) INTRODUCTION/554. Contents of register.

554. Contents of register.

The register of enforcement notices, stop notices and breach of condition notices¹ must contain the following information with respect to every enforcement notice² issued in relation to land³ in the area of the authority maintaining the register:

2140 (1) the address of the land to which the notice relates or a plan by reference to which its situation can be ascertained;

2141 (2) the name of the issuing authority;

2142 (3) the date of issue of the notice;

2143 (4) the date of service of copies of the notice;

2144 (5) a statement or summary of the breach of planning control⁴ alleged and the requirements of the notice, including the period within which any required steps are to be taken;

2145 (6) the date specified in the notice as the date on which it is to take effect;

2146 (7) information on any postponement of the date specified as the date on which the notice will take effect⁵ and the date of the final determination or withdrawal of any appeal;

2147 (8) the date of service and, if applicable, of withdrawal of any stop notice⁶ referring to the enforcement notice, together with a statement or summary of the activity prohibited by any such stop notice;

2148 (9) the date, if any, on which the local planning authority is satisfied that steps required by the notice for remedying any injury to amenity⁷ have been taken⁸.

That register must also contain the following information with respect to every breach of condition notice served in relation to land in the area of the authority maintaining the register:

- 2149 (a) the address of the land to which the notice relates or a plan by reference to which its situation can be ascertained;
- 2150 (b) the name of the serving authority;
- 2151 (c) the date of service of the notice;
- 2152 (d) details of the relevant planning permission sufficient to enable it to be identified;
- 2153 (e) a statement or summary of the condition which has not been complied with and the requirements of the notice, including the period allowed for compliance⁹.

All entries relating to an enforcement notice, stop notice or breach of condition notice must be removed from the register if:

- 2154 (i) in the case of an enforcement notice or stop notice, the relevant enforcement notice is quashed by the Secretary of State¹⁰ or, in relation to Wales, by the National Assembly for Wales¹¹;
- 2155 (ii) in the case of a breach of condition notice, the notice is quashed by a court;
- 2156 (iii) in any other case, the relevant notice is withdrawn¹².

The information must be entered in the register as soon as practicable and in any event within 14 days of the occurrence to which it relates¹³. Every register must include an index for enabling a person to trace any entry in the register by reference to the address of the land to which the notice relates¹⁴.

The register must either be kept at the principal office of the local planning register authority¹⁵ or that part of the register which relates to land in part of that authority's area must be kept at a place within or convenient to that part¹⁶.

1 le the register under the Town and Country Planning Act 1990 s 188 (as amended): see PARA 553 ante.

2 For the meaning of 'enforcement notice' see PARA 561 post.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'breach of planning control' see PARA 551 ante.

5 le by reason of the Town and Country Planning Act 1990 s 175(4) (as amended): see PARA 603 post.

6 For the meaning of 'stop notice' see PARA 577 post.

7 le steps required for a purpose mentioned in the Town and Country Planning Act 1990 s 173(4)(b) (as substituted): see PARA 563 post. As to the meaning of 'amenity' see PARA 158 note 8 ante.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 26(1). Where a county planning authority in England issues an enforcement notice or serves a stop notice or a breach of condition notice, it must supply the information specified in art 26(1) or (2), as the case may be, in relation to the notice to the district planning authority in whose area the land to which the notice relates is situated and must inform that authority if the notice is withdrawn or the relevant enforcement notice or breach of condition notice is quashed: art 26(5). For the meaning of 'breach of condition notice' see PARA 583 post. As to county planning authorities and district planning authorities in England see PARA 28 ante.

9 Ibid art 26(2).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

12 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 26(3).

13 Ibid art 26(6). Information must be so supplied under art 26(5) (see note 8 supra) that entries may be made within that period of 14 days: art 26(6).

14 Ibid art 26(4).

15 For the meaning of 'local planning register authority' see PARA 467 note 1 ante.

16 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 26(7).

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555. Crown land.

At the date at which this title states the law, notwithstanding any interest of the Crown in Crown land¹, any restrictions or powers imposed or conferred by the statutory provisions relating to enforcement² apply and are exercisable³ in relation to Crown land to the extent of any interest⁴ in it for the time being held otherwise than by or on behalf of the Crown⁵.

As from a day to be appointed⁶, however, the above provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷ and new provision is made regarding enforcement in relation to the Crown. As from such a day, and despite the general application of the Town and Country Planning Act 1990 to the Crown⁸, no act or omission done or suffered by or on behalf of the Crown constitutes an offence under that 1990 Act⁹. A local planning authority¹⁰ must not take any step for the purposes of enforcement in relation to Crown land¹¹ unless it has the consent of the appropriate authority¹²; and the appropriate authority may give such consent subject to such conditions as it thinks appropriate¹³. A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done¹⁴ or prohibited by or under the Town and Country Planning Act 1990¹⁵; and this includes entering land, bringing proceedings and the making of an application¹⁶ but does not include service of a notice¹⁷ or the making of an order, other than by a court¹⁸.

1 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

2 I.e the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) (as amended): see PARA 551 et seq ante, PARA 556 et seq post.

3 I.e subject to ibid s 296(2)(a) (as amended and prospectively repealed). In relation to land which for the time being is Crown land, no order or notice may be made, issued or served under any of the provisions of s 171C (as added) (see PARA 559 post), s 172 (as substituted) (see PARA 561 post), s 173A (as substituted) (see PARA 566 post), s 183 (as amended) (see PARAS 577-579 post), s 187A (as added) (see PARA 583 post) or s 187B (as added) (see PARA 585 post) or under any of those provisions as applied by any order or regulations made under Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq post) without the consent of the appropriate authority: s 296(2)(a) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 45(2); prospectively repealed: see the text and notes 6-7 infra). For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.

4 A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for the purposes of the Town and Country Planning Act 1990 s 296(1)(c) (as amended) so far as applicable to Pt VII (ss 171A-196C) (as amended) as having an interest in land: s 293(4) (prospectively repealed: see the text and notes 6-7 infra).

5 See ibid s 296(1)(c) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 45(1); prospectively repealed (see the text and notes 6-7 infra)); and PARA 11 ante at head (c) in the text. Although, until the changes made by the Planning and Compulsory Purchase Act 2004 (see PARA 13 et seq ante) are fully in force the Crown does not require planning permission for development (see *Ministry of Agriculture, Fisheries and Food v Jenkins* [1963] 2 QB 317, [1963] 2 All ER 147, CA; *Lord Advocate v Dumbarton District Council*

[1990] 2 AC 580, [1990] 1 All ER 1, HL), government departments in general consult with local planning authorities before carrying out development which otherwise would require planning permission. Land held, used or occupied by National Health Service bodies is subject to normal planning controls, subject to certain transitional provisions: see the National Health Service and Community Care Act 1990 s 60(1); and HEALTH SERVICES vol 54 (2008) PARAS 94, 136.

As to the position where enforcement notices are issued against a private individual who is subsequently declared bankrupt, his trustee in bankruptcy then disclaiming the land in question so that it vests in the Crown, see *Goodacre v Wealden District Council* [2003] EWHC 3432 (QB), [2003] All ER (D) 320 (Dec), where at [38]-[39] the text to notes 1-5 in the previous reissue of this title is cited with approval by John Leighton Williams QC (sitting as a deputy judge of the High Court). The prohibition of enforcement of planning control against the Crown does not extend to private interests not held on behalf of the Crown and Parliament cannot be taken to have intended Crown privilege to act as a cloak to prevent enforcement of planning control against private interests: *Goodacre v Wealden District Council* supra.

6 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed with respect to the repeals cited in note 7 infra, and 6 August 2004 had been appointed for limited purposes only: see PARA 13 note 8 ante.

7 See the Planning and Compulsory Purchase Act 2004 ss 84(1), 120, Sch 9. At the date at which this title states the law, that repeal was not in force.

8 See the Town and Country Planning Act 1990 s 292A (as added, partly as from a day to be appointed); and PARA 14 ante.

9 Ibid s 296A(1) (ss 296A, 296B prospectively added by the Planning and Compulsory Purchase Act 2004 s 84(2), as from a day to be appointed: see note 6 supra).

10 As to local planning authorities see PARA 28 et seq ante.

11 For the meaning of 'Crown land' for these purposes see PARA 14 ante.

12 Town and Country Planning Act 1990 s 296A(2) (as added: see note 9 supra). For the meaning of 'appropriate authority' for these purposes see PARA 14 note 15 ante.

13 Ibid s 296A(3) (as added: see note 9 supra).

14 To the extent that an interest in land is a Crown interest or a Duchy interest, anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority: ibid s 296B(1), (2) (as added: see note 9 supra). For the meaning of 'Crown interest' for these purposes see PARA 14 ante; and for the meaning of 'Duchy interest' see PARA 11 note 1 ante. An interest in land includes an interest only as occupier of the land: s 296B(3) (as so added).

15 Ibid s 296A(4) (as added: see note 9 supra).

16 Ibid s 296A(5) (as added: see note 9 supra).

17 As to the service of notices generally see PARA 54 ante.

18 Town and Country Planning Act 1990 s 296A(6) (as added: see note 9 supra).

UPDATE

555 Crown land

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

NOTES 8-12--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 296A: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(d).

PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(2) RIGHTS OF ENTRY/556. Right of entry without warrant.

(2) RIGHTS OF ENTRY

556. Right of entry without warrant.

Any person duly authorised in writing by a local planning authority¹ may at any reasonable hour enter any land²:

- 2157 (1) to ascertain whether there is or has been any breach of planning control³ on the land or any other land;
- 2158 (2) to determine whether any of the enforcement powers⁴ conferred on a local planning authority should be exercised in relation to the land or any other land;
- 2159 (3) to determine how any such power should be exercised in relation to the land or any other land;
- 2160 (4) to ascertain whether there has been compliance with any requirement imposed as a result of any such power having been exercised in relation to the land or any other land,

if there are reasonable grounds for entering for the purpose in question⁵.

Any person duly authorised⁶ in writing by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸ may at any reasonable hour enter any land to determine whether an enforcement notice⁹ should be issued in relation to the land or any other land, if there are reasonable grounds for entering for that purpose¹⁰.

1 For these purposes, and for the purposes of the Town and Country Planning Act 1990 ss 196B, 196C (as added) (see PARAS 557-558 post), references to a local planning authority include, in relation to a building situated in Greater London, a reference to the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage'): s 196C(8) (added by the Planning and Compensation Act 1991 s 11(1)). As to local planning authorities generally see PARA 28 et seq ante; for the meaning of 'building' see PARA 2 note 10 ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to English Heritage see PARA 1058 post.

2 For the meaning of 'land' see PARA 2 note 10 ante. As to entry onto Crown land, however, see PARA 555 ante.

3 For the meaning of 'breach of planning control' see PARA 551 ante.

4 Ie any of the powers conferred by the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) (as amended): see PARAS 551-553 ante, PARA 557 et seq post.

5 Town and Country Planning Act 1990 s 196A(1) (s 196A added by the Planning and Compensation Act 1991 s 11(1)). Admission to any building used as a dwelling house may not be demanded as of right by virtue of the Town and Country Planning Act 1990 s 196A(1) (as so added) or s 196A(2) (as so added) unless 24 hours' notice of the intended entry has been given to the occupier of the building: s 196A(4) (as so added). For guidance on the exercise of such rights of entry see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements*; and as to the status of policy guidance see PARA 9 ante.

6 The Secretary of State or, in relation to Wales, the National Assembly for Wales may not so authorise any person without consulting the local planning authority: Town and Country Planning Act 1990 s 196A(3) (as added: see note 5 supra). In England, the local planning authority which the Secretary of State is required so to consult is the county planning authority or the district planning authority as he thinks appropriate: Town and Country Planning Act 1990 s 1(5) (as amended), Sch 1 para 20(1) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 53(8)). The Town and Country Planning Act 1990 Sch 1 para 20(1) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'consult' see PARA 2 note 1 ante; and as to county planning authorities and district planning authorities in England see PARA 28 ante. See also notes 7-8 infra.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 s 196A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 For the meaning of 'enforcement notice' see PARA 561 post.

10 Town and Country Planning Act 1990 s 196A(2) (as added: see note 5 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(2) RIGHTS OF ENTRY/557. Right of entry under warrant.

557. Right of entry under warrant.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

- 2161 (1) that there are reasonable grounds for entering any land¹ for any specified purpose²; and
- 2162 (2) either that admission to the land has been refused³ or a refusal is reasonably apprehended or that the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by a local planning authority⁴ or, as the case may be, by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶, to enter the land⁷.

A warrant authorises entry on one occasion only and that entry must be:

- 2163 (a) within one month from the date of the issue of the warrant; and
- 2164 (b) at a reasonable hour, unless the case is one of urgency⁸.

1 For the meaning of 'land' see PARA 2 note 10 ante. As to entry onto Crown land, however, see PARA 555 ante.

2 Ie for any of the purposes mentioned in the Town and Country Planning Act 1990 s 196A(1) or (2) (as added): see PARA 556 ante.

3 For these purposes, admission to land is regarded as having been refused if no reply is received to a request for admission within a reasonable period: *ibid* s 196B(2) (s 196B added by the Planning and Compensation Act 1991 s 11(1)).

4 For the meaning of 'local planning authority' for these purposes see PARA 556 note 1 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 186B (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 196B(1) (as added: see note 3 supra).

8 *Ibid* s 196B(3) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(2) RIGHTS OF ENTRY/558. Additional rights and duties.

558. Additional rights and duties.

A person authorised to enter any land¹ in pursuance of a right of entry conferred under or by virtue of the provisions described above²:

- 2165 (1) must, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
- 2166 (2) may take with him such other persons as may be necessary; and
- 2167 (3) on leaving the land must, if the owner³ or occupier is not then present, leave it as effectively secured against trespassers as he found it⁴.

If any damage is caused to land or chattels in the exercise of such a right of entry, compensation⁵ may be recovered by any person suffering the damage from the authority which gave the written authority for the entry or, as the case may be, from the Secretary of State⁶ or, in relation to Wales, from the National Assembly for Wales⁷.

Any person who wilfully obstructs a person acting in the exercise of a right of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁸.

If any person who enters any land, in exercise of a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum⁹; but this provision does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land¹⁰.

1 For the meaning of 'land' see PARA 2 note 10 ante. As to entry onto Crown land, however, see PARA 555 ante.

2 I.e. a right of entry conferred under or by virtue of the Town and Country Planning Act 1990 s 196A (as added) (see PARA 556 ante) or s 196B (as added) (see PARA 557 ante).

3 For the meaning of 'owner' see PARA 17 note 1 ante.

4 Town and Country Planning Act 1990 s 196C(1) (s 196C added by the Planning and Compensation Act 1991 s 11(1)).

5 The provisions of the Town and Country Planning Act 1990 s 118 (determination of claims for compensation: see PARA 931 post) apply in relation to such compensation as they apply in relation to compensation under Pt IV (ss 107-118) (as amended) (see PARA 914 et seq post): s 196C(4) (as added: see note 4 supra).

6 As to the Secretary of State see PARA 19 ante.

7 Town and Country Planning Act 1990 s 196C(3) (as added: see note 4 supra). As to the transfer of functions under s 196C (as so added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 196C(2) (as added: see note 4 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

9 Ibid s 196C(5), (7) (as added: see note 4 supra). For the meaning of 'the statutory maximum' see PARA 53 note 11 ante.

10 Ibid s 196C(6) (as added: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(3) PLANNING CONTRAVENTION NOTICES/559. Power to require information about operations or activities on land.

(3) PLANNING CONTRAVENTION NOTICES

559. Power to require information about operations or activities on land.

Where it appears to the local planning authority¹ that there may have been a breach of planning control² in respect of any land³, the authority may serve notice to that effect (a 'planning contravention notice') on any person who:

- 2168 (1) is the owner⁴ or occupier of the land or has any other interest in it; or
- 2169 (2) is carrying out operations on the land⁵ or is using it for any purpose⁶.

A planning contravention notice may require the person on whom it is served to give such information as to:

- 2170 (a) any operations being carried out on the land, any use⁷ of the land and any other activities⁸ being carried out on the land; and
- 2171 (b) any matter relating to the conditions or limitations subject to which any planning permission⁹ in respect of the land has been granted,

as may be specified in the notice¹⁰.

The notice may¹¹ require the person on whom it is served, so far as he is able;

- 2172 (i) to state whether or not the land is being used for any purpose specified in the notice or any operations or activities specified in the notice are being or have been carried out on the land;
- 2173 (ii) to state when any use, operations or activities began;
- 2174 (iii) to give the name and postal address of any person known to him to use or to have used the land for any purpose or to be carrying out, or have carried out, any operations or activities on the land;
- 2175 (iv) to give any information he holds as to any planning permission for any use or operations or any reason for planning permission not being required for any use or operations;
- 2176 (v) to state the nature of his interest, if any, in the land and the name and postal address of any other person known to him to have an interest in the land¹².

A planning contravention notice may give notice of a time and place at which:

- 2177 (A) any offer which the person on whom the notice is served may wish to make to apply for planning permission, to refrain from carrying out any operations or activities or to undertake remedial works; and
- 2178 (B) any representations which he may wish to make about the notice,

will be considered by the authority; and the authority must give him an opportunity to make in person any such offer or representations at that time and place¹³.

A planning contravention notice must inform the person on whom it is served of the likely consequences of his failing to respond to the notice and, in particular that enforcement action may be taken¹⁴ and of the circumstances¹⁵ in which no compensation is payable¹⁶.

Any requirement of a planning contravention notice must be complied with by giving information in writing to the local planning authority¹⁷.

The service of a planning contravention notice does not affect any other power exercisable in respect of any breach of planning control¹⁸.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'breach of planning control' see PARA 551 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 For these purpose, references to operations on land include operations in, under or over the land: Town and Country Planning Act 1990 s 171C(8) (s 171C added by the Planning and Compensation Act 1991 s 1).

6 Town and Country Planning Act 1990 s 171C(1) (as added: see note 5 supra). Electronic communications may not be used for the service of a planning contravention notice: see s 329(3B)(a) (as added); and PARA 54 note 4 ante. As to the service of notices generally see PARA 54 ante. Service of a planning contravention notice is an optional procedure and there is no requirement to serve such a notice before going on to consider other forms of enforcement action: see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 1. As to the status of such policy guidance see PARA 9 ante.

7 For the meaning of 'use' see PARA 221 note 4 ante.

8 For these purposes, references to activities on land include activities in, under or over the land: Town and Country Planning Act 1990 s 171C(8) (as added: see note 5 supra).

9 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

10 Town and Country Planning Act 1990 s 171C(2) (as added: see note 5 supra). For a model form of planning contravention notice see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 1, Appendix.

11 Ie without prejudice to the generality of the Town and Country Planning Act 1990 s 171C(2) (as added): see the text and notes 7-10 supra.

12 Town and Country Planning Act 1990 s 171C(3) (as added (see note 5 supra); amended in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 5(a); and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 5(a)).

13 Town and Country Planning Act 1990 s 171C(4) (as added: see note 5 supra).

14 For the meaning of 'taking enforcement action' see PARA 551 ante.

15 Ie the notice must inform the person on whom it is served of the effect of the Town and Country Planning Act 1990 s 186(5)(b) (as substituted): see PARA 581 post at head (b) in the text.

16 Ibid s 171C(5) (as added: see note 5 supra).

17 Ibid s 171C(6) (as added: see note 5 supra).

18 Ibid s 171C(7) (as added: see note 5 supra). As to planning contravention notices in relation to Crown land see PARA 555 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(3) PLANNING CONTRAVENTION NOTICES/560. Non-compliance with planning contravention notice.

560. Non-compliance with planning contravention notice.

If, at any time after the end of the period of 21 days beginning with the day on which a planning contravention notice¹ has been served on any person, he has not complied with any requirement of the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale². Such an offence may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent such offence by reference to any period of time following the preceding conviction for such an offence³. It is, however, a defence for a person charged with such an offence to prove that he had a reasonable excuse for failing to comply with the requirement⁴.

If any person:

- 2179 (1) makes any statement purporting to comply with a requirement of a planning contravention notice which he knows to be false or misleading in a material particular; or
- 2180 (2) recklessly makes such a statement which is false or misleading in a material particular,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale⁵.

1 For the meaning of 'planning contravention notice' see PARA 559 ante.

2 Town and Country Planning Act 1990 s 171D(1), (4) (s 171D added by the Planning and Compensation Act 1991 s 1). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

3 Town and Country Planning Act 1990 s 171D(2) (as added: see note 2 supra).

4 Ibid s 171D(3) (as added: see note 2 supra).

5 Ibid s 171D(5), (6) (as added: see note 2 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/561. Issue and service of enforcement notice.

(4) ENFORCEMENT NOTICES

(i) In general

561. Issue and service of enforcement notice.

The local planning authority¹ may issue a notice (an 'enforcement notice')² where it appears to the authority that:

- 2181 (1) there has been a breach of planning control³; and
- 2182 (2) it is expedient to issue the notice, having regard to the provisions of the development plan⁴ and to any other material considerations⁵.

The service of the notice must take place:

- 2183 (a) not more than 28 days after its date of issue; and
- 2184 (b) not less than 28 days before the date specified in it as the date on which it is to take effect⁶.

A copy of the notice must be served:

- 2185 (i) on the owner⁷ and on the occupier⁸ of the land⁹ to which it relates; and
- 2186 (ii) on any other person having an interest in the land, being an interest which, in the opinion of the authority, is materially affected by the notice¹⁰.

Where it appears to the local planning authority by which or on behalf of which an enforcement notice is to be issued that the matters constituting the breach of planning control comprise or include:

- 2187 (A) Schedule 1 development¹¹ or Schedule 2 development¹², it must, before the enforcement notice is issued, adopt a screening opinion¹³;
- 2188 (B) EIA development¹⁴, it must serve with a copy of the enforcement notice a notice (a 'regulation 25 notice') which must include the screening opinion required by head (1) above and the required written statement¹⁵ of the reasons for its conclusion and require a person who gives notice of an appeal against the enforcement notice¹⁶ to submit to the Secretary of State¹⁷ or, in relation to Wales, to the National Assembly for Wales¹⁸, with the notice four copies of an environmental statement¹⁹ relating to that EIA development²⁰.

The authority by which a regulation 25 notice has been served must send a copy of it to the Secretary of State or the Assembly and the consultation bodies²¹ and where an authority provides the Secretary of State or Assembly with a copy of a regulation 25 notice it must also provide him or it with a list of the other persons to whom a copy of the notice has been or is to be sent²².

Any person on whom a regulation 25 notice is served may apply to the Secretary of State or to the Assembly for a screening direction²³.

The relevant planning authority²⁴ and any person, other than the Secretary of State or the Assembly, to whom a copy of the regulation 25 notice has been sent ('the consultee') must, if requested by the person on whom the regulation 25 notice was served, enter into consultation with that person to determine whether the consultee has in his possession any information which that person or the consultee considers relevant to the preparation of an environmental statement and, if it has, the consultee must make any such information available to that person²⁵.

The relevant planning authority must make available for public inspection at all reasonable hours at the place where the appropriate register²⁶, or relevant part of that register, is kept a copy of every regulation 25 notice given by the authority²⁷. Copies of those documents must

remain so available for a period of two years or until they are entered in Part II of the register²⁸, whichever is the sooner²⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 An enforcement notice is a nullity and thus devoid of legal effect if it is defective upon its face: see *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196 at 226-227, [1963] 1 All ER 459 at 470, CA, per Upjohn LJ (an enforcement notice would be a nullity if it 'was hopelessly ambiguous and uncertain, so that the owner or occupier could not tell in what respect it was alleged that he had developed land without permission or ... failed to comply with a condition or ... that he could not tell with reasonable certainty what steps he had to take to remedy the alleged breaches'). An enforcement notice may, however, be valid notwithstanding minor discrepancies remediable upon appeal unless the totality of the notice amounts to an injustice: *Patel v Betts* [1978] JPL 109, DC. See also *Coventry Scaffolding Co (London) Ltd v Parker* [1987] JPL 127, DC (enforcement notice did not precisely identify land; what had to be decided in such a case was whether, in the light of surrounding circumstances, the recipient of the notice was sufficiently and clearly apprised of the effect of the notice and of what he had to do pursuant to it, so as to decide whether it was just or unjust to hold him to it; omission held not to be a fundamental error so as to render the enforcement notice a nullity); *Epping Forest District Council v Matthews* [1987] JPL 132, DC (enforcement notice corrected by inspector on appeal held not to be a nullity); *Ferris v Secretary of State for the Environment* (1988) 57 P & CR 127 (alleged material change of use from single family occupation to multiple paying occupation; local planning authority did not have to specify in the notice the base use from which the material change of use was alleged to have been made); *International Society for Krishna Consciousness v Secretary of State for the Environment and Hertsmere Borough Council* (1991) 64 P & CR 85 (enforcement notice, read as a whole and bearing in mind that it would be read by an informed recipient, did state sufficiently precisely what was alleged and what steps the recipients were required to take; notice not a nullity). For guidance in drafting an enforcement notice see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 2; and as to the status of such guidance see PARA 9 ante.

Without prejudice to the generality of the Planning (Consequential Provisions) Act 1990 ss 3-5, Sch 3 paras 1, 2, notwithstanding the repeal by that Act of the Town and Country Planning Act 1971 s 292 (1), Sch 24 Pt VI (paras 31-40), the provisions of Sch 24 Pt VI (paras 31-40) (enforcement notices served under previous enactments) continue to have effect, in so far as they are not specifically reproduced in the Planning (Consequential Provisions) Act 1990 Sch 3 and remain capable of having effect, with any reference in those provisions to any provision of the repealed enactments which is reproduced in the consolidating Acts being taken, so far as the context otherwise permits, as including a reference to the corresponding provision of those Acts: Planning (Consequential Provisions) Act 1990 Sch 3 para 3. For the meaning of 'the repealed enactments' and 'the consolidating Acts' see PARA 2 note 5 ante.

3 For the meaning of 'breach of planning control' see PARA 551 ante. The local planning authority is not obliged to satisfy itself that a breach of planning control has in fact occurred before issuing an enforcement notice and the notice is not invalidated by the authority's failure to do so (*ZZZ Incorporated v First Secretary of State* [2003] EWHC 1092 (Admin), [2003] All ER (D) 201 (Apr)); but the notice may be quashed on appeal (see PARA 603 et seq post) if no breach is found to have occurred (*Tidswell v Secretary of State for the Environment* (1976) 34 P & CR 152). The authority must, however, be able to show that it did appear to the authority that a breach had occurred: *R v Rochester upon Medway City Council, ex p Hobday* (1989) 58 P & CR 424, [1989] 2 PLR 38. For guidance as to the circumstances in which an enforcement notice should be issued see *PPG18--Enforcing Planning Control*.

4 For the meaning of 'development plan' see PARA 91 ante.

5 Town and Country Planning Act 1990 s 172(1) (s 172 substituted by the Planning and Compensation Act 1991 s 5(1)). See eg *Fisher v Secretary of State for Local Government and the Regions* [2002] EWHC 2251 (Admin), [2003] 1 P & CR 257, [2002] 44 EG 168 (CS) (deposit of waste material); *R v Caradon District Council, ex p Knott* (1999) 80 P & CR 154 (enforcement notice quashed because issued without a proper planning purpose); *Exmouth Marina Ltd v First Secretary of State* [2003] EWHC 1500 (Admin), [2003] All ER (D) 10 (Jun) (on appeal against enforcement notice, inspector failed properly to consider proposals to modify structure in question). More than one breach of planning control may be alleged in a single enforcement notice so served: *Valentina of London Ltd v Secretary of State for the Environment* [1992] JPL 1151, (1992) Times, 21 May. An enforcement notice may be issued in respect of a site consisting of several owners or occupiers, it not being necessary to issue a notice in respect of each planning unit (*Rawlins v Secretary of State for the Environment, Gregory v Secretary of State for the Environment* [1990] 1 PLR 110, CA); and there is no requirement to limit enforcement procedure to a site or sites which do not overlap one another (*Ramsey v Secretary of State for the Environment* [1991] 2 PLR 112). An enforcement notice may be served in respect of the whole of an area of land even though a notice has already been served in respect of part of that land: *Biddle v Secretary of State for the Environment* [1999] JPL 835. A local planning authority is not prevented from issuing a fresh enforcement notice where the Secretary of State (or, now, in relation to Wales, the National Assembly for Wales) has previously allowed an appeal and quashed an enforcement notice under the Town and Country

Planning Act 1990 s 176(3) (see PARA 609 post) since s 176(3) provides procedural grounds for allowing an appeal and does not amount to a determination of the merits of the grounds of appeal: *R v Wychavon District Council and the Secretary of State for the Environment, ex p Saunders* (1991) 64 P & CR 120.

As to the validity of enforcement notices see PARA 44 ante; and as to appeals against enforcement notices see PARA 603 et seq post.

The power to issue an enforcement notice is discretionary and the decision by a local planning authority whether or not to issue a notice may not be challenged except on the ground that its issue was arbitrary or capricious: see *Perry v Stanborough (Developments) Ltd* (1977) 244 Estates Gazette 551 (authority's action in refusing to enforce a condition relating to construction of access roads from a development site to other sites, leaving the matter as one for negotiation between adjoining owners, upheld). 'I see no reason why the authority are not perfectly entitled in the exercise of the very wide discretion conferred upon them (and them alone) by the statute, to say simply that they do not propose to take enforcement action': *Perry v Stanborough (Developments) Ltd* supra at 555 per Fox J.

Estoppel does not normally operate to restrain enforcement of planning control (see *Western Fish Products Ltd v Penwith District Council* [1981] 2 All ER 204, CA; *Bedfordia Plant Ltd v Secretary of State for the Environment and North Bedfordshire District Council* [1981] JPL 122, DC; *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, [2003] 1 WLR 348); and it is unhelpful to introduce private law concepts of estoppel into planning law (see *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* supra; and ESTOPPEL vol 16(2) (Reissue) PARA 961). As to the related concept of legitimate expectation see JUDICIAL REVIEW vol 61 (2010) PARA 649. As to the limited circumstances in which the authority may be bound by an officer acting without specific delegated powers see *Lever Finance Ltd v Westminster (City) London Borough Council* [1971] 1 QB 222, [1970] 3 All ER 496, CA; *Western Fish Products Ltd v Penwith District Council* supra; *Bedfordia Plant Ltd v Secretary of State for the Environment and North Bedfordshire District Council* supra. Where enforcement proceedings have already been brought unsuccessfully, the doctrine of issue estoppel may, however, prevent the authority from issuing a fresh notice in respect of the same breach of control: *Thrasyvoulou v Secretary of State for the Environment* [1988] QB 809, [1988] 2 All ER 781, CA; affd [1990] 2 AC 273, [1990] 1 All ER 65, HL; and see *R (on the application of Exmouth Marina Ltd) v First Secretary of State* [2004] EWHC 3166 (Admin) at [10], [2004] All ER (D) 167 (Jun) per Judge Rich QC. As to issue estoppel see CIVIL PROCEDURE vol 12 (2009) PARA 1179 et seq.

6 Town and Country Planning Act 1990 s 172(3) (as substituted: see note 5 supra). Electronic communications may not be used for service of a copy of an enforcement notice by a local planning authority: see s 329(3B)(b) (as added); and PARA 54 note 4 ante.

7 For the meaning of 'owner' see PARA 17 note 1 ante. A freeholder who lets at less than a rack rent is not an owner for these purposes: *London Corp'n v Cusack-Smith* [1955] AC 337, [1955] 1 All ER 302, HL. See also *Courtney-Southan v Crawley UDC* [1967] 2 QB 930, [1967] 2 All ER 246, DC.

8 A licensee may be an occupier of the land: *Stevens v Bromley London Borough Council* [1972] Ch 400, [1972] 1 All ER 712, CA (although certain caravan dwellers were licensees, they were held to be occupiers for these purposes and entitled to be served with copies of the enforcement notice). A licensee was stated to be so entitled if he could satisfy tests of (1) degree of control over the land; and (2) duration of such control: see *Stevens v Bromley London Borough Council* supra at 413 and at 721 per Edmund Davies LJ.

9 For the meaning of 'land' see PARA 2 note 10 ante. As to enforcement notices in relation to Crown land see PARA 555 ante, PARA 572 post.

10 Town and Country Planning Act 1990 s 172(2) (as substituted: see note 5 supra). Electronic communications may not be used for service of such a copy: see note 6 supra.

11 For the meaning of 'Schedule 1 development' see PARA 489 ante.

12 For the meaning of 'Schedule 2 development' see PARA 490 ante.

13 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(2). For the meaning of 'screening opinion' see PARA 492 note 10 ante.

14 For the meaning of 'EIA development' see PARA 488 ante.

15 Ie the statement required by ibid reg 4(6): see PARA 492 ante. As to service of notices etc see PARA 492 note 8 ante.

16 Ie under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 post.

17 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

18 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

19 For the meaning of 'environmental statement' see PARA 497 ante. As to appeal under *ibid* s 174 (as amended) without an environmental statement see the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(12); and PARA 619 post; as to the procedure where an environmental statement is submitted on such an appeal see reg 25(13); and PARA 620 post; as to further information and evidence respecting environmental statements see reg 25(14); and PARA 620 note 5 post; and as to publicity and information see reg 25(16)-(18); and PARA 620 post.

20 *Ibid* reg 25(3).

21 For the meaning of 'the consultation bodies' see PARA 498 note 9 ante.

22 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(5).

23 *Ibid* reg 25(6). The following provisions apply: (1) such an application must be accompanied by (a) a copy of the regulation 25 notice; (b) a copy of the enforcement notice which accompanied it; and (c) such other information or representations as the applicant may wish to provide or make; (2) the applicant must send to the authority by which the regulation 25 notice was served, at such time as he applies to the Secretary of State or the Assembly, a copy of the application under reg 25(6) and of any information or representations provided or made in accordance with head (1)(c) *supra*; (3) if the Secretary of State or the Assembly considers that the information provided in accordance with head (1) *supra* is insufficient to enable him or it to make a direction, he or the Assembly must notify the applicant and the authority of the matters in respect of which he or the Assembly requires additional information; and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice; (4) the Secretary of State or the Assembly must send a copy of his or its direction to the applicant; (5) without prejudice to head (4) *supra*, where the Secretary of State or the Assembly directs that the matters which are alleged to constitute the breach of planning control do not comprise or include EIA development, he or the Assembly must send a copy of the direction to every person to whom a copy of the regulation 25 notice was sent: reg 25(6)(a)-(e) (as so modified). For the meaning of 'screening direction' see PARA 492 note 20 ante.

24 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

25 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(7). The provisions of reg 12(5), (6) (see PARA 500 ante) apply to information under reg 25(7) as they apply to any information falling within reg 12(4): reg 25(8).

26 For the meaning of 'the appropriate register' see PARA 508 note 7 ante.

27 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(19)(a).

28 For the meaning of 'register' see PARA 507 note 1 ante.

29 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(19).

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562. Enforcement by the Secretary of State or the Assembly.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² to be expedient that an enforcement notice³ should be issued in respect of any land⁴, he or the Assembly may issue such a notice⁵; but may not do so without consulting⁶ the local planning authority⁷.

An enforcement notice issued by the Secretary of State or the Assembly has the same effect as a notice issued by the local planning authority⁸. Electronic communications may not be used for the service of such an enforcement notice⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 182, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'enforcement notice' see PARA 561 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 182(1). In relation to an enforcement notice issued by the Secretary of State or the Assembly, the Town and Country Planning Act 1990 s 178 (as amended) (see PARA 568 post) and s 181 (as amended) (see PARA 571 post) apply as if for any reference therein to the local planning authority there were substituted a reference to the Secretary of State or the Assembly: s 182(4). For these purposes, any reference to the local planning authority in England is to be construed as a reference to the county planning authority or the district planning authority, as the Secretary of State thinks appropriate: see s 1(5)(c) (as amended), Sch 1 para 20(2). Schedule 1 para 20(2) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; as to local planning authorities generally see PARA 28 et seq ante; and as to county planning authorities and district planning authorities see PARA 28 ante.

6 For the meaning of 'consult' see PARA 2 note 1 ante.

7 Town and Country Planning Act 1990 s 182(2).

8 Ibid s 182(3). The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682 (as amended), except regs 7, 8 (see PARA 606 post), apply with respect to enforcement notices issued by the Secretary of State under the Town and Country Planning Act 1990 s 182 as they apply with respect to such notices issued by local planning authorities (1) as if for references to a local planning authority there were substituted references to the Secretary of State (Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 11(a)); and (2) subject to certain other specified amendments (see PARAS 564 notes 4, 14, 608 post). Similarly, the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, except regs 6, 7, apply to enforcement notices issued by the Assembly under the Town and Country Planning Act 1990 s 182 as they apply to such notices issued by local planning authorities (1) as if for references to a local planning authority there were substituted references to the Assembly (Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 10(a)); and (2) subject to certain other specified amendments (see PARAS 564 notes 4, 14, 608 post).

9 See PARA 54 note 4 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/563. Contents of enforcement notice; in general.

563. Contents of enforcement notice; in general.

An enforcement notice¹ must state:

- 2189 (1) the matters which appear to the local planning authority² to constitute the breach of planning control³; and
- 2190 (2) the relevant statutory provision⁴ within which, in the opinion of the authority, the breach falls⁵.

A notice complies with head (1) above if it enables any person on whom a copy of it is served to know what those matters are⁶.

An enforcement notice must specify the steps which the authority requires to be taken⁷, or the activities which the authority requires to cease, in order to achieve, wholly or partly, any of the following purposes:

- 2191 (a) remedying the breach by making any development⁸ comply with the terms, including conditions and limitations, of any planning permission⁹ which has been granted in respect of the land¹⁰, by discontinuing any use¹¹ of the land or by restoring the land to its condition before the breach took place; or
- 2192 (b) remedying any injury to amenity¹² which has been caused by the breach¹³.

An enforcement notice may, for example, require:

- 2193 (i) the alteration or removal of any buildings or works¹⁴;
- 2194 (ii) the carrying out of any building¹⁵ or other operations;
- 2195 (iii) any activity on the land not to be carried on except to the extent specified in the notice; or
- 2196 (iv) the contour of a deposit of refuse or waste materials on land to be modified by altering the gradient or gradients of its sides¹⁶.

An enforcement notice must specify the date on which it is to take effect and takes effect¹⁷ on that date¹⁸.

An enforcement notice must specify the period at the end of which any steps are required to have been taken or any activities are required to have ceased and may specify different steps or activities¹⁹.

An enforcement notice must specify such additional matters as may be prescribed²⁰; and regulations may require every copy of an enforcement notice served²¹ to be accompanied by an explanatory note giving prescribed information as to the right²² of appeal²³.

1 For the meaning of 'enforcement notice' see PARA 561 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'breach of planning control' see PARA 551 ante.

4 Ie within which of the Town and Country Planning Act 1990 s 171A(1)(a) or (b) (as added) (see PARA 551 ante at heads (1)-(2) in the text) the breach falls.

5 Ibid s 173(1) (s 173 substituted by the Planning and Compensation Act 1991 s 5(1)). As to the approach to be taken in interpreting enforcement notices see *Warrington Borough Council v Garvey* [1988] JPL 752; and for model forms of notices see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 2. See also *East Riding County Council v Park Estate (Bridlington) Ltd* [1957] AC 223, [1956] 2 All ER 669, HL (decided under previous legislation).

6 Town and Country Planning Act 1990 s 173(2) (as substituted: see note 5 supra).

7 As to the power to require steps to be taken see *Iddenden v Secretary of State for the Environment* [1972] 3 All ER 883, [1972] 1 WLR 1433, CA; *Copeland Borough Council v Secretary of State for the Environment* (1976) 31 P & CR 403. The steps required must be stated clearly and not in uncertain or subjective terms: see *Trevors Warehouses Ltd v Secretary of State for the Environment* (1972) 23 P & CR 215, DC; *Metallic Protectives Ltd v Secretary of State for the Environment* [1976] JPL 166, DC; *Hounslow London Borough Council v Secretary of State for the Environment and Indian Gymkhana Club Ltd* [1981] JPL 510, DC; *South Oxfordshire District Council v Secretary of State for the Environment* [1981] 1 All ER 954, [1981] 1 WLR 1092; *Lee v Bromley London Borough Council* [1982] JPL 778; *Warrington Borough Council v Garvey* [1988] JPL 752.

An enforcement notice may not, however, require a landowner to apply a positive use to the land affected by it: see *Lipson v Secretary of State for the Environment* (1976) 33 P & CR 95.

8 For the meaning of 'development' see PARA 217 ante.

9 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante. For guidance on taking enforcement action see *PPG18--Enforcing Planning Control*; and as to the status of such guidance see PARA 9 ante.

10 For the meaning of 'land' see PARA 2 note 10 ante.

11 For the meaning of 'use' see PARA 221 note 4 ante.

12 As to the meaning of 'amenity' see PARA 158 note 8 ante.

13 Town and Country Planning Act 1990 s 173(3), (4) (as substituted: see note 5 supra).

14 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

15 For the meaning of 'building operations' see PARA 218 ante.

16 Town and Country Planning Act 1990 s 173(5) (as substituted: see note 5 supra).

17 *Ie* subject to *ibid* s 175(4) (as amended) (see PARA 603 post) and s 289(4A) (as added) (see PARA 648 post).

18 *Ibid* s 173(8) (as substituted: see note 5 supra).

19 *Ibid* s 173(9) (as substituted: see note 5 supra). Where different periods apply to different steps or activities, references in Pt VII (ss 171A-196C) (as amended) (see PARA 551 *et seq* ante, PARA 565 *et seq* post) to the period for compliance with an enforcement notice, in relation to any step or activity, are to the period at the end of which the step is required to have been taken or the activity is required to have ceased: s 173(9) (as so substituted).

Failure to provide the relevant period is not a mere technicality and to state that compliance with an enforcement notice must occur immediately after it takes effect does not purport to specify a period of time; such a notice is a nullity: see *R (on the application of Lynes) v West Berkshire District Council* [2002] EWHC 1828 (Admin), [2002] All ER (D) 339 (Jul). See also *Burgess v Jarvis and Sevenoaks RDC* [1952] 2 QB 41, [1952] 1 All ER 592, CA (decided under the Town and Country Planning Act 1947 s 23(3) (repealed)).

20 For the meaning of 'prescribed' see PARA 16 note 5 ante. In exercise of the power so conferred the Secretary of State has made the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 4; and the National Assembly for Wales has made the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 3: see PARA 564 post. As to the making of regulations generally see PARA 3 ante. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under the Town and Country Planning Act 1990 s 173 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

21 *Ie* under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante.

22 *Ie* the right of appeal under *ibid* s 174 (as amended): see PARA 603 post.

23 *Ibid* s 173(10) (as substituted: see note 5 supra). As to the regulations so made see note 20 supra.

In relation to special enforcement notices, s 173(10) (as so substituted) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution for the words 'section 172' of the words 'section 295(1)' and for the words 'section 174' of the words 'section 295(3)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

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564. Additional matters to be specified in enforcement notice; copy notices.

An enforcement notice¹ must specify:

- 2197 (1) the reasons why the local planning authority² considers it expedient to issue the notice;
- 2198 (2) all policies and proposals in the development plan³ which are relevant to the decision to issue an enforcement notice; and
- 2199 (3) the precise boundaries of the land to which the notice relates, whether by reference to a plan or otherwise⁴.

Every copy of an enforcement notice served⁵ by a local planning authority must be accompanied by an explanatory note which must include the following:

- 2200 (a) a copy of the statutory provisions⁶ relating to enforcement notices or a summary of those provisions including the following information:

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- 231. (i) that there is a right of appeal to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ against the enforcement notice;
- 232. (ii) that an appeal must be made by giving written notice of the appeal to the Secretary of State or the Assembly before the date specified in the enforcement notice as the date on which it is to take effect or by sending such notice to him or to the Assembly in a properly addressed, prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him or to the Assembly before that date or (where electronic communications⁹ are used to send such notice) by sending the notice to him or to the Assembly at such time that, in the ordinary course of transmission, it would be delivered to him or to it before that date;
- 233. (iii) the grounds on which an appeal may be brought¹⁰;
- 234. (iv) the fee payable¹¹ for the deemed application for planning permission¹² for the development¹³ alleged to be in breach of planning control in the enforcement notice;

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- 2201 (b) notification that an appellant must submit to the Secretary of State or to the Assembly, either when giving notice of appeal or within 14 days from the date on which the Secretary of State or the Assembly sends him a notice so requiring him, a statement in writing specifying the grounds on which he is appealing against the enforcement notice and stating briefly the facts on which he proposes to rely in support of each of those grounds;
- 2202 (c) a list of the names and addresses of the persons on whom a copy of the enforcement notice has been served¹⁴.

1 le an enforcement notice served under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante. For these purposes, 'enforcement notice' means a notice issued under s 172 (as substituted): Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 3; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 2.

2 For these purposes, 'local planning authority' means the body which issues the relevant enforcement notice: Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 3; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 2. As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'development plan' see PARA 91 ante.

4 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 4; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 3. These provisions apply with respect to enforcement notices issued by the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 182 (see PARA 562 ante) as they apply with respect to such notices issued by local planning authorities as if for 'section 172' there were substituted 'section 182': Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 11(b); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 10(b).

5 le under the Town and Country Planning Act 1990 s 172(2) (as substituted): see PARA 561 ante.

6 le ibid ss 171A, 171B, 172-177 (as added and amended): see PARA 551 et seq ante, PARA 603 et seq post.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 3 (definition added by SI 2003/956); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 2 (definition added by SI 2004/3157).

10 le under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 post.

11 le the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 10 (as amended): see PARA 461 ante.

12 For the meaning of 'planning permission' for the purposes of enforcement see PARA 551 note 2 ante.

13 For the meaning of 'development' see PARA 217 ante.

14 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 5 (amended by SI 2003/956); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 4 (amended by SI 2004/3157). These provisions apply with respect to enforcement notices issued by the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 182 (see PARA 562 ante) as they apply with respect to such notices issued by local planning authorities as if for 'section 172(2)' there were substituted 'section 182(1)' and after 'sections 171A, 171B, 172 to 177' there were inserted 'and section 182': Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 11(c); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 10(c).

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565. Replacement buildings.

Where an enforcement notice¹ is issued in respect of a breach of planning control² consisting of the demolition of a building³, the notice may require the construction of a building (a 'replacement building') which is as similar as possible to the demolished building⁴.

However, a replacement building:

- 2203 (1) must comply with any requirement imposed by any enactment⁵ applicable to the construction of buildings;

2204 (2) may differ from the demolished building in any respect which, if the demolished building had been altered in that respect, would not have constituted a breach of planning control;

2205 (3) must comply with any regulations made⁶ for these purposes⁷.

Where an enforcement notice requires the construction of a replacement building and all the requirements of the notice with respect to that construction have been complied with, planning permission⁸ is treated as having been granted⁹ in respect of development¹⁰ consisting of that construction¹¹.

1 For the meaning of 'enforcement notice' see PARA 561 ante.

2 For the meaning of 'breach of planning control' see PARA 551 ante.

3 For the meaning of 'building' see PARA 2 note 10 ante.

4 Town and Country Planning Act 1990 s 173(6) (s 173 substituted by the Planning and Compensation Act 1991 s 5(1)).

5 For the meaning of 'enactment' see PARA 2 note 11 ante.

6 Ie made for the purposes of the Town and Country Planning Act 1990 s 173(7) (as substituted: see note 4 supra), including regulations modifying the Town and Country Planning Act 1990 s 173(7)(a), (b) (as so substituted).

7 Ibid s 173(7) (as substituted: see note 4 supra). At the date at which this title states the law, no such regulations had been made.

8 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

9 Ie by virtue of the Town and Country Planning Act 1990 s 73A (as added): see PARA 525 ante.

10 For the meaning of 'development' see PARA 217 ante.

11 Town and Country Planning Act 1990 s 173(12) (as substituted: see note 4 supra). As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

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566. Variation and withdrawal of enforcement notice.

The local planning authority¹ may:

2206 (1) withdraw an enforcement notice² issued by it; or

2207 (2) waive or relax any requirement of such a notice and, in particular, may extend any period specified³ at the end of which any steps are required to be taken or any activities are required to have ceased⁴;

and the power so conferred may be exercised whether or not the notice has taken effect⁵.

The local planning authority must, immediately after exercising the powers so conferred, give notice of the exercise to every person who has been served with a copy of the enforcement notice or who would, if the notice were reissued, be served with a copy of it⁶.

The withdrawal of an enforcement notice does not, however, affect the power of the local planning authority to issue a further enforcement notice⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'enforcement notice' see PARA 561 ante.

3 In any period specified in accordance with the Town and Country Planning Act 1990 s 173(9) (as substituted): see PARA 563 ante. Extension of a compliance period may be particularly appropriate in the case of a small business or a self-employed person: see *PPG18--Enforcing Planning Control* para 16.

4 Town and Country Planning Act 1990 s 173A(1) (s 173A added by the Planning and Compensation Act 1991 s 5(1)).

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 173A (as so added) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution in s 173A(1)(b) (as so added) for the words 'section 173(9)' of the words 'section 294(6) and (7)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

5 Town and Country Planning Act 1990 s 173A(2) (as added: see note 4 supra). Before agreeing to withdrawal of an enforcement notice on a local council's behalf, the solicitor representing that council must have ostensible authority to do so: *South Buckinghamshire District Council v Flanagan* [2002] EWCA Civ 690, [2002] 1 WLR 2601.

6 Town and Country Planning Act 1990 s 173A(3) (as added: see note 4 supra). Such notice may not be given using electronic communications: see PARA 54 note 4 ante. As to service of notices generally see PARA 54 ante.

7 Ibid s 173A(4) (as added: see note 4 supra). As to the exercise of powers under s 173A (as so added) in relation to Crown land see PARA 555 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/567. Deemed grant of planning permission for development already carried out.

567. Deemed grant of planning permission for development already carried out.

Where an enforcement notice¹ in respect of any breach of planning control² could have required any buildings or works³ to be removed or any activity to cease, but does not do so, and all the requirements of the notice have been complied with, then, so far as the notice did not so require, planning permission⁴ is treated as having been granted⁵ in respect of development⁶ consisting of the construction of the buildings or works or, as the case may be, the carrying out of the activities⁷.

1 For the meaning of 'enforcement notice' see PARA 561 ante.

2 For the meaning of 'breach of planning control' see PARA 551 ante.

3 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

4 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

5 In under the Town and Country Planning Act 1990 s 73A (as added): see PARA 525 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning Act 1990 s 173(11) (substituted by the Planning and Compensation Act 1991 s 5(1)). As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante. As to the service of two enforcement notices in respect of one planning unit see *Millen v Secretary of State for the Environment and Maidstone Borough Council* (1995) 73 P & CR 48. The Town and Country Planning Act 1990 s 173(11) (as so substituted) does not apply where an enforcement notice has been issued but no remedial steps have been specified: *Tandridge District Council v Verrechia* [2000] QB 318, [1999] 3 All ER 247, CA. Nor does it oblige a local planning authority to scour a planning unit for potential breaches of planning control, whether or not it has sufficient evidence to prove those breaches, for fear that planning permission for any such breaches may otherwise be deemed to be granted; the focus has to be on the particular breach of planning control identified in the enforcement notice and nothing else: see *Maldon District Council v Hammond* [2004] EWCA Civ 1073, [2004] All ER (D) 611 (Jul). See also *Fidler v First Secretary of State* [2004] EWCA Civ 1295, 148 Sol Jo LB 1214, [2004] All ER (D) 141 (Oct); *Scott v Secretary of State for the Environment* (16 October 2000, unreported), CA.

UPDATE

567 Deemed grant of planning permission for development already carried out

NOTE 7--*Fidler*, cited, reported at, [2005] JPL 510.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/568. Execution and cost of works required by enforcement notice.

568. Execution and cost of works required by enforcement notice.

Where any steps required by an enforcement notice¹ to be taken are not taken within the period for compliance with the notice², the local planning authority³ may:

- 2208 (1) enter the land⁴ and take the steps; and
- 2209 (2) recover from the person who is then the owner⁵ of the land any expenses reasonably incurred⁶ by the authority in doing so⁷.

Any person who wilfully obstructs a person acting in the exercise of the powers so conferred is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁸.

Where a copy of an enforcement notice has been served in respect of any breach of planning control⁹:

- 2210 (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice; and
- 2211 (b) any sums paid¹⁰ by the owner of any land in respect of expenses incurred by the local planning authority in taking steps required by such a notice to be taken, are deemed to be incurred or paid for the use and at the request of the person by whom the breach of planning control was committed¹¹.

1 For the meaning of 'enforcement notice' see PARA 561 ante.

2 As to the period for compliance see PARA 563 note 19 ante.

3 For the purposes of the Town and Country Planning Act 1990 s 178(1) (as substituted: see note 7 infra), any reference to the local planning authority is to be construed as a reference to the authority which issued the notice in question or, in the case of a notice issued by the Secretary of State or by the National Assembly for Wales, the authority named in the notice: see s 1(5)(c) (as amended), 1(6) (as added), Sch 1 para 12, Sch 1A para 4 (s 1(6), Sch 1A added by the Local Government (Wales) Act 1994 s 18, Sch 4). In relation to Wales, the Town and Country Planning Act 1990 Sch 1A para 4 (as so added) applies only in relation to any area for which, by virtue of any provision made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added). In relation to England, Sch 1 para 12 does not apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities generally see PARA 28 et seq ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'owner' see PARA 17 note 1 ante.

6 The expenses so recoverable by a local planning authority are, until recovered, a charge that is binding on successive owners of the land to which the enforcement notice relates and the charge takes effect as from the date of the completion by the local planning authority of the steps required to be taken by the enforcement notice: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(2).

7 Town and Country Planning Act 1990 s 178(1) (s 178(1), (6) substituted by the Planning and Compensation Act 1991 s 7(1)). The rights so conferred on a local planning authority are dependent on the existence of a valid enforcement notice: *R v Greenwich London Borough Council, ex p Patel* (1985) 51 P & CR 282, CA. As to whether enforcement action under the Town and Country Planning Act 1990 s 178 (as amended) to remove gypsy families' caravans and mobile homes engages the claimants' Convention rights under the Human Rights Act 1998 see PARA 7 the text and notes 24-26 ante.

Regulations made under the Town and Country Planning Act 1990 may provide that (1) the Public Health Act 1936 s 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale); (2) s 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and (3) s 294 (limit of liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act) shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by an enforcement notice: Town and Country Planning Act 1990 s 178(3). Regulations so made applying the Public Health Act 1936 s 289 may include adaptations and modifications for the purpose of giving the owner of land to which an enforcement notice relates the right, as against all other persons interested in the land, to comply with the requirements of the enforcement notice: Town and Country Planning Act 1990 s 178(4). In exercise of the power so conferred the Secretary of State made the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(1). The provisions of the Public Health Act 1936 ss 276, 289 and 294 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 118, 123-124) apply in relation to steps required to be taken by an enforcement notice, to requirements of a notice under the Town and Country Planning Act 1990 s 207(1) (enforcement of duties as to replacement of trees: see PARA 874 post) and to steps required to be taken by a notice under s 215 (proper maintenance of land: see PARA 887 post) as if: (a) references to a local authority were references to a local planning authority; (b) references (in whatever form) to the execution of works under the 1936 Act were references (i) in the case of an enforcement notice or a notice under the Town and Country Planning Act 1990 s 215, to the taking of steps required to be taken by the notice; and (ii) in the case of a notice under s 207(1), to the planting of trees of specified sizes and species; (c) references in the Public Health Act 1936 s 289 to the occupier were references to a person having an interest in the premises other than the owner; and (d) the reference in s 294 to 'expenses under this Act' were a reference to expenses incurred in the taking of steps or the planting of trees, as the case may be: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(1). For an example of a case where materials were removed and sold under these powers see *Goodacre v Wealden District Council* [2003] EWHC 3432 (QB), [2003] All ER (D) 320 (Dec).

Regulations under the Town and Country Planning Act 1990 s 178(3) may also provide for the charging on the land of any expenses recoverable by a local planning authority under s 178(1) (as so substituted): s 178(5). As to the exercise of this power see note 6 supra.

8 Ibid s 178(6) (as substituted: see note 7 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

9 For the meaning of 'breach of planning control' see PARA 551 ante.

10 Ie under the Town and Country Planning Act 1990 s 178(1) (as substituted: see note 7 supra).

11 Ibid s 178(2) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 25, Sch 19 Pt 1).

UPDATE**568 Execution and cost of works required by enforcement notice**

NOTE 7--See *R (on the application of McCarthy) v Basildon DC* [2009] EWCA Civ 13, [2009] LGR 1013 (decision to rely on enforcement notice not unlawful because at what moment, and in what manner, each claimant would be evicted had not been set out).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/569. Offence where enforcement notice not complied with.

569. Offence where enforcement notice not complied with.

Where, at any time after the end of the period for compliance with an enforcement notice¹, any step required by the notice to be taken has not been taken or any activity required by the notice to case is being carried on, the person who is then the owner² of the land³ is in breach of the notice⁴.

Where the owner of the land is in breach of an enforcement notice, he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000⁵; but in proceedings against any person for such an offence it is a defence for him to show that he did everything he could be expected to do to secure compliance with the notice⁶.

A person who has control of, or an interest in, the land to which an enforcement notice relates, other than the owner, must not carry on any activity which is required by the notice to cease or cause or permit such an activity to be carried on⁷; and a person who, at any time after the end of the period for compliance with the notice, contravenes these provisions is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000⁸.

An offence under the above provisions⁹ may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction for such an offence¹⁰; and, where:

- 2212 (1) a person charged with such an offence has not been served with a copy of the enforcement notice; and
- 2213 (2) the notice is not contained in the appropriate register¹¹,

it is a defence for him to show that he was not aware of the existence of the notice¹².

In determining the amount of any fine to be imposed on a person convicted of an offence under the above provisions¹³, the court must, in particular, have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence¹⁴.

1 For the meaning of 'enforcement notice' see PARA 561 ante; and as to the period for compliance see PARA 563 note 19 ante. For the purposes of the Town and Country Planning Act 1990 s 179 (as substituted) (see the text and notes 2-14 infra), an 'enforcement notice' means a notice issued by a planning authority which on its face complies with the requirements of the 1990 Act and which has not actually been quashed on appeal or by judicial review: see *R v Wicks* [1998] AC 92, [1997] 2 All ER 801, HL.

2 For the meaning of 'owner' see PARA 17 note 1 ante. As to proof of ownership see *R v Ruttle, ex p Marshall* (1988) 57 P & CR 299, DC; *Walton v Sedgfield Borough Council* [1999] JPL 541.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Town and Country Planning Act 1990 s 179(1) (s 179 substituted by the Planning and Compensation Act 1991 s 8). A defendant who is prosecuted for an offence contrary to the Town and Country Planning Act 1990 s 179(1) (as substituted) is not entitled as a matter of right to put forward in such proceedings the defence that the enforcement notice relied upon by the prosecution is invalid on the grounds that the decision to issue it was ultra vires: see *R v Wicks* [1998] AC 92, [1997] 2 All ER 801, HL. An enforcement notice does not prohibit any activity for which there has been a grant of planning permission: *Duguid v Secretary of State for the Environment, Transport and the Regions* (2000) 82 P & CR 52, CA. As to the power of the Secretary of State or, in relation to Wales, of the National Assembly for Wales, and of a local authority to require information as to interests in land see PARA 53 ante.

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 179 (as so substituted) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution in s 179(1), (2) (as so substituted) for the word 'owner' in each place that it occurs the word 'occupier': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

5 Town and Country Planning Act 1990 s 179(2), (8) (as substituted: see note 4 supra). As to offences by corporations see PARA 55 ante. When a prosecution is brought for an offence under s 179 (as so substituted) for failure to comply with an enforcement notice, it is essential for the information to allege the date by which the enforcement notice had to be complied with: *Maltege Ltd v Workingham District Council, Frost v Wokingham District Council* (1992) Times, 21 May, DC. It was held in *R v Collet, R v Furminger, R v Nazari, R v Pope, R v Bandar* [1994] 2 All ER 372, CA, that the offence is an absolute offence which does not require the prosecution to prove that the defendant had actual knowledge of the enforcement notice; however, this case was decided with specific reference to the wording of the Town and Country Planning Act 1990 s 179 as originally enacted. It is inappropriate to impose a compensation order for the offence unless it is a simple, straightforward case, in which the amount of compensation can be readily and easily ascertained: *R v Briscoe* (1994) 15 Cr App Rep (S) 699, CA. Where the defendant challenges the validity of an enforcement notice, the prosecution must prove that the notice has been made in compliance with the statutory requirements and has not been quashed on appeal or by judicial review: *Palacegate Properties Ltd v Camden London Borough Council* (2000) 82 P & CR 199, DC.

As to the application of the Town and Country Planning Act 1990 s 179(2) (as so substituted) to special enforcement notices see note 4 supra.

6 Ibid s 179(3) (as substituted: see note 4 supra). The fact that a defendant has done nothing can amount to a defence under s 179(3) (as so substituted) if there was not anything that he could reasonably have been expected to do: *R v Wood* [2001] EWCA Crim 1395, [2002] 1 PLR 1. As to whether the criminal conviction of gypsy who had breached an enforcement notice and failed to remove his caravan amounted to a breach of his Convention rights under the Human Rights Act 1998 see *R v Clarke* [2002] EWCA Crim 753, [2002] All ER (D) 36 (Mar) (the Town and Country Planning Act 1990 s 179(3) (as substituted) should be read not in isolation but in the context of the statutory regime as a whole and the applicant's Convention rights would have been considered at an earlier stage when considering whether to issue the enforcement notice, or on an earlier challenge to its validity); and see further PARA 7 the text and notes 24-26 ante.

7 Town and Country Planning Act 1990 s 179(4) (as substituted: see note 4 supra). In relation to special enforcement notices s 179(4) (as so substituted) is to be omitted: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

8 Town and Country Planning Act 1990 s 179(5), (8) (as substituted: see note 4 supra). In relation to special enforcement notices s 179(5) (as so substituted) is to be omitted: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

9 Ie an offence under the Town and Country Planning Act 1990 s 179(2) or (5) (as substituted: see note 4 supra).

10 Ibid s 179(6) (as substituted: see note 4 supra). In relation to special enforcement notices the words 'or (5)' in s 179(6) (as so substituted) are to be omitted: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

11 Ie the appropriate register kept under the Town and Country Planning Act 1990 s 188 (as amended): see PARA 553 ante.

12 Ibid s 179(7) (as substituted: see note 4 supra).

13 See note 9 *supra*.

14 Town and Country Planning Act 1990 s 179(9) (as substituted: see note 4 *supra*). The court's obligation under s 179(9) (as so substituted) runs concurrently with its obligation under the statutory provisions with regard to sentencing generally (ie, now, the Criminal Justice Act 2003 s 164 (as amended)) to have regard to the seriousness of the offence and the financial circumstances of the offender: *R v Browning* [1996] 1 PLR 61, CA. As to sentencing principles and the defendant's ability to pay see also *R v Turner-Thomas* [2003] EWCA Crim 1841, [2003] All ER (D) 13 (Jun).

UPDATE

569 Offence where enforcement notice not complied with

NOTE 6--It is not a defence under s 179(3) for non-compliance with an enforcement notice due to no other alternative site where the activity could be continued being found: *Wycombe DC v Jesse Wells* [2005] EWHC 1012 (Admin), [2005] JPL 1640.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/570. Effect of planning permission on enforcement notice.

570. Effect of planning permission on enforcement notice.

Where, after the service of a copy of an enforcement notice¹, planning permission² is granted for any development³ carried out before the grant of that permission, the notice ceases to have effect⁴ so far as inconsistent with that permission⁵.

The fact that an enforcement notice has wholly or partly ceased to have effect by virtue of these provisions does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice⁶.

1 For the meaning of 'enforcement notice' see PARA 561 *ante*.

2 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 *ante*.

3 For the meaning of 'development' see PARA 217 *ante*.

4 'Ceases to have effect' means what it says and does not mean that, if temporary planning permission is granted, the enforcement notice has no effect only for as long as that temporary planning permission is in being: *Cresswell v Pearson* (1997) 75 P & CR 404, DC.

5 Town and Country Planning Act 1990 s 180(1) (s 180 substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 26).

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 180(1) (as so substituted) has effect as if the references therein to an enforcement notice were references to a special enforcement notice and with the omission of the words 'or (b) a breach of condition notice': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 *post*.

6 Town and Country Planning Act 1990 s 180(3) (as substituted: see note 4 *supra*).

In relation to special enforcement notices s 180(3) (as so substituted) has effect as if the references therein to an enforcement notice were references to a special enforcement notice and with the omission of the words 'or breach of condition notice': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(i) In general/571. Enforcement notice to have effect against subsequent development.

571. Enforcement notice to have effect against subsequent development.

Compliance with an enforcement notice¹, whether in respect of:

- 2214 (1) the completion, removal or alteration of any buildings or works²;
- 2215 (2) the discontinuance of any use³ of land⁴; or
- 2216 (3) any other requirements contained in the notice,

does not discharge the notice⁵.

Where, at any time after an enforcement notice takes effect:

- 2217 (a) any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with the notice; and
- 2218 (b) the local planning authority⁶ proposes⁷ to take any steps required by the enforcement notice for the removal or alteration of the buildings or works in consequence of the reinstatement or restoration, the local planning authority must, not less than 28 days before taking any such steps, serve on the owner⁸ and occupier of the land a notice of the authority's intention to do so⁹.

Where without planning permission¹⁰ a person carries out any development on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice:

- 2219 (i) he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale; and
- 2220 (ii) no person is liable¹¹ for failure to take any steps required to be taken by an enforcement notice by way of removal or alteration of what has been so reinstated or restored¹².

1 For the meaning of 'enforcement notice' see PARA 561 ante.

2 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

3 For the meaning of 'use' see PARA 221 note 4 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 181(1) (s 181(1), (3)-(5) amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 27). Without prejudice to the Town and Country Planning Act 1990 s 181(1) (as so amended): (1) any provision of an enforcement notice requiring a use of land to be discontinued operates as a requirement that it shall be discontinued permanently, to the extent that it is in contravention of Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante); and accordingly the resumption of that use at any time after it has been discontinued in compliance with the enforcement notice is to that extent in contravention of the enforcement notice (s 181(2)); (2) if any development is carried out on land by way of reinstating or restoring buildings or works which have been removed or altered in compliance with an enforcement notice, the notice is deemed, notwithstanding that its terms are not apt for the purpose, to apply in relation to the buildings or works as reinstated or restored as it applied in relation to the buildings or works before they were removed or altered; and, subject to s 181(4) (as so amended), the provisions of s 178(1), (2) (as amended) (see PARA 568 ante) apply accordingly (s 181(3) (as so amended)). For the meaning of 'development' see PARA 217 ante.

In relation to special enforcement notices the Town and Country Planning Act 1990 s 181 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and subject to the following modifications: (a) in s 181(2) the words 'to the extent that it is contravention of Part III' are to be omitted; and (b) in s 181(3) (as so amended) all the words after 'were removed or altered' are to be omitted: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 post.

6 For the purposes of the Town and Country Planning Act 1990 s 181(4)(b) (as amended: see note 5 supra), any reference to the local planning authority is to be construed as a reference to the authority which issued the notice in question or, in the case of a notice issued by the Secretary of State in England or by the National Assembly for Wales, the authority named in the notice: see s 1(5)(c) (as amended), 1(6) (as added), Sch 1 para 12, Sch 1A para 4 (s 1(6), Sch 1A added by the Local Government (Wales) Act 1994 s 18, Sch 4). In relation to Wales, the Town and Country Planning Act 1990 Sch 1A para 4 (as so added) applies only in relation to any area for which, by virtue of any provision made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added). In relation to England, Sch 1 para 12 does not apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities generally see PARA 28 et seq ante.

7 le under ibid s 178(1) (as substituted): see PARA 568 ante.

8 For the meaning of 'owner' see PARA 17 note 1 ante.

9 Town and Country Planning Act 1990 s 181(4) (as amended: see note 5 supra). Electronic communications may not be used for the service of a notice under s 181(4) (as so amended): see PARA 54 note 4 ante. As to the service of notices see generally para 54 ante.

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 181(4) (as so amended) is to be omitted: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

10 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

11 le under the Town and Country Planning Act 1990 s 179(2) (as substituted): see PARA 569 ante.

12 Ibid s 181(5) (as amended: see note 5 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(4) ENFORCEMENT NOTICES/(ii) Crown Land/572. Special enforcement notices; in general.

(ii) Crown Land

572. Special enforcement notices; in general.

At the date at which this title states the law, except with the consent of the appropriate authority¹, no enforcement notice² may be issued or served³ in relation to land⁴ which for the time being is Crown land⁵.

No enforcement notice may be issued⁶ in respect of development⁷ carried out by or on behalf of the Crown after 1 July 1948 on land which was Crown land at the time when the development was carried out⁸.

The following provisions apply to development of Crown land carried out otherwise than by or behalf of the Crown at a time when no person is entitled to occupy it by virtue of a private interest⁹. Where:

2221 (1) it appears to a local planning authority¹⁰ that such development has taken place in its area; and

2222 (2) the authority considers it expedient to do so having regard to the provisions of the development plan¹¹ and to any other material considerations,

the authority may issue a notice (a 'special enforcement notice')¹². No special enforcement notice may, however, be issued except with the consent of the appropriate authority¹³.

A special enforcement notice must specify:

- 2223 (a) the matters alleged to constitute such development; and
- 2224 (b) the steps which the authority issuing the notice requires to be taken for restoring the land to its condition before the development took place or for discontinuing any use¹⁴ of the land which has been instituted by the development¹⁵.

A special enforcement notice must also specify:

- 2225 (i) the date on which it is to take effect ('the specified date'); and
- 2226 (ii) the period within which any such steps as are mentioned in head (b) above are to taken¹⁶.

A special enforcement notice may specify different periods for the taking of different steps¹⁷.

Not later than 28 days after the date of the issue of a special enforcement notice and not later than 28 days before the specified date, the local planning authority which issued the notice must serve a copy of it:

- 2227 (A) on the person who carried out the development alleged in the notice;
- 2228 (B) on any person who is occupying the land when the notice is issued; and
- 2229 (C) on the appropriate authority¹⁸;

but the local planning authority need not serve a copy of the notice on the person mentioned in head (A) above if the authority is unable, after reasonable inquiry, to identify or trace him¹⁹.

The above provisions are, however, prospectively repealed by the Planning and Compulsory Purchase Act 2004²⁰, subject to transitional arrangements²¹. The Town and Country Planning Act 1990 will, in general, bind the Crown²² but this is subject to any express provision²³ made²⁴ including the enforcement provisions previously discussed²⁵.

1 For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.

2 For the meaning of 'enforcement notice' see PARA 561 ante.

3 ie under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 ante) or under s 173A (as added) as applied by any order or regulations made under Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq post).

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 296(2)(a). For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

The discretion of the appropriate authority so to grant consent to the issue of an enforcement notice cannot be fettered by contract: see *Molton Builders Ltd v City of Westminster London Borough Council* (1975) 30 P & CR 182, CA.

6 ie under the Town and Country Planning Act 1990 s 172 (as substituted).

7 For the meaning of 'development' see PARA 217 ante.

8 Town and Country Planning Act 1990 s 294(1). Section 294(1) does not confer immunity from enforcement proceedings upon private persons in respect of development carried out by, and on behalf of, the Crown on land not owned by the Crown: *Mid-Devon District Council v First Secretary of State* [2004] EWHC 814 (Admin), [2004] All ER (D) 447 (Mar).

9 Town and Country Planning Act 1990 s 294(2). A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for the purposes of ss 294(2)-(7), 295 as having an interest in land: see s 293(4) (as prospectively repealed); and PARA 11 note 19 ante. For the meaning of 'private interest' generally see PARA 11 note 19 ante.

10 As to local planning authorities see PARA 28 et seq ante.

11 For the meaning of 'development plan' see PARA 91 ante.

12 Town and Country Planning Act 1990 s 294(3). As to appeals against special enforcement notices see PARA 612 post. The provisions contained in, or having effect under, s 174(3)-(5) (as amended) (see PARA 603 post), s 175(1)-(4) (as amended) (see PARAS 603-604 post) and s 176(1)-(4) (as amended) (see PARA 609 post) apply to special enforcement notices issued by local planning authorities and to appeals against them under s 295(3) (as prospectively repealed) (see PARA 612 post) as they apply to enforcement notice and to appeals under s 174 (as amended) (see PARA 603 post): s 295(5). The Secretary of State or, in relation to Wales, the National Assembly for Wales may by regulations apply to special enforcement notices and to appeals under s 295(3) such other provisions of the Town and Country Planning Act 1990, with such modifications as he or it thinks fit, as he or it thinks necessary or expedient: s 295(6). As to the transfer of functions under s 295, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. In exercise of the power so conferred, and prior to the transfer of functions in relation to Wales to the Assembly, the Secretary of State made the Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, which came into force on 27 July 1992: reg 1.

The provisions of the Town and Country Planning Act 1990 specified in the Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule apply to special enforcement notices and to appeals against such notices under the Town and Country Planning Act 1990 s 295(3) (see PARA 612 post) as if the references in those provisions to an enforcement notice were references to a special enforcement notice and subject to the further modifications specified in the Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule: reg 2. The provisions so specified are: the Town and Country Planning Act 1990 s 173(10) (as substituted) (see PARA 563), s 173A (as added) (see PARA 566), s 175(5), (7) (see PARA 603 post), s 179 (as substituted) (see PARA 569 ante), s 180(1), (3) (as substituted) (see PARA 570 ante, PARA 584 post), s 181 (as amended) (see PARA 571 ante), s 183 (as amended) (see PARAS 577, 578-579 post), s 186 (as amended) (see PARA 581 post), s 187 (as amended) (see PARA 582 post), s 188 (as amended) (see PARA 553 ante), s 285(1), (2) (as amended) (see PARA 44 ante), s 289 (as amended) (see PARA 648 post), s 322 (see PARA 655 post) and s 322A (as added) (see PARA 656 post): Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

13 Town and Country Planning Act 1990 s 294(4).

14 For the meaning of 'use' see PARA 221 note 4 ante.

15 Town and Country Planning Act 1990 s 294(5).

16 Ibid s 294(6).

17 Ibid s 294(7).

18 Ibid s 295(1).

19 Ibid s 295(2).

20 See the Planning and Compulsory Purchase Act 2004 ss 79(4), 120, Sch 3 para 9(1), Sch 9. At the date at which this title states the law, those repeals were not in force.

21 The repeal of the Town and Country Planning Act 1990 ss 294, 295 does not affect their operation in relation to development carried out before the commencement of the Planning and Compulsory Purchase Act 2004 Sch 3 para 9: Sch 3 para 9(2). At the date at which this title states the law, Sch 3 para 9(2) was not in force.

22 See the Town and Country Planning Act 1990 s 292A (as added, partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121); and PARA 13 ante.

23 le any express provision made by the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended): see PARA 14 et seq ante.

24 See ibid s 292A(2) (as added: see note 22 supra); and PARA 13 ante.

25 See PARA 555 ante.

UPDATE

572 Special enforcement notices; in general

TEXT AND NOTE 20--Repeals now in force: SI 2006/1281.

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(5) TEMPORARY STOP NOTICES

573. Power to issue temporary stop notice.

Partly as from a day to be appointed in relation to Wales¹, if the local planning authority² thinks:

- 2230 (1) that there has been a breach of planning control³ in relation to any land⁴;
and
- 2231 (2) that it is expedient that the activity, or any part of the activity, which amounts to the breach is stopped immediately,

the authority may issue a temporary stop notice⁵. The notice must be in writing⁶ and must:

- 2232 (a) specify the activity which the authority thinks amounts to the breach;
- 2233 (b) prohibit the carrying on of the activity, or of so much of the activity as is specified in the notice;
- 2234 (c) set out the authority's reasons for issuing the notice⁷.

A temporary stop notice may be served⁸ on any of the following:

- 2235 (i) the person who the authority thinks is carrying on the activity;
- 2236 (ii) a person who the authority thinks is an occupier of the land;
- 2237 (iii) a person who the authority thinks has an interest in the land⁹.

The authority must display on the land a copy of the notice¹⁰ and a statement of the effect of the notice and of the provisions¹¹ setting out the circumstances in which its contravention is an offence¹². A temporary stop notice has effect from the time a copy of it is first displayed in pursuance of this requirement¹³ and ceases to have effect:

- 2238 (A) at the end of the period of 28 days starting on the day the copy notice is so displayed;
- 2239 (B) at the end of such shorter period starting on that day as is specified in the notice; or

2240 (c) if it is withdrawn by the local planning authority¹⁴.

1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, the Town and Country Planning Act 1990 s 171E (added by the Planning and Compulsory Purchase Act 2004 s 52) (see the text and notes 2-14 *infra*) was fully in force in England but was in force in Wales for limited purposes only: see PARA 4 note 8 *ante*.

2 As to local planning authorities see PARA 28 *et seq ante*.

3 For the meaning of 'breach of planning control' para 551 *ante*.

4 For the meaning of 'land' see PARA 2 note 10 *ante*.

5 Town and Country Planning Act 1990 s 171E(1), (2) (as added: see note 1 *supra*). For a discussion of the possible use of temporary stop notices see Kinloch 'What Is Wrong With Temporary Stop Notices?' [2005] JPL 7; for guidance on their use see ODPM Circular 02/2005 *Temporary Stop Notice*; and as to the status of such guidance see PARA 9 *ante*.

6 As to the use of electronic communications see PARA 54 *ante*.

7 Town and Country Planning Act 1990 s 171E(3) (as added: see note 1 *supra*).

8 As to the service of notices see PARA 54 *ante*.

9 Town and Country Planning Act 1990 s 171E(4) (as added: see note 1 *supra*).

10 Ibid s 171E(5)(a) (as added: see note 1 *supra*).

11 le the effect of *ibid* s 171G (as added): see PARA 575 *post*.

12 Ibid s 171E(5)(b) (as added: see note 1 *supra*).

13 Ibid s 171E(6) (as added: see note 1 *supra*).

14 Ibid s 171E(7) (as added: see note 1 *supra*).

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574. Restrictions affecting temporary stop notices.

A temporary stop notice¹ does not prohibit:

2241 (1) the use of a building² as a dwelling house³;

2242 (2) the carrying out of an activity of such description or in such circumstances as is prescribed⁴;

and in England the stationing of a caravan on any land⁵ in the specified circumstances⁶ is prescribed for the purposes of head (2) above, unless the local planning authority⁷ considers that the risk of harm to a compelling public interest arising from the stationing of the caravan is so serious so as to outweigh any benefit, to the occupier of the caravan, in the stationing of the caravan for the period for which the temporary stop notice has effect⁸.

A temporary stop notice does not prohibit the carrying out of any activity which has been carried out, whether or not continuously, for a period of four years⁹ ending with the day on

which the copy of the notice is first displayed¹⁰ in accordance with the statutory requirements¹¹; but this does not prevent a temporary stop notice prohibiting:

- 2243 (a) activity consisting of or incidental to building, engineering, mining or other operations; or
- 2244 (b) the deposit of refuse or waste materials¹².

A second or subsequent temporary stop notice must not be issued in respect of the same activity unless the local planning authority has first taken some other enforcement action¹³ in relation to the breach of planning control which is constituted by the activity¹⁴.

- 1 For the meaning of 'temporary stop notice' see PARA 573 ante.
- 2 For the meaning of 'building' see PARA 2 note 10 ante.
- 3 As to the meaning of 'use as a dwelling house' see PARA 233 ante.
- 4 Town and Country Planning Act 1990 s 171F(1) (s 171F added by the Planning and Compulsory Purchase Act 2004 s 52, partly, in Wales, as from a day to be appointed under s 121: see PARA 573 note 1 ante). For the meaning of 'prescribed' see PARA 16 note 5 ante.
- 5 For the meaning of 'land' see PARA 2 note 10 ante.
- 6 The specified circumstances are that (1) the caravan is stationed on the land immediately before the issue of the temporary stop notice; and (2) the caravan is at that time occupied by a person as his main residence: Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, SI 2005/206, art 2(2)(a), (b).
- 7 As to local planning authorities see PARA 28 et seq ante.
- 8 Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, SI 2005/206, art 2(1), (2). As to the extent to which enforcement action taken against the occupier of a caravan may engage his Convention rights under the Human Rights Act 1998 see also PARA 7 the text and notes 24-26 ante; and as to the licensing and control of caravan sites and the removal of unauthorised campers see further PARA 1032 et seq post.
- 9 For these purposes, any period during which the activity is authorised by planning permission must be ignored: Town and Country Planning Act 1990 s 171F(4) (as added: see note 4 supra). For the meaning of 'planning permission' for enforcement purposes see PARA 551 note 2 ante.
- 10 It displayed as mentioned in ibid s 171E(6) (as added): see PARA 573 ante.
- 11 Ibid s 171F(2) (as added: see note 4 supra).
- 12 Ibid s 171F(3) (as added: see note 4 supra).
- 13 For these purposes, enforcement action includes obtaining the grant of an injunction under ibid s 187B (as added: see PARA 585 post) s 171F(6) (as added: see note 4 supra).
- 14 Ibid s 171F(5) (as added: see note 4 supra).

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575. Offences relating to temporary stop notices.

A person commits an offence if he contravenes a temporary stop notice¹ which has been served² on him or a copy of which has been displayed³ in accordance with the statutory

requirements⁴ and is liable on summary conviction to a fine not exceeding £20,000⁵ or on conviction on indictment to a fine⁶. In determining the amount of the fine the court must have regard in particular to any financial benefit which has accrued or has appeared to accrue to the person convicted in consequence of the offence⁷.

Contravention of a temporary stop notice includes causing or permitting the contravention of the notice⁸; and an offence may be charged by reference to a day or a longer period of time⁹. A person may be convicted of more than one such offence in relation to the same temporary stop notice by reference to different days or periods of time¹⁰.

A person does not, however, commit an offence under the above provisions if he proves:

- 2245 (1) that the temporary stop notice was not served on him; and
- 2246 (2) that he did not know, and could not reasonably have been expected to know, of its existence¹¹.

1 For the meaning of 'temporary stop notice' see PARA 573 ante.

2 As to service of notices see PARA 54 ante.

3 In accordance with the Town and Country Planning Act 1990 s 171E(5) (as added): see PARA 573 ante.

4 Ibid s 171G(1) (s 171G added by the Planning and Compulsory Purchase Act 2004 s 52, partly, in relation to Wales, as from a time to be appointed under s 121: see PARA 573 note 1 ante).

5 Town and Country Planning Act 1990 s 171G(6)(a) (as added: see note 4 supra).

6 Ibid s 171G(6)(b) (as added: see note 4 supra).

7 Ibid s 171G(7) (as added: see note 4 supra).

8 Ibid s 171G(2) (as added: see note 4 supra).

9 Ibid s 171G(3) (as added: see note 4 supra).

10 Ibid s 171G(4) (as added: see note 4 supra).

11 Ibid s 171G(5) (as added: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(5) TEMPORARY STOP NOTICES/576. Compensation for loss or damage directly attributable to prohibition effected by temporary stop notice.

576. Compensation for loss or damage directly attributable to prohibition effected by temporary stop notice.

If and only if a temporary stop notice¹ is issued and at least one of the specified conditions applies², then a person who at the time the notice is served has an interest in the land³ to which the notice relates is entitled to be compensated by the local planning authority⁴ in respect of any loss or damage directly attributable to the prohibition effected by the notice⁵. The specified conditions are:

- 2247 (1) the activity which is specified in the notice is authorised by planning permission⁶ or a development order⁷ or local development order⁸;

- 2248 (2) a certificate of lawfulness of the existing use or development⁹ in respect of the activity is issued¹⁰ or granted on an appeal¹¹;
 2249 (3) the authority withdraws the notice¹².

A claim for such compensation must be made to the local planning authority within the prescribed time¹³ and in the prescribed¹⁴ manner¹⁵.

The loss or damage in respect of which compensation is so payable in respect of a prohibition includes any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition¹⁶.

No compensation is so payable:

- 2250 (a) in respect of the prohibition in a temporary stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control¹⁷; or
 2251 (b) in the case of a claimant who was required to provide specified information¹⁸, in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the local planning authority when responding to the notice¹⁹.

1 For the meaning of 'temporary stop notice' see PARA 573 ante.

2 Ie at least one of the Town and Country Planning Act 1990 s 171H(1)(a)-(c) (as added) applies: see heads (1)-(3) in the text.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning Act 1990 s 171H(1), (4) (s 171H added by the Planning and Compulsory Purchase Act 2004 s 52, partly, in relation to Wales, as from a day to be appointed under s 121: see PARA 573 note 1 ante).

6 The Town and Country Planning Act 1990 s 171H(1)(a) (as added) (see head (1) in the text) does not apply if the planning permission is granted on or after the date on which a copy of the notice is first displayed as mentioned in s 171E(6) (as added) (see PARA 573 ante): s 171H(2) (as added: see note 5 supra). For the meaning of 'planning permission' for enforcement purposes see PARA 551 note 2 ante.

7 For the meaning of 'development order' see PARA 252 ante.

8 As to local development orders see PARA 419 et seq ante.

9 Ie a certificate under the Town and Country Planning Act 1990 s 191 (as substituted): see PARA 586 post.

10 Ie under ibid s 191 (as substituted: see PARA 586 post.

11 Ie by virtue of ibid s 195 (as amended): see PARAS 613-614 post.

12 Ibid s 171H(1)(a)-(c) (as added: see note 5 supra). Section 171H(1)(c) (as so added: see head (3) in the text) does not, however, apply if the notice is withdrawn following the grant of planning permission as mentioned in s 171H(2) (as added) (see note 6 supra): s 171H(3) (as so added).

13 As to the prescribed time see PARA 581 note 13 post. For the meaning of 'prescribed' see PARA 16 note 5 ante.

14 As to the prescribed manner for making the claim see PARA 581 note 14 post.

15 Town and Country Planning Act 1990 s 186(3) (s 186(3)-(7) (as amended) applied by s 171H(5) (as added: see note 5 supra)). Compensation payable under the Town and Country Planning Act 1990 s 186 (as amended and as so applied) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of service of the stop notice until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to

payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 post; and as to the determination of questions of disputed compensation see the Town and Country Planning Act 1990 s 186(6), (7) (as so applied); and PARA 581 note 10 post.

16 Town and Country Planning Act 1990 s 186(4) (as applied: see note 15 supra).

17 For the meaning of 'breach of planning control' see PARA 551 ante.

18 le under the Town and Country Planning Act 1990 s 171C (as added) (see PARA 559 ante) or s 330 (as amended) (see PARA 53 ante) or the Local Government (Miscellaneous Provisions) Act 1976 s 16 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 533).

19 Town and Country Planning Act 1990 s 186(5) (substituted by the Planning and Compensation Act 1991 s 9(3); applied with modifications by the Town and Country Planning Act 1990 s 171H(5) (as added: see note 5 supra)).

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(6) STOP NOTICES

577. Service of stop notice; validity.

Where the local planning authority¹ considers it expedient that any relevant activity² should cease before the expiry of the period for compliance³ with an enforcement notice, it may, when it serves the copy of the enforcement notice or afterwards, serve a notice (a 'stop notice') prohibiting the carrying out of that activity on the land⁴ to which the enforcement notice relates, or any part of that land specified in the stop notice⁵.

A stop notice may not, however, be served where the enforcement notice has taken effect⁶.

A stop notice may be served by the local planning authority on any person who appears to the authority to have an interest in the land or to be engaged in any activity prohibited by the notice⁷.

Where a stop notice has been served in respect of any land, the local planning authority may display there a notice (a 'site notice'):

- 2252 (1) stating that a stop notice has been served and that any person contravening it may be prosecuted⁸;
- 2253 (2) giving the date when the stop notice takes effect; and
- 2254 (3) indicating its requirements⁹.

A stop notice is not invalid by reason that a copy of the enforcement notice to which it relates was not duly served¹⁰ if it is shown that the local planning authority took all such steps as were reasonably practicable to effect proper service¹¹.

1 As to local planning authorities see PARA 28 et seq ante.

2 For these purposes, 'relevant activity' means any activity specified in the enforcement notice as an activity which the local planning authority requires to cease and any activity carried out as part of that activity or associated with that activity: Town and Country Planning Act 1990 s 183(2) (s 183(1)-(5) substituted, and s 183(5A) added, by the Planning and Compensation Act 1991 s 9(1)). For the meaning of 'enforcement notice' see PARA 561 ante.

3 As to the period for compliance with an enforcement notice see PARA 563 note 19 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante. As to stop notices in relation to Crown land see PARA 555 ante.

5 Town and Country Planning Act 1990 s 183(1) (as substituted: see note 2 supra). As to service see note 7 infra. A stop notice which uses wording which incorporates matters of fact and degree is not void even though it leaves the person served with the stop notice the problem of judging what is permissible behaviour: *R v Runnymede Borough Council, ex p Sarvan Singh Seehra* (1986) 53 P & CR 281 (applicant prohibited from using land for religious devotion otherwise than as incidental to enjoyment of dwelling house).

6 Town and Country Planning Act 1990 s 183(3) (as substituted: see note 2 supra). As to when an enforcement notice takes effect see PARA 563 ante. For guidance on the use of stop notices see *PPG18--Enforcing Planning Control*; and as to the status of such guidance see PARA 9 ante.

7 Town and Country Planning Act 1990 s 183(6). Electronic communications may not be used for the service of a stop notice by a local planning authority: see PARA 54 note 4 ante. As to the service of notices generally see PARA 54 ante.

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 183 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice and with the substitution in s 183(6) for the words 'have an interest in' of the words 'be occupying': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 ante.

8 le for an offence under the Town and Country Planning Act 1990 s 187 (as amended): see PARA 582 post.

9 Ibid s 184(6). Where it is alleged that a person is in contravention of a stop notice it is important that the terms of the notice are strictly construed and where the meaning of the notice is ambiguous, assistance cannot be derived from other documents: *R v Dhar* [1993] Crim LR 615, CA.

10 le served as required by the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante.

11 Ibid s 184(8) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 28 (c)). See also note 7 supra.

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 184 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution in s 184(8) (as so amended) for the words 'section 172' of the words 'section 295(1)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, Schedule.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(6) STOP NOTICES/578. Contents of stop notice.

578. Contents of stop notice.

A stop notice¹ must refer to the enforcement notice² to which it relates and must have a copy of the notice annexed to it³. The stop notice must specify the date on which it will take effect and it cannot be contravened until that date⁴. That date must not be:

- 2255 (1) earlier than three days after the date when the notice is served unless the local planning authority⁵ considers that there are special reasons for specifying an earlier date and a statement of those reasons is served with the stop notice; and
- 2256 (2) later than 28 days from the date when the notice is first served on any person⁶.

A stop notice may not prohibit:

- 2257 (a) the use of any building⁷ as a dwelling house⁸; or
 2258 (b) the carrying out of any activity if the activity has been carried out, whether continuously or not, for a period of more than four years ending with the service of the notice; and, for these purposes, no account is to be taken of any period during which the activity was authorised by planning permission⁹.

1 For the meaning of 'stop notice' see PARA 577 ante.

2 For the meaning of 'enforcement notice' see PARA 561 ante.

3 Town and Country Planning Act 1990 s 184(1). As to the application of s 184 (as amended) in relation to special enforcement notices see PARA 577 note 11 ante.

4 Ibid s 184(2).

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 184(3) (substituted by the Planning and Compensation Act 1991 s 9(2)). The day of service of a stop notice may be included in calculating the period of three days before which the notice is to take effect: *R v Hounslow London Borough Council, ex p Dooley* (2000) 80 P & CR 405.

7 For the meaning of 'building' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 s 183(4) (s 183(4), (5) substituted, and s 183(5A) added, by the Planning and Compensation Act 1991 s 9(1)). As to the application of the Town and Country Planning Act 1990 s 183 (as amended) in relation to special enforcement notices see PARA 577 note 7 ante.

9 Ibid s 183(5) (as substituted: see note 8 supra). Section 183(5) (as so substituted) does not prevent a stop notice prohibiting any activity consisting of, or incidental to, building, engineering, mining or other operations or the deposit of refuse or waste materials: s 183(5A) (as added: see note 8 supra). For a model form of stop notice see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 3, Appendix. For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante; for the meaning of 'building operations' see PARA 218 ante; for the meaning of 'engineering operations' see PARA 219 ante; and for the meaning of 'mining operations' see PARA 220 ante.

UPDATE

578 Contents of stop notice

NOTE 8--The 1990 Act s 183(4) is not incompatible with the European Convention on Human Rights art 14 (see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 164): *R (on the application of Wilson) v Wychavon DC* [2007] EWCA Civ 52, [2007] 2 WLR 798 (exemption afforded to dwelling houses not extended to residential caravans; differential treatment justified).

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579. Withdrawal and cessation of stop notice.

The local planning authority¹ may at any time withdraw a stop notice², without prejudice to its power to serve another notice, by serving notice to that effect on persons served with the stop notice³. If the local planning authority so withdraws a stop notice in respect of which a site notice⁴ was displayed, the authority must display a notice of the withdrawal in place of the site notice⁵.

A stop notice ceases to have effect when:

- 2259 (1) the enforcement notice⁶ to which it relates is withdrawn or quashed; or
- 2260 (2) the period for compliance with the enforcement notice⁷ expires; or
- 2261 (3) notice of the withdrawal of the stop notice is first served⁸.

A stop notice also ceases to have effect if or to the extent that the activities prohibited by it cease, on a variation of the enforcement notice, to be relevant activities⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'stop notice' see PARA 577 ante.

3 Town and Country Planning Act 1990 s 183(7). Electronic communications may not be used for the service of notice of withdrawal of a stop notice by a local planning authority: see PARA 54 note 4 ante. As to service of notices generally see PARA 54 ante.

As to the application of the Town and Country Planning Act 1990 s 183 (as amended) to special enforcement notices see PARA 577 note 7 ante.

4 For the meaning of 'site notice' see PARA 577 ante.

5 Town and Country Planning Act 1990 s 184(7). As to the application of s 184 (as amended) to special enforcement notices see PARA 577 note 11 ante.

6 For the meaning of 'enforcement notice' see PARA 561 ante.

7 As to the period for compliance with an enforcement notice see PARA 563 note 19 ante.

8 Town and Country Planning Act 1990 s 184(4) (s 184(4), (5) amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 28).

9 Town and Country Planning Act 1990 s 184(5) (as amended: see note 8 supra). For the meaning of 'relevant activity' see PARA 577 note 2 ante.

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580. Service of stop notice by the Secretary of State or the Assembly.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² to be expedient that a stop notice³ should be served in respect of any land⁴, he or the Assembly may himself or itself serve such a notice⁵ but may not do so without consulting⁶ the local planning authority⁷.

A notice so served by the Secretary of State or the Assembly has the same effect as if it had been served by the local planning authority⁸. Electronic communications may not be used for the service of such a stop notice⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 185, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'stop notice' see PARA 577 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 185(1). As to the service of notices see generally para 54 ante; but see the text and note 9 infra.

6 For the meaning of 'consult' see PARA 2 note 1 ante.

7 Town and Country Planning Act 1990 s 185(3). For these purposes, any reference to the local planning authority in England is to be construed as a reference to the county planning authority or the district planning authority, as the Secretary of State thinks appropriate: see s 1(5)(c) (as amended), Sch 1 para 20(2). Schedule 1 para 20(2) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; as to local planning authorities generally see PARA 28 et seq ante; and as to county planning authorities and district planning authorities see PARA 28 ante.

8 Ibid s 185(2).

9 See PARA 54 note 4 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(6) STOP NOTICES/581. Compensation for loss due to stop notice.

581. Compensation for loss due to stop notice.

Where a stop notice¹ is served², compensation may be payable in respect of a prohibition contained in the notice only if:

- 2262 (1) the enforcement notice³ is quashed on specified grounds⁴;
- 2263 (2) the enforcement notice is varied on specified grounds⁵ so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity⁶;
- 2264 (3) the enforcement notice is withdrawn by the local planning authority⁷ otherwise than in consequence of the grant by it of planning permission⁸ for the development⁹ to which the notice relates; or
- 2265 (4) the stop notice is withdrawn¹⁰.

A person who, when the stop notice is first served, has an interest in or occupies the land¹¹ to which the notice relates is entitled to be compensated by the local planning authority in respect of any loss or damage directly attributable to the prohibition contained in the notice or, in a case within head (2) above, the prohibition of such of the activities prohibited by the stop notice as cease to be relevant activities¹².

A claim for such compensation must be made to the local planning authority within the prescribed time¹³ and in the prescribed¹⁴ manner¹⁵.

The loss or damage in respect of which compensation is so payable in respect of a prohibition includes any sum payable in respect of a breach of contract caused by the taking of action necessary to comply with the prohibition¹⁶.

No compensation is so payable:

- 2266 (a) in respect of the prohibition in a stop notice of any activity which, at any time when the notice is in force, constitutes or contributes to a breach of planning control¹⁷; or

2267 (b) in the case of a claimant who was required to provide specified information¹⁸, in respect of any loss or damage suffered by him which could have been avoided if he had provided the information or had otherwise co-operated with the local planning authority when responding to the notice¹⁹.

1 For the meaning of 'stop notice' see PARA 577 ante.

2 le under the Town and Country Planning Act 1990 s 183 (as amended): see PARA 577 ante.

3 For the meaning of 'enforcement notice' see PARA 561 ante.

4 le quashed on grounds other than those mentioned in the Town and Country Planning Act 1990 s 174(2)(a) (as substituted): see PARA 603 post at head (1) in the text. The date from which the period for so making a claim for compensation runs (see note 13 infra) is the date on which the enforcement notice was quashed; the fact that an appeal is in progress against the decision to quash does not revive the stop notice: *R v Secretary of State for the Environment, ex p Hillingdon London Borough Council* (1991) 64 P & CR 105.

5 le is varied otherwise than on the grounds mentioned in the Town and Country Planning Act 1990 s 174(2) (a) (as substituted).

6 For the meaning of 'relevant activity' see PARA 577 note 2 ante.

7 As to local planning authorities see PARA 28 et seq ante.

8 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

9 For the meaning of 'development' see PARA 217 ante.

10 Town and Country Planning Act 1990 s 186(1) (s 186(1), (2) amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 29, Sch 19 Pt 1). As to the authority to which claims for compensation are to be made see PARA 912 post.

Except in so far as may be otherwise provided by any regulations made under the Town and Country Planning Act 1990, any question of disputed compensation under Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante, PARA 582 et seq post) must be referred to and determined by the Lands Tribunal: s 186(6). In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply subject to any necessary modifications and to the provisions of any regulations made under the Town and Country Planning Act 1990: s 186(7).

In relation to special enforcement notices, s 186 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice, and with the substitution for s 186(1) (a)-(c) (as amended) of the following: '(a) the special enforcement notice is quashed; (b) the special enforcement notice is varied so that any activity the carrying out of which is prohibited by the stop notice ceases to be a relevant activity; (c) the special enforcement notice is withdrawn by the local planning authority': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 ante.

11 For the meaning of 'land' see PARA 2 note 10 ante.

12 Town and Country Planning Act 1990 s 186(2) (as amended: see note 10 supra). As to the nature of the requisite interest in land see *International Ferry Traders Ltd v Adur District Council* [2004] EWCA Civ 288, [2004] RVR 65, [2004] All ER (D) 430 (Feb).

13 The time within which any such claim as is mentioned in the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 12(1) (see note 14 infra) must be served is 12 months from the date of the decision in respect of which the claim is made, or such longer period as the Secretary of State or, in relation to Wales, the National Assembly for Wales may at any time in any particular case allow: reg 12(2). For the meaning of 'prescribed' see PARA 16 note 5 ante; and as to the Secretary of State and the Assembly see PARAS 19-20 post.

14 A claim for compensation made to a local planning authority under the Town and Country Planning Act 1990 s 186 (as amended) or under s 107 (as amended) (see PARA 914 post) (including s 107 (as amended) as applied by s 108 (as amended): see PARA 915 post), s 114 (repealed), s 115 (see PARA 923 post), s 144 (as amended) (see PARA 977 post) or s 250 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 794) must be in writing and must be served on that authority by delivering it at the offices of the authority, or by sending it by prepaid post: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 12(1).

15 Town and Country Planning Act 1990 s 186(3). Compensation payable under s 186 (as amended) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of service of the stop notice until payment: see the Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I (as amended).

If it appears to any person that he may become liable to pay another (1) compensation under the Town and Country Planning Act 1990 s 186, or under s 107(1) (see PARA 914 post), s 107(1) (as applied by s 108(1)) (see PARA 915 post), s 115 (see PARA 923 post), s 144(2) (as amended) (see PARA 977 post), s 203 (see PARA 864 post), s 204 (see PARA 865 post), s 223 (see PARA 832 post), s 250 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 794), s 279(1), (2) (see PARA 1027 post), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28 (see PARA 1136 post), s 29 (see PARA 1137 post) or the Planning (Hazardous Substances) Act 1990 s 16 (see PARA 1262 post), s 19 (see PARA 1267 post); or (2) interest under the Planning and Compensation Act 1991 s 80(1), he may, if the other person requests him in writing to do so, make one or more payments on account of such compensation or interest: s 80(2). If, after a payment has been so made by any person (a) it is agreed or determined that he is not liable to pay the compensation or interest; or (b) by reason of any agreement or determination, any payment under s 80(2) is shown to have been excessive, the payment or, as the case may be, excess is recoverable by that person: s 80(3). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 900.

16 Town and Country Planning Act 1990 s 186(4).

17 For the meaning of 'breach of planning control' see PARA 551 ante.

18 le under the Town and Country Planning Act 1990 s 171C (as added) (see PARA 559 ante) or s 330 (as amended) (see PARA 53 ante) or the Local Government (Miscellaneous Provisions) Act 1976 s 16 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 533).

19 Town and Country Planning Act 1990 s 186(5) (substituted by the Planning and Compensation Act 1991 s 9(3)).

UPDATE

581 Compensation for loss due to stop notice

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 10--Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Town and Country Planning Act 1990 s 186(6), (7) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(6) STOP NOTICES/582. Contravention of stop notice.

582. Contravention of stop notice.

If any person contravenes a stop notice¹ after a site notice² has been displayed or the stop notice has been served on him, he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000³. In determining the amount of any fine to be imposed on a person convicted of such an offence, the court must, in particular, have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence⁴.

Any such offence may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent such offence by reference to any period of time following the preceding conviction for such an offence⁵.

In any proceedings for such an offence it is, however, a defence for the accused to prove:

- 2268 (1) that the stop notice was not served on him; and
- 2269 (2) that he did not know, and could not reasonably have been expected to know, of its existence⁶.

1 For these purposes, references to contravening a stop notice include causing or permitting its contravention: Town and Country Planning Act 1990 s 187(1B) (s 187(1)-(2A) substituted by the Planning and Compensation Act 1991 s 9(4)). For the meaning of 'stop notice' see PARA 577 ante.

2 For the meaning of 'site notice' see PARA 577 ante.

3 Town and Country Planning Act 1990 s 187(1), (2) (as substituted: see note 1 supra). As to offences by corporations see PARA 55 ante. In the absence of any evidence to the contrary, a prosecution based upon a stop notice which asserts on its face that the council considers it expedient to prevent the activity is effective: *R v Pettigrove and Roberts* (1990) 62 P & CR 355, CA. Once it is apparent that the stop notice was validly brought into existence and served and is valid on its face, it is the obligation of the recipient to observe it; and any arguments relating to ancillary use must be dealt with by way of appeal against the enforcement notice and not by way of a defence to criminal proceedings: *R v Pettigrove and Roberts* supra.

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 187 (as amended) has effect as if the references therein to an enforcement notice were references to a special enforcement notice: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 ante.

4 Town and Country Planning Act 1990 s 187(2A) (as substituted: see note 1 supra).

5 Ibid s 187(1A) (as substituted: see note 1 supra).

6 Ibid s 187(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(7) BREACH OF CONDITION NOTICES/583. Breach of condition notices.

(7) BREACH OF CONDITION NOTICES

583. Breach of condition notices.

Where planning permission¹ for carrying out any development² of land³ has been granted subject to conditions⁴, the local planning authority⁵ may, if any of the conditions is not complied with, serve a notice (a 'breach of condition notice') on:

- 2270 (1) any person who is carrying out or has carried out the development; or
- 2271 (2) any person having control of the land,

requiring him to secure compliance with such of the conditions as are specified in the notice⁶.

A breach of condition notice must specify the steps which the authority considers ought to be taken, or the activities which the authority considers ought to cease, to secure compliance with the conditions specified in the notice⁷.

The authority may by notice served on the person responsible⁸ withdraw the breach of condition notice, but its withdrawal does not affect the power to serve on him a further breach of condition notice in respect of the conditions specified in the earlier notice or any other conditions⁹.

The period allowed for compliance with the notice is:

- 2272 (a) such period of not less than 28 days beginning with the date of service of the notice as may be specified in the notice; or
- 2273 (b) that period as extended by a further notice served by the local planning authority on the person responsible¹⁰.

If, at any time after the end of the period allowed for compliance with the notice:

- 2274 (i) any of the conditions specified in the notice is not complied with; and
- 2275 (ii) the steps specified in the notice have not been taken or, as the case may be, the activities specified in the notice have not ceased,

the person responsible is in breach of the notice¹¹.

If the person responsible is in breach of the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹². Such an offence may be charged by reference to any day or longer period of time; and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction for such an offence¹³.

It is, however, a defence for a person charged with such an offence to prove:

- 2276 (A) that he took all reasonable measures to secure compliance with the conditions specified in the notice; or
- 2277 (B) where the notice was served on him by virtue of head (2) above, that he no longer had control of the land¹⁴.

1 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

2 For these purposes, references to carrying out any development include causing or permitting another to do so: Town and Country Planning Act 1990 s 187A(13)(b) (s 187A added by the Planning and Compensation Act 1991 s 2). For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For these purposes, 'conditions' includes limitations: Town and Country Planning Act 1990 s 187A(13)(a) (as added: see note 2 supra). As to the grant of planning permission subject to conditions see PARAS 522-523 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 187A(1), (2) (as added: see note 2 supra). The burden of rebutting the reasonable inference that the owner of the land is the person in control of the land falls upon the owner himself: *Nourish v Adamson* [1998] JPL 859.

The conditions which may be specified in a notice served by virtue of the Town and Country Planning Act 1990 s 187A(2)(b) (as so added) (see head (2) in the text) are any of the conditions regulating the use of the land: s 187A(4) (as so added). Where a building fails to comply with planning permission requirements, any condition attached to the permission does not apply to the unauthorised building: *Handoll v Warner, Goodman & Street* (1994) 93 LGR 293, CA. Electronic communications may not be used to serve a breach of condition notice: see PARA 54 note 4 ante. As to service of notices generally see PARA 54 ante. For guidance on breach of condition notices see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 4; for a model form of breach of condition notice see Annex 4, Appendix; and as to the

status of such guidance see PARA 9 ante. For the meaning of 'use' see PARA 221 note 4 ante; and as to breach of condition notices in relation to Crown land see PARA 555 ante.

7 Town and Country Planning Act 1990 s 187A(5) (as added: see note 2 supra).

8 For these purposes, references to the person responsible are to the person on whom the breach of condition notice has been served: *ibid* s 187A(3) (as added: see note 2 supra).

9 *Ibid* s 187A(6) (as added: see note 2 supra). Electronic communications may not be used to serve notice of withdrawal of a breach of condition notice: see PARA 54 note 4 ante.

10 *Ibid* s 187A(7) (as added: see note 2 supra).

11 *Ibid* s 187A(8) (as added: see note 2 supra).

12 *Ibid* s 187A(9), (12) (as added: see note 2 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante. A defendant can challenge the validity of the notice as part of his defence to criminal proceedings: *Dilieta v Ealing London Borough Council* [2000] QB 381, [1998] 2 All ER 885, DC. See also *McGahan v Windsor and Maidenhead Borough Council* [2002] EWHC 1551 (Admin), (2000) Times, 30 July, [2002] All ER (D) 190 (Jul) (meaning of 'display' in the context of planning permission conditions). For guidance as to when a prosecution is appropriate see *PPG18--Enforcing Planning Control*.

13 Town and Country Planning Act 1990 s 187A(10) (as added: see note 2 supra).

14 *Ibid* s 187A(11) (as added: see note 2 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(7) BREACH OF CONDITION NOTICES/584. Effect of planning permission on breach of condition notice.

584. Effect of planning permission on breach of condition notice.

Where, after the service of a breach of condition notice¹, planning permission² is granted for any development³ carried out before the grant of that permission, the notice ceases to have effect so far as inconsistent with that permission⁴.

Where, after a breach of condition notice has been served, any condition to which the notice relates is discharged, the notice ceases to have effect so far as it requires any person to secure compliance with the condition in question⁵.

The fact that a breach of condition notice has wholly or partly ceased to have effect by virtue of these provisions does not affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice⁶.

1 For the meaning of 'breach of condition notice' see PARA 583 ante.

2 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 Town and Country Planning Act 1990 s 180(1) (s 180 substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 26). As to the application of the Town and Country Planning Act 1990 s 180(1) (as so substituted) in relation to special enforcement notices see PARA 570 ante; and as to special enforcement notices see PARA 572 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

5 Town and Country Planning Act 1990 s 180(2) (as substituted: see note 4 supra).

6 Ibid s 180(3) (as substituted: see note 4 supra). As to the application of s 180(3) (as so substituted) in relation to special enforcement notices see PARA 570 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(8) INJUNCTIONS/585. Injunctions.

(8) INJUNCTIONS

585. Injunctions.

Where a local planning authority¹ considers it necessary or expedient for any actual or apprehended breach of planning control² to be restrained by injunction, it may apply to the court³ for an injunction, whether or not the authority has exercised, or is proposing to exercise, any of its other statutory powers⁴ relating to enforcement⁵. On such an application the court may grant such an injunction as it thinks appropriate for the purpose of restraining the breach⁶. If the court grants an interim injunction, it may exercise its discretion not to require a local planning authority to give an undertaking in damages⁷.

Rules of court may provide for such an injunction to be issued against a person whose identity is unknown⁸. Without prejudice to the court's power to make an order for service by an alternative method or an order dispensing with service⁹, an applicant for such an injunction must, in the claim form, describe the defendant by reference to (1) a photograph; (2) a thing belonging to or in the possession of the defendant; or (3) any other evidence, with sufficient particularity to enable service to be effected¹⁰. The applicant must file¹¹ in support of the application evidence by witness statement or affidavit:

- 2278 (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant's identity;
- 2279 (b) setting out the action taken to ascertain the defendant's identity; and
- 2280 (c) verifying the means by which the defendant has been described in the application and that the description is the best that the applicant is able to provide¹².

There is no requirement that an injunction has to be confined to the area in respect of which an enforcement notice has been issued¹³.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'breach of planning control' see PARA 551 ante.

3 For these purposes, 'the court' means the High Court or the county court: Town and Country Planning Act 1990 s 187B(4) (s 187B added by the Planning and Compensation Act 1991 s 3).

4 Ie any of its powers under the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) (as amended): see PARA 551 et seq ante, PARA 586 et seq post.

5 Ibid s 187B(1) (as added: see note 3 supra). For general policy guidance as to injunctions to restrain breaches of planning control see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 5; and as to the status of such guidance see PARA 9 ante. As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq; and as to injunctions in relation to Crown land see PARA 555 ante. See also eg *Kettering Borough Council v Perkins* [1999] JPL 166; *Wealden District Council v Krushandal* [1999] JPL 174, CA. As to the importance of following the council's own internal procedures when authorising proceedings for an injunction see *Kirklees Borough Council v Brook* [2004] EWHC 2841 (Ch) at [22], [2004] All ER (D) 101 (Dec) per Lloyd J (proceedings for an injunction are the most serious

that a planning authority can take by way of enforcement, because of the sanction of committal to prison for breach of an injunction; in the case in question there was no valid delegation of authority allowing any officer to take the decision to bring such proceedings). For an example of a case where a suspended committal order was made see *South Bedfordshire District Council v Price* [2005] EWHC 2031 (QB), [2005] All ER (D) 129 (Sep).

The functions of a local planning authority under the Town and Country Planning Act 1990 s 187B (as so added) are exercisable by any body having the functions of taking enforcement action in respect of the breach in question: see s 1(5)(c) (as amended) Sch 1 para 12A (added by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 53(7)); the Town and Country Planning Act 1990 s 1(6) (as added and amended), Sch 1A para 5 (Sch 1A added by the Local Government (Wales) Act 1994 s 18, Sch 4). In relation to Wales, the Town and Country Planning Act 1990 Sch 1A para 5 (as so added) applies only in relation to any area for which, by virtue of any provision made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added). In relation to England, Sch 1 para 12A (as added) does not apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 ante; for the meaning of 'taking enforcement action' see PARA 551 ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities generally see PARA 28 et seq ante.

6 Ibid s 187B(2) (as added: see note 3 supra). The court has jurisdiction to grant interim injunctions and mandatory injunctions to enforce actual breaches of planning control: *Runnymede Borough Council v Harwood*, *Croydon London Borough Council v Gladden* (1994) 92 LGR 561, [1994] JPL 723, CA (applied in *South Hams District Council v Halsey* [1996] 3 PLR 38, CA). Once an injunction has been granted, it cannot be discharged except where there has been a significant change of circumstances since the order was made: *Salisbury District Council v Le Roi* [2001] EWCA Civ 1490, [2002] 1 P & CR 501, CA. Similar considerations apply to its suspension pending a further planning appeal: see *Waverley Borough Council v Lee* [2003] EWHC 29 (Ch), [2003] All ER (D) 30 (Jan); further proceedings [2003] EWHC 941 (QB), [2003] All ER (D) 64 (Mar).

The jurisdiction of the court under the Town and Country Planning Act 1990 s 187B (as added) is an original, not a supervisory, jurisdiction, and in all cases the court has to decide whether in all the circumstances it is just and proportionate, in the Convention sense, to exercise its discretion under that provision to grant the relief sought against the particular defendant: *South Buckinghamshire District Council v Porter*, *Chichester District Council v Searle*, *Wrexham County Borough Council v Berry*, *Hertsmere Borough Council v Harty* [2003] UKHL 26, [2003] All ER (D) 312 (May), affg [2001] EWCA Civ 1549, [2002] 1 All ER 425, [2002] 1 WLR 1359, CA (a case involving enforcement action against four gypsy families living in mobile homes in breach of planning control and enforcement notices; for a discussion of the competing objectives of protecting the environment and whatever countervailing rights the families had see [2001] EWCA Civ 1549 at [38]-[41] per Simon Brown LJ; and see further PARA 7 the text and notes 24-26 ante). Cf *Tonbridge and Malling Borough Council v Davis* [2003] EWHC 1069 (QB) at [40], [2003] All ER (D) 177 (May) per Stanley Burnton J (judicial loyalty (and not merely deference) to the lawful decisions of the elected executive branch of government required (other things being equal) the enforcement of the Secretary of State's decision) (affd [2004] EWCA Civ 194, (2004) Times, 5 March, [2004] All ER (D) 426 (Feb) where the dictum of Stanley Burnton J is explained at [23]); *Buckinghamshire County Council v North West Estates plc* [2002] EWHC 1088 (Ch) at [29], [2003] JPL 414 per Jacobs J (prima facie the court should exercise its discretion to grant an injunction to enforce compliance with an enforcement notice when asked to do so since the planning authority is the democratically elected body entrusted with planning control; it is for the respondent to demonstrate why an enforcement notice beyond challenge should not be enforced by way of injunction); *St Albans District Council v Daniels* [2003] EWHC 2485 (QB), [2003] All ER (D) 230 (Oct) (as a matter of principle, when exercising its discretion under the Town and Country Planning Act 1990 s 187B (as added) the court should have at the forefront of its consideration the need to bring present and defined breaches of planning control to an end); *Epping Forest District Council v Mason* [2002] EWHC 1532 (QB), [2002] All ER (D) 110 (Jul) (differing considerations applying to the grant (1) of an interim injunction to prevent anticipated breach of planning control by bringing caravans onto a site and (2) of a permanent injunction requiring the removal of the defendants from the site and the carrying out of restorative works); *Mid Bedfordshire District Council v Brown* [2004] EWCA Civ 1709 at [25], [2004] All ER (D) 310 (Dec) (judge's decision to suspend injunction pending determination of the planning application held not to have taken proper account of the vital role of the court in upholding the important principle that its orders are meant to be obeyed and not to be ignored with impunity).

As to the exercise of discretion see also *North West Estates plc v Buckinghamshire County Council* [2003] EWCA Civ 719, [2003] All ER (D) 304 (May) (judge correct in accepting validity of enforcement notice at face value and granting mandatory injunction ordering removal of workshop); *Brent London Borough Council v Dowman* [2003] EWCA Civ 920, (2003) 147 Sol Jo LB 904, [2003] All ER (D) 309 (Jul); *Tewkesbury Borough Council v Appleton* [2004] All ER (D) 131 (Oct) (injunction against a group of travelling showpeople; the court indicated its willingness to commit the defendants to prison if the injunction was not obeyed); *Maldon District Council v Hammond* [2005] All ER (D) 92 (Jul), CA. For a case with multiple defendants see *Hillingdon London Borough Council v Guinea Enterprises Ltd* (1998) 76 P & CR 338.

7 See *Kirklees Metropolitan Borough Council v Wickes Building Supplies Ltd* [1993] AC 227, [1992] 3 All ER 717, HL; *Uttlesford District Council v Sanders* [2005] All ER (D) 79 (Aug).

8 Town and Country Planning Act 1990 s 187B(3) (as added: see note 3 supra); and see CPR Sch 1 RSC Ord 110 r 1(1), Sch 2 CCR Ord 49 r 7(1). See eg *South Cambridgeshire District Council v Persons Unknown* [2004] EWCA Civ 1280, (2004) Times, 11 November, [2004] All ER (D) 112 (Sep).

9 As to service of court documents see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

10 CPR Sch 1 RSC Ord 110 r 1(2), (4), Sch 2 CCR Ord 49 r 7(2), (4).

11 'Filing', in relation to a document, means delivering it, by post or otherwise, to the court office: CPR 2.3(1). See also *Van Aken v Camden London Borough Council* [2002] EWCA Civ 1724, [2003] 1 All ER 552, [2003] 1 WLR 684 (the mere delivery of a document to a court office constitutes filing within the definition in CPR 2.3(1) without any requirement for there to be any person at the office to receive or authenticate that document).

12 CPR Sch 1 RSC Ord 110 r 1(3), Sch 2 CCR Ord 49 r 7(3). As to witness statements and affidavits see generally CIVIL PROCEDURE vol 11 (2009) PARA 979 et seq.

13 *Slough Borough Council v Prashar* [2004] EWCA Civ 671 at [10], [2004] All ER (D) 210 (May) per Longmore LJ.

UPDATE

585 Injunctions

NOTE 6--See also *Bromley LBC v Maughan*; *South Cambridgeshire DC v Gammell* [2005] EWCA Civ 1429, [2006] 1 WLR 658 (where an injunction had been granted in breach of planning control by persons unknown, a person moving on to the land who learned of the injunction was in breach of it and in contempt of court); and *Chiltern DC v Webb* [2007] EWHC 1686 (QB), [2008] JPL 1323, [2007] All ER (D) 181 (Jul) (injunction to restrain breach of planning control by travelling showmen suspended in view of recent change in government policy).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(i) Certificate of Lawfulness of Existing Use or Development ('CLEUD')/586. Certificate of lawfulness of existing use or development ('CLEUD'); in general.

(9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT

(i) Certificate of Lawfulness of Existing Use or Development ('CLEUD')

586. Certificate of lawfulness of existing use or development ('CLEUD'); in general.

If any person wishes to ascertain whether:

- 2281 (1) any existing use¹ of buildings² or other land³ is lawful⁴;
- 2282 (2) any operations which have been carried out in, on, over or under land are lawful; or
- 2283 (3) any other matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful⁵,

he may make an application for the purpose to the local planning authority⁶ specifying the land and describing the use, operations or other matter⁷.

If, on such an application, the local planning authority is provided with information satisfying it of the lawfulness at the time of the application of the use, operations or other matter described in the application, or that description as modified by the local planning authority or a description substituted by it, it must issue a certificate to that effect; and in any other case it must refuse the application⁸.

Such a certificate must:

- 2284 (a) specify the land to which it relates;
- 2285 (b) describe the use, operations or other matter in question⁹;
- 2286 (c) give the reasons for determining the use, operations or other matter to be lawful; and
- 2287 (d) specify the date of the application for the certificate¹⁰.

Such a certificate may be issued:

- 2288 (i) for the whole or part of the land specified in the application; and
- 2289 (ii) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and must be in such form as may be prescribed by a development order¹¹.

Such a certificate does not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate¹².

The lawfulness of any use, operations or other matter for which such a certificate is in force is to be conclusively presumed¹³; and such a certificate in respect of any use also has effect for the purposes of specified enactments¹⁴ as if it were a grant of planning permission¹⁵.

1 For the meaning of 'use' see PARA 221 note 4 ante. It has been held that a dormant use may be classed as an 'existing use' for these purposes: *Panton v Secretary of State for the Environment* [1999] 1 PLR 92.

2 For the meaning of 'building' see PARA 2 note 10 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For these purposes, uses and operations are lawful at any time if (1) no enforcement action may then be taken in respect of them, whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason; and (2) they do not constitute a contravention of any of the requirements of any enforcement notice then in force: Town and Country Planning Act 1990 s 191(2) (ss 191, 193 substituted by the Planning and Compensation Act 1991 s 10(1)); and see *R v Epping Forest District Council, ex p Philcox* [2002] PLCR 32, [2000] NPC 146, [2000] All ER (D) 2216, CA. For the meaning of 'taking enforcement action' see PARA 551 ante; for the meaning of 'development' see PARA 217 ante; for the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante; and for the meaning of 'enforcement notice' see PARA 561 ante.

5 For these purposes, any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted is lawful at any time if (1) the time for taking enforcement action in respect of the failure has then expired; and (2) it does not constitute a contravention of any of the requirements of any enforcement notice or breach of condition notice then in force: Town and Country Planning Act 1990 s 191(3) (as substituted: see note 4 supra). For the meaning of 'breach of condition notice' see PARA 583 ante. The expiry of the time for taking enforcement action in respect of a failure to observe a planning condition does not render works done in breach of the condition lawful retrospectively: *Agecrest Ltd v Gwynedd County Council* [1998] JPL 325.

6 As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 s 191(1) (as substituted: see note 4 supra); and see *Nicholson v Secretary of State for the Environment* (1998) 76 P & CR 191. As to the mode of application see PARA 589 post;

for guidance as to certificates of lawful use or development see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 8; and as to the status of such guidance see PARA 9 ante.

8 Town and Country Planning Act 1990 s 191(4) (as substituted: see note 4 supra). As to the construction of s 191(4) (as so substituted) see the ministerial decision reported in [2003] JPL 258 (evidence as to lawfulness must relate to uses subsisting at the time of the application).

9 le in the case of any use falling within one of the classes specified in an order under the Town and Country Planning Act 1990 s 55(2)(f) (see PARA 223 ante at head (6) in the text), identifying it by reference to that class.

10 Ibid s 191(5) (as substituted: see note 4 supra).

11 Town and Country Planning Act 1990 s 193(4) (as substituted: see note 4 supra). A certificate under the Town and Country Planning Act 1990 s 191 (as substituted) must be in the form set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(11), Sch 4, or in a form substantially to the same effect: art 24(11). For the meaning of 'development order' see PARA 252 ante. As to the degree of precision required in the certificate see *Main v Secretary of State for the Environment* (1998) 77 P & CR 300.

12 Town and Country Planning Act 1990 s 193(5) (as substituted: see note 4 supra). See also *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, [2003] 1 WLR 348 (decided under the Town and Country Planning Act 1990 s 64 (repealed) (application to determine whether proposed development would constitute a material change of use: see now s 192 (as substituted); and PARA 587 post) (the opinion of a county planning officer could not reasonably be taken as a binding representation that no planning permission was required).

13 Town and Country Planning Act 1990 s 191(6) (as substituted: see note 4 supra).

14 le for the purposes of (1) the Caravan Sites and Control of Development Act 1960 s 3(3) (see PARA 1039 post); (2) the Control of Pollution Act 1974 s 5(2) (repealed subject to transitional provisions); and (3) the Environmental Protection Act 1990 s 36(2)(a) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol46 (2010) PARA 672). For the meaning of 'enactment' see PARA 2 note 11 ante.

15 Town and Country Planning Act 1990 s 191(7) (as substituted: see note 4 supra). An order under the Planning and Compensation Act 1991 s 84(2) (commencement orders) may provide for established use certificates to have effect, in such circumstances and to such extent as may be specified in the order, for the purposes of the Town and Country Planning Act 1990 s 191 (as substituted): Planning and Compensation Act 1991 s 10(2). Without prejudice to the generality of the Planning and Compensation Act 1991 (Commencement No 11 and Transitional Provisions) Order 1992, SI 1992/1630, art 3(1), the Town and Country Planning Act 1990 s 192(4) (as originally enacted) (conclusiveness of established use certificates for the purposes of an appeal to the Secretary of State against an enforcement notice) continues to apply for the purpose of established use certificates, within the meaning of s 192 (as originally enacted), granted under the Town and Country Planning Act 1990 notwithstanding the repeal of s 192 (as originally enacted) and its substitution by the Planning and Compensation Act 1991 s 10(1): Planning and Compensation Act 1991 (Commencement No 11 and Transitional Provisions) Order 1992 art 3(2). For guidance as to the effect of established use certificates existing on 27 July 1992 and their conversion into certificates of lawful use or development see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 8.

UPDATE

586 Certificate of lawfulness of existing use or development ('CLEUD'); in general

NOTE 4--Where an application for a certificate of lawfulness of existing use or development under the Town and Country Planning Act 1990 s 191 is made, it is not permissible to aggregate days of individual use with events based use for the purposes of establishing that the limitation on permitted temporary events use is excluded and that there is immunity from enforcement action: *Miles v National Assembly for Wales* [2007] EWHC 10 (Admin), [2007] JPL 1235.

NOTE 7--A certificate should be granted where the works were carried out in breach of a planning permission that has lapsed without enforcement action being taken: *Rastrum*

Ltd v Secretary of State for Communities and Local Government [2009] EWHC 184 (Admin), [2009] All ER (D) 35 (Feb).

NOTE 13--A right to use land for a purpose described in a certificate of lawful use can be lost by abandonment; such a certificate declares conclusively that at the point in time the certificate refers to that particular use is lawful: *M & M (Land) Ltd v Secretary of State for Communities and Local Government* [2007] EWHC 489 (Admin), [2007] 2 P & CR 399.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(ii) Certificate of Lawfulness of Proposed Use or Development ('CLOPUD')/587. Certificate of lawfulness of proposed use or development ('CLOPUD'); in general.

(ii) Certificate of Lawfulness of Proposed Use or Development ('CLOPUD')

587. Certificate of lawfulness of proposed use or development ('CLOPUD'); in general.

If any person wishes to ascertain whether:

- 2290 (1) any proposed use¹ of buildings² or other land³; or
- 2291 (2) any operations proposed to be carried out in, on, over or under land,

would be lawful⁴, he may make an application for the purpose to the local planning authority⁵ specifying the land and describing the use or operations in question⁶.

If, on such an application, the local planning authority is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, the authority must issue a certificate to that effect; and in any other case it must refuse the application⁷.

Such a certificate must:

- 2292 (a) specify the land to which it relates;
- 2293 (b) describe the use or operations in question⁸;
- 2294 (c) give the reasons for determining the use or operations to be lawful; and
- 2295 (d) specify the date of the application for the certificate⁹.

Such a certificate may be issued:

- 2296 (i) for the whole or part of the land specified in the application; and
- 2297 (ii) where the application specifies two or more uses, operations or other matters, for all of them or some one or more of them;

and must be in such form as may be prescribed by a development order¹⁰.

Such a certificate does not affect any matter constituting a failure to comply with any condition or limitation subject to which planning permission has been granted unless that matter is described in the certificate¹¹.

The lawfulness of any use or operations for which such a certificate is in force is to be conclusively presumed unless there is a material change, before the use is instituted or the operations are begun, in any of the matters relevant to determining such lawfulness¹².

It has been held that it is generally appropriate to apply for a certificate under the above provisions rather than to apply to the court for a declaration that a proposed use would be lawful¹³.

Partly as from a day to be appointed¹⁴, if:

- 2298 (A) certain internal operations are included in the statutory definition of 'development' by means of a development order¹⁵;
- 2299 (B) at the date the development order comes into force a certificate under the above provisions is in force in respect of the operations; and
- 2300 (C) before that date no such operations have been begun,

then the certificate is of no effect¹⁶.

1 For the meaning of 'use' see PARA 221 note 4 ante.

2 For the meaning of 'building' see PARA 2 note 10 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 As to the circumstances in which uses and operations are lawful see PARA 586 note 4 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 192(1) (ss 192, 193 substituted by the Planning and Compensation Act 1991 s 10(1)). As to the mode of application see PARA 589 post; for guidance as to certificates of lawful use or development generally see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 8; and as to the status of such guidance see PARA 9 ante.

7 Town and Country Planning Act 1990 s 192(2) (as substituted: see note 6 supra). A local planning authority has power to encourage an applicant to amend the description of a proposed development, but not to require modification as a condition of granting an application: *R v Thanet District Council, ex p Tapp* [2001] EGCS 43, CA. In considering an application for a certificate of lawfulness of proposed use, the interposition of a notionally permitted use between the existing use and the use applied for is not relevant: *Waltham Forest London Borough Council v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 330, [2002] 13 EG 99 (CS), [2002] All ER (D) 236 (Mar).

8 Ie in the case of any use falling within one of the classes specified in an order under the Town and Country Planning Act 1990 s 55(2)(f) (see PARA 223 ante at head (6) in the text), identifying it by reference to that class.

9 Ibid s 192(3) (as substituted: see note 6 supra).

10 Ibid s 193(4) (as substituted: see note 6 supra). A certificate under the Town and Country Planning Act 1990 s 192 (as substituted) must be in the form set out in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(11), Sch 4, or in a form substantially to the like effect: art 24(11). For the meaning of 'development order' see PARA 252 ante.

It has been held that a certificate expressed to have been issued under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) but which was intended to be issued under s 192 (as substituted) fell within the words 'a form substantially to the like effect' and was valid: see *Broads Authority v Secretary of State for the Environment, Transport and the Regions* (2001) 81 P & CR 16, [2001] JPL 115n.

11 Town and Country Planning Act 1990 s 193(5) (as substituted: see note 6 supra). See also *R v East Sussex County Council, ex p Reprotech (Pebsham) Ltd* [2002] UKHL 8, [2002] 4 All ER 58, [2003] 1 WLR 348 (cited in PARA 586 note 12 ante); *Coghurst Wood Leisure Park Ltd v Secretary of State for Transport, Local Government and the Regions and Rother District Council* [2003] JPL 206.

12 Town and Country Planning Act 1990 s 192(4) (as substituted: see note 6 supra).

13 See *Thames Heliport plc v Tower Hamlets London Borough Council* (1996) 74 P & CR 164, [1997] JPL 448, CA.

14 Ie partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121.

15 Ie if the Town and Country Planning Act 1990 s 55(2) (as amended) (operations or uses not involving development: see PARA 223 ante) is disapplied in respect of any operations by virtue of a development order under s 55(2A) (as added) (see PARA 223 note 9 ante).

16 Planning and Compulsory Purchase Act 2004 s 49(2), (3). At the date at which this title states the law, s 49 was in force for the purposes of making subordinate legislation only: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 note 8 ante.

UPDATE

587 Certificate of lawfulness of proposed use or development ('CLOPUD'); in general

NOTE 10--See *James Hay Pension Trustees Ltd v First Secretary of State* [2006] EWCA Civ 1387, [2007] JPL 643 (document described as 'permission for development' not valid certificate of lawful use; court could not overlook errors of form).

TEXT AND NOTES 14-16--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

NOTE 15--In relation to England, where development includes certain internal operations which increase the gross floor space of a building used for the retail sale of goods, other than hot food, by more than 200 square metres it will require planning permission: SI 1995/419 art 2A (added by SI 2006/1062).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(ii) Certificate of Lawfulness of Proposed Use or Development ('CLOPUD')/588. Application for certificate in anticipation of disposal of Crown land.

588. Application for certificate in anticipation of disposal of Crown land.

At the date at which this title states the law, provision is made for the purpose of enabling Crown land¹, or an interest in Crown land², to be disposed of with the benefit of a certificate³ of lawfulness of proposed use or development⁴. The relevant statutory provisions are the same as those relating to applications for planning permission in anticipation of the disposal of Crown land and have already been discussed in that context⁵. As from a day to be appointed⁶, however, those provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷.

1 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of references to the disposal of an interest in Crown land, and to a private interest in such land, for these purposes see the Town and Country Planning Act 1990 s 293(4); and PARA 11 ante.

3 Ie a certificate under the Town and Country Planning Act 1990 s 192 (as substituted): see PARA 587 ante. Any application so made for a certificate under s 192 (as substituted) must be determined as if the land were not Crown land: s 299(4) (substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 46; prospectively repealed).

4 See the Town and Country Planning Act 1990 s 299 (as amended and prospectively repealed); and PARA 454 ante.

5 See PARA 454 ante. As to the procedure on such an application see PARA 589 et seq post.

6 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 7 infra.

7 Ibid ss 79(4), 120, Sch 3 para 10(2), Sch 9. In so far as it confers on the Secretary of State or the National Assembly for Wales a power or imposes a duty to make or to make provision by rules, regulations, development order or other order or to give directions, or make provision with respect to the exercise of any such power or performance of such duty, Sch 3 para 10 came into force on 6 August 2004: see the Planning and Compulsory Purchase Act 2004 (Commencement No 1) Order 2004, SI 2004/2097, art 2; and PARA 4 note 8 ante.

UPDATE

588 Application for certificate in anticipation of disposal of Crown land

text and notes 6, 7--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(iii) Procedure on Application for CLEUD or CLOPUD/589. Applications for certificates of lawfulness of existing or proposed use or development.

(iii) Procedure on Application for CLEUD or CLOPUD

589. Applications for certificates of lawfulness of existing or proposed use or development.

An application for a certificate of lawfulness of existing or proposed use or development¹ must be made in such manner as may be prescribed by a development order² and must include such particulars, and be verified by such evidence, as may be required by such an order or by any directions given under such an order or by the local planning authority³.

An application for such a certificate must be in writing⁴ and must, in addition to specifying the land and describing the use, operations or other matter in question⁵, include the specified⁶ information⁷. Such an application must be accompanied by:

- 2301 (1) a plan identifying the land to which the application relates;
- 2302 (2) such evidence verifying the information included in the application as the applicant can provide;
- 2303 (3) a statement setting out the applicant's interest in the land, the name and address of any other person known to the applicant to have an interest in the land and whether any such other person has been notified of the application⁸.

Where such an application specifies two or more uses, operations or other matters, the plan which accompanies the application must indicate to which part of the land each such use, operation or matter relates⁹.

Where an application for a certificate of lawfulness of proposed use or development¹⁰ is made in respect of Crown land¹¹, it must, in addition to the documents required by heads (1) to (3) above, be accompanied by:

- 2304 (a) a statement that the application is made¹² in respect of Crown land; and
 2305 (b) where the application is made by a person authorised in writing by the appropriate authority¹³, a copy of that authorisation¹⁴.

The local planning authority may by notice in writing require the applicant to provide such further information as may be specified to enable the authority to deal with the application¹⁵.

1 le an application for a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) or s 192 (as substituted) (see PARA 587 ante).

2 For the meaning of 'development order' see PARA 252 ante.

3 Town and Country Planning Act 1990 s 193(1) (s 193 substituted by the Planning and Compensation Act 1991 s 10(1)). As to local planning authorities see PARA 28 et seq ante.

4 As to the use of electronic communications see PARA 451 ante.

5 le in accordance with the Town and Country Planning Act 1990 s 191 or s 192 (each as substituted).

6 le the information specified in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(1)(a)-(g). The information so specified is: (1) the paragraph of the Town and Country Planning Act 1990 s 191(1) (as substituted) or, as the case may be, s 192(1) (as substituted) under which the application is made; (2) in the case of an application under s 191(1) (as substituted), the date on which the use, operations or other matter began or, in the case of operations carried out without planning permission, the date on which the operations were substantially completed; (3) in the case of an application under s 191(1)(a) (as substituted), the name of any use class specified in an order under s 52(2)(f) (see PARA 223 ante at head (6) in the text) which the applicant considers applicable to the existing use; (4) in the case of an application under s 191(1)(c) (as substituted), sufficient details of the planning permission to enable it to be identified; (5) in the case of an application under s 192(1)(a) (as substituted), the use of the land at the date of the application, or, when the land is not in use at that date, the purpose for which it was last used, and the name of any use class specified in an order under s 55(2)(f) which the applicant considers applicable to the proposed use; (6) the applicant's reasons, if any, for regarding the use, operations or other matter described in the application as lawful; and (7) such other information as the applicant considers to be relevant to the application: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(1)(a)-(g).

7 Ibid art 24(1). Article 5(1) (as amended) (authority to which application is to be made: see PARA 450 ante) applies as it applies to an application for planning permission: art 24(4). For model forms of application see ODPM (ex-DOE) Circular 10/97 *Enforcing Planning Control--Legislative Provisions and Procedural Requirements* Annex 8.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(2).

9 Ibid art 24(3).

10 le an application under the Town and Country Planning Act 1990 s 192(1) (as substituted): see PARA 587 ante.

11 le by virtue of ibid s 299(2) (as amended; prospectively repealed): see PARAS 454, 588 ante.

12 See note 11 supra

13 For the meaning of 'appropriate authority' for these purposes see PARA 11 note 20 ante.

14 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(2A) (added by SI 1995/1139).

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(7).

UPDATE

589 Applications for certificates of lawfulness of existing or proposed use or development

TEXT AND NOTES--SI 1995/419 art 24(1), (2) amended, art 24(3A) added, art 24(5)-(9A) substituted for art 24(5)-(9) in relation to England: SI 2008/550.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(iii) Procedure on Application for CLEUD or CLOPUD/590. Applications relating to county matters.

590. Applications relating to county matters.

A county planning authority¹ in England must, before determining an application for a certificate of lawful use or development², give the district planning authority, if any³, for the area in which the relevant land⁴ lies a period of at least 14 days, from the date of receipt of the application by the district planning authority, within which to make recommendations about the manner in which the application is determined; and the county planning authority must take any such recommendations into account⁵.

A county planning authority must:

- 2306 (1) on determining such an application, as soon as reasonably practicable notify the district planning authority, if any, of the terms of its decision; or
- 2307 (2) if any such application is referred to the Secretary of State⁶, inform the district planning authority, if any, of the date when the application was so referred and, when notified to it, of the terms of the decision⁷.

1 As to county planning authorities see PARA 28 ante.

2 I.e. an application under the Town and Country Planning Act 1990 s 191 or s 192 (each as substituted): see PARAS 586-686 ante.

3 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(1).

6 As to the Secretary of State see PARA 19 ante.

7 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 12(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(iii) Procedure on Application for CLEUD or CLOPUD/591. Register of applications for certificates.

591. Register of applications for certificates.

The register of planning applications¹ kept by the local planning register authority² must contain the following information in respect of every application for a certificate of lawfulness of existing or proposed use or development³ relating to the authority's area:

- 2308 (1) the name and address of the applicant;
- 2309 (2) the date of the application;
- 2310 (3) the address or location of the land⁴ to which the application relates;
- 2311 (4) the description of the use, operations or other matter included in the application;
- 2312 (5) the decision, if any, of the local planning authority⁵ in respect of the application and the date of such decision;
- 2313 (6) the reference number, date and effect of any decision of the Secretary of State⁶ or, in relation to Wales, of the National Assembly for Wales⁷ on an appeal in respect of the application⁸.

1 le the register kept in accordance with the Town and Country Planning Act 1990 s 69(1) (as amended) (prospectively substituted); see PARAS 466-467 ante.

2 For the meaning of 'local planning register authority' see PARA 467 note 1 ante.

3 le every application for a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) or s 192 (as substituted) (see PARA 587 ante).

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 25(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(iii) Procedure on Application for CLEUD or CLOPUD/592. Procedure for dealing with applications.

592. Procedure for dealing with applications.

Provision may be made by a development order¹ for regulating the manner in which applications for certificates of existing or proposed use or development² are to be dealt with by local planning authorities³; and, in particular, such an order may provide for requiring the authority to give:

- 2314 (1) to any applicant within such time as may be prescribed by the order such notice as may be so prescribed as to the manner in which his application has been dealt with; and
- 2315 (2) to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ and to such other persons as may be prescribed by or under the order, such information as may be so prescribed with respect to such applications made to the authority, including information as to the manner in which any application has been dealt with⁶.

Where the local planning authority receives such an application and any fee required to be paid in respect of the application⁷, the authority must, as soon as reasonably practicable, send to the applicant an acknowledgment of the application⁸; and, where, after sending such an acknowledgment, the local planning authority considers that the application is invalid⁹, it must, as soon as practicable, notify the applicant that his application is invalid¹⁰.

The local planning authority must give the applicant written notice¹¹ of its decision within a period of eight weeks beginning with the date of receipt by the authority of the application and any fee required to be paid in respect of the application or, except where the applicant has already given notice of appeal to the Secretary of State or the Assembly, within such extended period as may be agreed upon in writing between the applicant and the authority¹².

Where an application is refused, in whole or in part, including a case in which the authority modifies the description of the use, operations or other matter in the application or substitutes an alternative description for that description, the notice of decision must state clearly and precisely the authority's full reasons for its decision and must include a statement to the effect that, if the applicant is aggrieved¹³ by the decision, he may appeal¹⁴ to the Secretary of State or the Assembly¹⁵.

1 For the meaning of 'development order' see PARA 252 ante.

2 Ie an application for a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) or s 192 (as substituted) (see PARA 587 ante).

3 Ibid s 193(2) (s 193 substituted by the Planning and Compensation Act 1991 s 10(1)). As to local planning authorities see PARA 28 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 193 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 193(3) (as substituted; see note 3 supra). The Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20(4) (information about applications: see PARA 532 ante) applies to an application for a certificate to which art 24(1) (see PARA 589 ante) applies as it applies to an application for planning permission: art 24(4).

7 As to the fee payable see PARAS 463-464 ante.

8 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(5). The acknowledgment must be in the terms, or substantially in the terms, set out in art 24(5), Sch 1 Pt I: art 24(5).

9 Ie by reason of failure to comply with ibid art 24A(1)-(5) (see the text and notes 7-8 supra; and PARA 589 ante) or any other statutory requirement.

10 Ibid art 24(6).

11 As to the use of electronic communications see PARA 451 ante.

12 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(8). As to the Assembly see PARA 451 note 13 ante. For the purpose of calculating the appropriate period so specified, where any fee required has been paid by a cheque which is subsequently dishonoured, the time between the date when the authority sends the applicant written notice of the dishonouring of the cheque and the date when the authority receives the full amount of the fee is not to be taken into account: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(9).

13 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

14 Ie under the Town and Country Planning Act 1990 s 195 (as amended): see PARA 613 post.

15 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(10).

UPDATE

592 Procedure for dealing with applications

TEXT AND NOTES--SI 1995/419 art 24(5)-(9A) substituted for art 24(5)-(9) in relation to England: SI 2008/550.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/ (iv) Revocation of CLEUD or CLOPUD/593. Power to revoke certificates of lawfulness of existing or proposed use or development.

(iv) Revocation of CLEUD or CLOPUD

593. Power to revoke certificates of lawfulness of existing or proposed use or development.

A local planning authority¹ may revoke a certificate of lawfulness of existing or proposed use or development² if, on the application for the certificate:

- 2316 (1) a statement was made or document used which was false in a material particular; or
- 2317 (2) any material information was withheld³.

Provision may be made by a development order⁴ for regulating the manner in which certificates may be revoked and the notice to be given of such revocation⁵.

¹ As to local planning authorities see PARA 28 et seq ante.

² I.e a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) or s 192 (as substituted) (see PARA 587 ante).

³ Ibid s 193(7) (s 193 substituted by the Planning and Compensation Act 1991 s 10(1)).

⁴ For the meaning of 'development order' see PARA 252 ante.

⁵ Town and Country Planning Act 1990 s 193(8) (as substituted: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/ (iv) Revocation of CLEUD or CLOPUD/594. Procedure on revocation of certificate.

594. Procedure on revocation of certificate.

Where a local planning authority¹ proposes to revoke² a certificate of lawfulness of existing or proposed use or development³, the authority must, before it revokes the certificate, give notice of that proposal to:

- 2318 (1) the owner of the land affected;
- 2319 (2) the occupier of the land affected;
- 2320 (3) any other person who will, in the authority's opinion, be affected by the revocation; and
- 2321 (4) in the case of a case of a certificate issued by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵ on an appeal⁶, to him or to the Assembly⁷.

A notice so issued must invite the person on whom the notice is served to make representations on the proposal to the authority within 14 days of service of the notice; and the authority may not revoke the certificate until the expiry of all such periods allowed for making representations have expired⁸.

An authority must give written notice of any revocation⁹ to every person on whom notice of the proposed revocation was so served¹⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 Ie in accordance with the Town and Country Planning Act 1990 s 193(7) (as substituted): para 593 ante.

3 Ie a certificate issued under ibid s 191 (as substituted) or s 192 (as substituted): see PARAS 586-587 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 451 note 13 ante.

6 Ie on an appeal under the Town and Country Planning Act 1990 s 195 (as amended): see PARA 614 post.

7 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(12). As to the use of electronic communications see PARA 451 ante.

8 Ibid art 24(13).

9 Ie under the Town and Country Planning Act 1990 s 193(7) (as substituted): see PARA 593 ante.

10 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 24(14).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/ (9) CERTIFICATES OF LAWFUL USE OR DEVELOPMENT/(v) Offences/595. Offences.

(v) Offences

595. Offences.

If any person, for the purpose of procuring a particular decision on an application, whether by himself or another, for the issue of a certificate of lawfulness of existing or proposed use or development¹:

- 2322 (1) knowingly or recklessly makes a statement which is false or misleading in a material particular;
- 2323 (2) with intent to deceive, uses any document which is false or misleading in a material particular; or

2324 (3) with intent to deceive, withholds any material information,

he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum².

A magistrates' court may³ try an information in respect of any such offence whenever laid⁴.

1 le an application for a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (see PARA 586 ante) or s 192 (as substituted) (see PARA 587 ante).

2 Ibid s 194(1), (2) (s 194 substituted by the Planning and Compensation Act 1991 s 10(1)). For the meaning of 'the statutory maximum' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

3 le notwithstanding the Magistrates' Courts Act 1980 s 127 (time limit for summary proceedings): see MAGISTRATES VOL 29(2) (Reissue) PARA 589.

4 Town and Country Planning Act 1990 s 194(3) (as substituted: see note 2 supra). Undue delay may, however, result in a breach of the right to a fair trial under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) (Cmd 8969)), art 6(1), now set out in the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 6: see PARA 7 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(10) DISCONTINUANCE ORDERS ETC/596. Penalties for contravention of discontinuance orders etc.

(10) DISCONTINUANCE ORDERS ETC

596. Penalties for contravention of discontinuance orders etc.

Any person who without planning permission¹;

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235. (1) uses land², or causes or permits land to be used for any purpose for which an order³ has required that its use shall be discontinued, or in contravention of any condition imposed by such an order⁴; or

236. (2) resumes, or causes or permits to be resumed, development⁵ consisting of the winning and working of minerals⁶ or involving the depositing of mineral waste⁷ the resumption of which an order⁸ has prohibited; or

237. (3) contravenes, or causes or permits to be contravened, any specified requirement¹⁰,

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is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum¹¹.

Any person who contravenes any requirement of a suspension order¹² or who causes or permits any requirement of such an order to be contravened is likewise guilty of an offence¹³ and liable to the like penalties¹⁴.

It is, however, a defence for a person charged with any such offence to prove that he took all reasonable measures and exercised all due diligence to avoid commission of the offence by himself or any person under his control¹⁵; but, if in any case this defence involves an allegation

that the commission of the offence was due to the act or default of another person or due to reliance on information supplied by another person, the person charged is not, without the leave of the court, entitled to rely on the defence unless he has, within a period ending seven clear days before the hearing, served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of the other person as was then in his possession¹⁶.

- 1 For the meaning of 'planning permission' for these purposes see PARA 551 note 2 ante.
- 2 For the meaning of 'land' see PARA 2 note 10 ante.
- 3 Ie an order under the Town and Country Planning Act 1990 s 102 (as amended) (see PARAS 546-547 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 post).
- 4 Ie by virtue of ibid s 102(1) (see PARA 546 ante) or, as the case may be, Sch 9 para 1(1) (as amended) (see PARA 757 post).
- 5 For the meaning of 'development' see PARA 217 ante.
- 6 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.
- 7 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.
- 8 Ie under the Town and Country Planning Act 1990 Sch 9 para 3 (as amended) (prohibition orders): see PARA 759 post.
- 9 Ie any such requirement as is specified in ibid Sch 9 para 3(3) (as substituted) or Sch 9 para 3(4): see PARA 759 post.
- 10 Ibid s 189(1) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 11).
- 11 Town and Country Planning Act 1990 s 189(3). For the meaning of 'the statutory maximum' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.
- 12 Ie an order under ibid Sch 9 para 5 (as amended) (suspension orders: see PARA 762 post) or Sch 9 para 6 (supplementary suspension orders: see PARA 763 post).
- 13 Ibid s 189(2).
- 14 See note 11 supra.
- 15 Town and Country Planning Act 1990 s 189(4).
- 16 Ibid s 189(5). As to the service of notices see PARA 54 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/5. ENFORCEMENT; IN GENERAL/(10) DISCONTINUANCE ORDERS ETC/597. Enforcement of discontinuance orders etc.

597. Enforcement of discontinuance orders etc.

Where any step:

- 2325 (1) required by a discontinuance order¹ to be taken for the alteration or removal of any buildings or works² or any plant or machinery; or
- 2326 (2) required by a prohibition order³ to be taken for the alteration or removal of plant or machinery or for the removal or alleviation of any injury to amenity⁴; or

2327 (3) for the protection of the environment⁵ required to be taken by a suspension order⁶,

has not been taken within the period specified in the order, or within such extended period as the local planning authority⁷ or, as the case may be, the mineral planning authority⁸, may allow, the local planning authority⁹ or, as the case may be, the mineral planning authority, may enter the land¹⁰ and take the required step¹¹.

Where the local planning authority or, as the case may be, the mineral planning authority has so exercised its power, the authority may recover from the person who is then the owner¹² of the land any expenses reasonably incurred by the authority in doing so¹³.

1 le an order under the Town and Country Planning Act 1990 s 102 (as amended) (see PARAS 546-547 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 post).

2 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

3 le an order under the Town and Country Planning Act 1990 Sch 9 para 3 (as amended): see PARA 759 post.

4 As to the meaning of 'amenity' see PARA 158 note 8 ante.

5 For the meaning of 'steps for the protection of the environment' see PARA 762 note 7 post.

6 le an order under the Town and Country Planning Act 1990 Sch 9 para 5 (as amended) (see PARA 762 post) or Sch 9 para 6 (see PARA 763 post).

7 As to local planning authorities see PARA 28 et seq ante.

8 For the meaning of 'mineral planning authority' see PARA 29 ante.

9 For the purposes of the Town and Country Planning Act 1990 s 190(2), (3), (5), any reference to the local planning authority is to be construed as a reference to the authority which made the order in question or, in the case of an order made by the Secretary of State or by the National Assembly for Wales, the authority named in the order: s 1(5) (as amended), Sch 1 para 12, s 1(6) (as added and amended), Sch 1A para 4 (Sch 1A added by the Local Government (Wales) Act 1994 s 18, Sch 4; modified by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1). In relation to Wales, the Town and Country Planning Act 1990 Sch 1A para 4 (as so added) applies only in relation to any area for which, by virtue of any provision made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added). In relation to England, Sch 1 para 12 does not apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 ante; for the meaning of 'taking enforcement action' see PARA 551 ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to local planning authorities generally see PARA 28 et seq ante.

10 For the meaning of 'land' see PARA 2 note 10 ante.

11 Town and Country Planning Act 1990 s 190(1), (2). The Public Health Act 1936 s 276 (power of local authority to sell certain materials; see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 118) applies in relation to any works executed by an authority under the Town and Country Planning Act 1990 s 190(2) as it applies in relation to works executed by a local authority under the Public Health Act 1936: Town and Country Planning Act 1990 s 190(5). For the meaning of 'local authority' see PARA 3 note 3 ante.

12 For the meaning of 'owner' see PARA 17 note 1 ante.

13 Town and Country Planning Act 1990 s 190(3).

GENERAL/598. Rights of appeal and functions of local planning authority where certain appeals are made.

6. APPEALS ETC; IN GENERAL

(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY

(i) Appeals regarding Planning Applications and Decisions

A. IN GENERAL

598. Rights of appeal and functions of local planning authority where certain appeals are made.

Where a local planning authority¹:

- 2328 (1) refuses an application for planning permission² or grants it subject to conditions³;
- 2329 (2) refuses an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of planning permission or grants it subject to conditions; or
- 2330 (3) refuses an application for any approval of that authority required under a development order⁴ or a local development order⁵ or grants it subject to conditions,

the applicant may by notice appeal to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷.

A person who has made such an application may also appeal to the Secretary of State or the Assembly if the local planning authority has done none of the following:

- 2331 (a) given notice to the applicant of its decision on the application;
- 2332 (b) given notice to the applicant that it has exercised its power⁸ to decline to determine the application;
- 2333 (c) given notice to him that the application has been referred to the Secretary of State or the Assembly in accordance with directions given⁹ by him or by it,

within such period as may be prescribed by a development order or within such extended period as may at any time be agreed upon in writing between the applicant and the authority¹⁰.

Any such appeal must be made by notice served within such time and in such manner as may be prescribed by a development order¹¹. The time so prescribed for the service of such a notice must, however, be not less than 28 days from the date of notification of the decision or, in the case of an appeal under heads (a) to (c) above, 28 days from the end of the prescribed period¹² or, as the case may be, the period¹³ as so extended¹⁴.

The following provisions apply, partly as from a day to be appointed¹⁵, if a person who has made an application for planning permission¹⁶ appeals to the Secretary of State or the Assembly under heads (a) to (c) above¹⁷. At any time before the end of the additional period¹⁸ the local planning authority may give the notice referred to in those heads¹⁹. If the local planning authority so gives notice that its decision is to refuse the application:

- 2334 (i) the appeal must be treated as an appeal²⁰ against the refusal;

- 2335 (ii) the Secretary of State or the Assembly must give the person making the appeal an opportunity to revise the grounds of the appeal;
- 2336 (iii) the Secretary of State or the Assembly must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal²¹.

If, however, the local planning authority so gives notice that its decision is to grant the application subject to conditions the Secretary of State or the Assembly must give the person making the appeal the opportunity:

- 2337 (A) to proceed with the appeal as an appeal²² against the grant of the application subject to conditions;
- 2338 (B) to revise the grounds of the appeal;
- 2339 (C) to change any option the person has chosen relating to the procedure for the appeal²³.

The Secretary of State or the Assembly must not issue his or its decision on the appeal before the end of the additional period²⁴.

The submission of an environmental statement on such an appeal is discussed below²⁵.

1 As to local planning authorities see PARA 28 et seq ante.

2 As to refusal of planning permission see PARA 486 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante. On its true construction, the word 'application' in the Town and Country Planning Act 1990 s 78 (as amended) (see the text and notes 3-14 infra) includes an application that the local planning authority considered to be invalid; thus a determination of invalidity by the authority does not exclude a right of appeal to the Secretary of State or to the Assembly on the question of validity: see *R v Secretary of State for the Environment, Transport and the Regions, ex p Bath and North East Somerset District Council* [1999] 4 All ER 418, [1999] 1 WLR 1759, CA (where, however, the court suggested that there may be requests for planning permission which are so deficient in form and substance that no reasonable authority or Secretary of State can reasonably treat them as 'applications' within the meaning of the legislation).

3 As to the grant of planning permission subject to conditions see PARAS 522-523 ante.

4 For the meaning of 'development order' see PARA 252 ante.

5 As to local development orders see PARA 419 et seq ante.

6 As to the Secretary of State see PARA 19 ante.

7 Town and Country Planning Act 1990 s 78(1) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(e), partly as from a day to be appointed under s 121; at the date at which this title states the law, that amendment was not fully in force). As to the transfer of functions under the Town and Country Planning Act 1990 s 78 (as amended), s 78A (as added) so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

As to the procedure on the determination of appeals under the Town and Country Planning Act 1990 s 78 (as amended) see PARA 618 et seq post. Section 78 (as amended) does not apply to applications for planning permission to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies: see PARA 893 note 8 post.

The fact that an appeal is pending does not prevent the service of an enforcement notice: *Davis v Miller* [1956] 3 All ER 109, [1956] 1 WLR 1013, DC. As to appeals against enforcement notices on the grounds that permission ought to have been granted see PARA 603 post.

8 Ie under the Town and Country Planning Act 1990 s 70A (as added and substituted) (see PARA 516 ante) or under s 70B (as added) (see PARA 517 ante).

9 Ie under *ibid* s 77 (as amended): see PARA 483 ante.

10 Town and Country Planning Act 1990 s 78(2) (amended by the Planning and Compensation Act 1991 s 17(2); prospectively amended by the Planning and Compulsory Purchase Act 2004 s 43(2), as from a day to be appointed under s 121; until the coming into force of that amendment, the words 'or under s 70B' (see note 8 supra) are omitted). A failure by the local authority to decide an application is not deemed to be a refusal for any other purpose: *Edwick v Sunbury-on-Thames UDC* (1959) 12 P & CR 38, CA.

For the purposes of the application of the Town and Country Planning Act 1990 s 79(1) (see PARA 601 post), s 253(2)(c) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 798), s 266(1)(b) (see PARA 1013 post) and s 288(10)(b) (see PARA 47 ante) in relation to an appeal under s 78(2) (as so amended), it is assumed that the authority decided to refuse the application in question: s 78(5). As to notice of appeal see PARA 599 post.

In determining for the purposes of s 78 (as amended) the time which has elapsed without the relevant planning authority giving notice to the applicant of its decision in a case where (1) the authority has notified an applicant in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(2) (see PARA 495 ante) that the submission of an environmental statement is required; and (2) the Secretary of State or the Assembly has given a screening direction in relation to the development in question (see PARA 494 ante), no account is to be taken of any period before the issue of the direction: reg 32(1).

11 Town and Country Planning Act 1990 s 78(3).

12 Ie the period prescribed as mentioned in *ibid* s 78(2) (as amended): see the text to note 10 supra.

13 Ie the extended period mentioned in *ibid* s 78(2) (as amended): see the text to note 10 supra.

14 *Ibid* s 78(4).

15 Ie partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121.

16 Ie an application mentioned in the Town and Country Planning Act 1990 s 78(1)(a): see head (1) in the text.

17 *Ibid* s 78A(1) (s 78A added by the Planning and Compulsory Purchase Act 2004 s 50(1), partly as from a day to be appointed: see note 15 supra). The appeal referred to in the text is an appeal under the Town and Country Planning Act 1990 s 78(2) (as amended).

18 The additional period is the period prescribed by development order for the purposes of *ibid* s 78A (as added) and which starts on the day on which the person appeals under s 78(2) (as amended): s 78A(6) (as added: see note 17 supra).

19 *Ibid* s 78A(2) (as added: see note 17 supra).

20 Ie an appeal under *ibid* s 78(1) (as amended): see the text to notes 1-7 supra.

21 *Ibid* s 78A(3) (as added: see note 17 supra).

22 See note 20 supra.

23 Town and Country Planning Act 1990 s 78A(4) (as added: see note 17 supra).

24 *Ibid* s 78A(5) (as added: see note 17 supra).

25 See PARA 618 post. Where an environmental statement was submitted with the original application, three copies of that statement and of any further information, where relevant, must be submitted on the appeal: see PARA 503 ante.

UPDATE

598 Rights of appeal and functions of local planning authority where certain appeals are made

TEXT AND NOTES--Town and Country Planning Act 1990 s 78(4A)-(4D) added: Planning Act 2008 Sch 11 paras 1, 2 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Appeals regarding Planning Applications and Decisions/A. IN GENERAL/599. Notice of appeal.

599. Notice of appeal.

An applicant who wishes to appeal to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² against a planning decision or failure to take such a decision³ must give notice of appeal to the Secretary of State or the Assembly by:

- 2340 (1) serving on him or on it within the specified time⁴ a form obtained from him or from it, together with such of the documents specified in heads (a) to (g) below as are relevant to the appeal;
- 2341 (2) serving on the local planning authority⁵ a copy of the form mentioned in head (1) above, as soon as reasonably practicable, together with a copy of any relevant document mentioned in head (e) below⁶.

The documents so specified are:

- 2342 (a) the application made to the local planning authority which has occasioned the appeal;
- 2343 (b) all plans, drawings and documents sent to the authority in connection with the application;
- 2344 (c) all correspondence with the authority relating to the application;
- 2345 (d) any certificate in relation to notice of the application provided to the authority⁷;
- 2346 (e) any other plans, documents or drawings relating to the application which were not sent to the authority;
- 2347 (f) the notice of the decision, if any;
- 2348 (g) if the appeal relates to an application for approval of certain matters in accordance with a condition on a planning permission, the application for that permission, the plans submitted with that application and the planning permission granted⁸.

The Secretary of State or the Assembly may refuse to accept a notice of appeal from an applicant if the documents so required are not served on him or on it within the specified time limit⁹.

The Secretary of State or the Assembly may provide, or arrange for the provision of, a website for use for such purposes as he or it thinks fit which relate to such appeals as are described above¹⁰ and which are capable of being carried out electronically¹¹. Where a person gives notice of appeal to the Secretary of State or to the Assembly using electronic communications¹², the person is to be taken to have agreed:

- 2349 (i) to the use of such communications for all purposes relating to his appeal which are capable of being carried out electronically;
- 2350 (ii) that his address¹³ for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his notice of appeal; and
- 2351 (iii) that his deemed agreement under this provision is to subsist until he gives notice¹⁴ that he wishes to revoke the agreement¹⁵.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 Ie appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.
- 4 The time limit so specified is six months from (1) the date of the notice of the decision giving rise to the appeal; (2) the expiry of the period specified in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 20 (see PARA 532 ante) or, as the case may be, art 21 (see PARA 533 ante); or (3) in a case in which the authority has served a notice on the applicant in accordance with art 3(2) (see PARA 520 ante) that the authority requires further information, and he has not provided the information, the date of service of that notice, or such longer period as the Secretary of State or the Assembly may at any time allow: art 23(2) (amended in relation to England by SI 2004/3340).
- 5 As to local planning authorities see PARA 28 et seq ante.
- 6 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 23(1).
- 7 Ie any certificate provided under ibid art 7: see PARA 470 ante.
- 8 Ibid art 23(3). As to publicity for appeals see PARA 600 post.
- 9 Ibid art 23(4) (added in relation to England by SI 2003/2047 and in relation to Wales by SI 2004/1434).
- 10 Ie appeals under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante) and under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 23 (as amended) (see the text and notes 1-9 supra).
- 11 Ibid art 23(5) (art 23(5), (6) added in relation to England by SI 2003/956 and in relation to Wales by SI 2004/3156).
- 12 For the meaning of 'electronic communications' see PARA 451 ante.
- 13 For the meaning of 'address' for these purposes see PARA 451 note 11 ante.
- 14 Ie notice under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 27A (as added): see PARA 451 ante.
- 15 Ibid art 23(6) (as added: see note 11 supra).

UPDATE

599 Notice of appeal

TEXT AND NOTES--SI 1995/419 art 23 amended, in relation to England: SI 2009/453.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Appeals regarding Planning Applications and Decisions/A. IN GENERAL/600. Publicity for appeals.

600. Publicity for appeals.

The statutory provisions relating to notice¹ apply to any appeal to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ against a planning decision or failure to take such a decision⁴ as they apply to applications for planning permission⁵.

If the local planning authority⁶ has failed to satisfy the statutory requirements for publicity⁷ in respect of an application for the planning permission at the time any appeal is made to the Secretary of State or the Assembly⁸, those requirements continue to apply as if such appeal to him or to it had not been made⁹; and, when the local planning authority has satisfied those requirements, it must inform the Secretary of State or the Assembly that it has done so¹⁰.

1 In the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6 (as amended), art 7: see PARAS 469-470 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 In any appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

5 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(1).

6 As to local planning authorities see PARA 28 et seq ante.

7 In the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8 (as amended): see PARA 471 ante.

8 See note 4 supra.

9 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 9(2).

10 Ibid art 9(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Appeals regarding Planning Applications and Decisions/A. IN GENERAL/601. Determination of appeals.

601. Determination of appeals.

The Secretary of State¹ must make one or more timetables for the purposes of decisions which he must take on an appeal against planning decisions and failure to take such decisions².

On such an appeal the Secretary of State or, in relation to Wales, the National Assembly for Wales³ may:

- 2352 (1) allow or dismiss the appeal; or
- 2353 (2) reverse or vary any part of the decision of the local planning authority⁴, whether the appeal relates to that part of it or not,

and may deal with the application as if it had been made to him or to the Assembly in the first instance⁵.

Before so determining an appeal, the Secretary of State or the Assembly must, if either the appellant or the local planning authority so wishes, give each of them an opportunity of

appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose⁶. He or the Assembly must, in determining the appeal, take into account any representations⁷ made, where any notice of the appeal has been served:

- 2354 (a) on an owner of the land or a tenant of an agricultural holding⁸; or
- 2355 (b) on an adjoining owner or occupier⁹,

within 21 days beginning with the date when the notice was served on that person, provided that the representations are made by any person who satisfies the Secretary of State or the Assembly that he is such an owner, tenant or occupier¹⁰.

If, before or during the determination of such an appeal in respect of an application for planning permission to develop¹¹ land¹², the Secretary of State or the Assembly forms the opinion that, having regard to the general considerations for the determination of applications¹³, the conditions which may be imposed on the grant of planning permission¹⁴, the development order and any directions given under that order, planning permission for that development:

- 2356 (i) could not have been granted by the local planning authority; or
- 2357 (ii) could not have been granted otherwise than subject to the conditions imposed,

he or the Assembly may decline to determine the appeal or to proceed with the determination¹⁵.

If, at any time before or during the determination of such an appeal, it appears to the Secretary of State or the Assembly that the appellant is responsible for undue delay in the progress of the appeal, he or it may:

- 2358 (A) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- 2359 (B) if the appellant fails to take those steps within that period, dismiss the appeal accordingly¹⁶.

The Secretary of State or the Assembly must give notice of his or its decision to every person who has made representations which he or it was required to take into account in accordance with head (a) above¹⁷. His or its decision on such an appeal is final¹⁸. The validity of such a decision may, however, be challenged on certain statutory grounds¹⁹ or on an application for judicial review²⁰; and it has been held that, notwithstanding the absence of a right to a further appeal on the facts, the decision-making process on such appeals is not incompatible with the right to a fair hearing before an impartial and independent tribunal²¹ because the judicial review jurisdiction of the High Court constitutes a sufficient review of the legality of the decisions and of the procedures followed²².

In the absence of express statutory provisions permitting him to do so, the Secretary of State has no power to reinstate an appeal which has been withdrawn²³.

1 As to the Secretary of State see PARA 19 ante.

2 See the Planning and Compulsory Purchase Act 2004 s 55, Sch 2; and PARA 527 et seq ante. Note that Sch 2 does not apply to decisions on such appeals to be taken by the National Assembly for Wales. The appeals referred to in the text are appeals under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante. There are, however, a number of specified exclusions: see the Town and Country Planning (Timetable for Decisions) (England) Order 2005, SI 2005/205; and PARA 527 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning Act 1990 s 79(1). See further *R v East Kesteven RDC, ex p Sleaford and District White City Sports Stadium Co* [1947] 1 All ER 310, DC (refusal on ground of overriding need to preserve land for agricultural use valid). The Town and Country Planning Act 1990 s 79 (as amended) does not apply to applications for planning permission to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies: see PARA 893 note 8 post.

6 Town and Country Planning Act 1990 s 79(2). Section 79(2) does not apply to an appeal (1) referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 post) (s 79(3)); or (2) which falls to be determined by an appointed person (see Sch 6 para 2(2) (as amended); and PARA 623 post).

Where an appeal against a refusal of planning permission is conducted by way of an informal hearing, as opposed to a public local inquiry, the absence of an accusatorial procedure places an inquisitorial burden upon the inspector hearing the appeal. There is a danger that the more relaxed atmosphere of an informal hearing could lead, not to a full and fair hearing, but rather to a less than thorough examination of the issues: see *Dyason v Secretary of State for the Environment and Chiltern District Council* (1998) 75 P & CR 506, [1998] JPL 778, CA.

The Town and Country Planning Act 1990 79(7), Sch 6 (as amended) (see PARA 621 et seq post) applies to appeals under s 78 (as amended), including appeals under s 78 (as amended) as applied by or under any other provisions of the Town and Country Planning Act 1990: s 79(7).

Subject to s 79(2), the provisions of s 70 (as amended) (see PARA 486 ante), s 72(1), (5) (as amended) (see PARA 522 ante), s 73 (as amended) (see PARA 524 ante), s 73A (as added) (see PARA 525 ante) and Sch 5 Pt 1 (paras 1-6) (as amended) (see PARA 711 et seq post) apply, with any necessary modifications, in relation to an appeal to the Secretary of State or the Assembly under s 78 (as amended) as they apply in relation to an application for planning permission which falls to be determined by the local planning authority; and a development order may apply, with or without modifications, to such an appeal any requirements imposed by a development order by virtue of s 65 (as substituted and amended) (see PARA 468 ante) or s 71 (as amended) (see PARA 473 ante): s 79(4) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 19). For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'development order' see PARA 252 ante.

7 For the meaning of 'representations' for these purposes see PARA 474 note 7 ante.

8 Ie notice has been so served under the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 6 (as amended): see PARA 469 ante.

9 Ie notice has been so served under ibid art 8 (as amended): see PARA 471 ante.

10 Ibid art 19(1)(b), (3). As to the persons to whom art 19(1)(b)(i) (see head (a) in the text) applies see eg *Hamsher v First Secretary of State* [2004] EWHC 2299 (Admin), [2004] All ER (D) 137 (Sep).

11 For the meaning of 'develop' see PARA 217 ante.

12 For the meaning of 'land' see PARA 2 note 10 ante.

13 Ie the provisions of the Town and Country Planning Act 1990 s 70 (as amended): see PARA 486 ante.

14 Ie the provisions of ibid s 72(1): see PARA 522 ante.

15 Ibid s 79(6).

16 Ibid s 79(6A) (added by the Planning and Compensation Act 1991 s 18).

17 Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(2), (3).

18 Town and Country Planning Act 1990 s 79(5).

19 Ie under ibid s 288 (as amended): see PARA 47 ante. See eg *Ayres v Secretary of State for the Environment* (1997) 74 P & CR 246.

20 As to judicial review see PARA 650 post.

21 lie under the Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950; TS 71 (1953) (Cmd 8969)), art 6, now set out in the Human Rights Act 1998 s 1(3), Sch 1 Pt I art 6: see PARA 7 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

22 See *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929; and see further PARA 483 note 15 ante.

23 *R (on the application of Corbett) v First Secretary of State* [2005] All ER (D) 244 (Jul), [2005] 30 EG 88 (CS).

UPDATE

601 Determination of appeals

NOTE 6--See also *Gale v Secretary of State for Communities and Local Government* [2007] EWHC 2053 (Admin), [2007] All ER (D) 136 (Sep).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Appeals regarding Planning Applications and Decisions/B. APPEALS REGARDING PARTICULAR CONSENTS ETC/602. Rights of appeal; in general.

B. APPEALS REGARDING PARTICULAR CONSENTS ETC

602. Rights of appeal; in general.

Rights of appeal regarding listed building consents¹ and conservation area consents² under the Planning (Listed Buildings and Conservation Areas) Act 1990³ and hazardous substances consents⁴ under the Planning (Hazardous Substances) Act 1990⁵ are discussed in a later part of this title⁶.

Rights of appeal in connection with:

- 2360 (1) old mining and mineral planning permissions⁷;
- 2361 (2) the control of advertisements⁸;
- 2362 (3) tree preservation orders⁹; and
- 2363 (4) compliance determinations in relation to war-time breaches of planning control by the Crown¹⁰,

are also discussed below¹¹.

1 For the meaning of 'listed building consent' see PARA 1109 post.

2 For the meaning of 'conservation area consent' see PARA 1174 post.

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 20-22 (as amended); and PARA 1186 et seq post.

4 See ibid ss 20-22 (as modified for these purposes); and PARA 1191 et seq post.

5 See the Planning (Hazardous Substances) Act 1990 s 21 (as amended); and PARA 1287 et seq post.

6 See PARAS 1186 et seq, 1287 et seq post.

- 7 See PARAS 724-725, 740 post.
- 8 See PARA 833 et seq post.
- 9 See PARAS 883-884 post (consents); paras 885-886 post (enforcement notices relating to trees).
- 10 See PARA 911 post.
- 11 See the paragraphs of this title cited in notes 7-10 supra.

UPDATE

602 Rights of appeal; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/603. Right of appeal.

(ii) Appeals against Enforcement Notices; in general

603. Right of appeal.

A person having an interest in the land¹ to which an enforcement notice² relates or a relevant occupier³ may appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ against the notice, whether or not a copy of it has been served on him⁶.

An appeal may be brought on any of the following grounds:

- 2364 (1) that, in respect of any breach of planning control⁷ which may be constituted by the matters stated in the notice, planning permission⁸ ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged;
- 2365 (2) that those matters have not occurred;
- 2366 (3) that those matters, if they occurred, do not constitute a breach of planning control;
- 2367 (4) that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters⁹;
- 2368 (5) that copies of the enforcement notice were not duly served¹⁰;
- 2369 (6) that the steps required by the notice to be taken, or the activities required by the notice to cease, exceed what is necessary to remedy any breach of planning control which may be constituted by those matters or, as the case may be, to remedy any injury to amenity¹¹ which has been caused by any such breach;
- 2370 (7) that any period specified in the notice¹² falls short of what should reasonably be allowed¹³.

Such an appeal must be made:

- 2371 (a) by giving written notice of the appeal to the Secretary of State or the Assembly before the date specified in the enforcement notice as the date on which it is to take effect; or
- 2372 (b) by sending such notice to him in a properly addressed and prepaid letter posted to him or to the Assembly at such time that, in the ordinary course of post, it would be delivered to him or to the Assembly before that date; or
- 2373 (c) by sending such notice to him or to the Assembly using electronic communications¹⁴ at such time that, in the ordinary course of transmission, it would be delivered to him or to the Assembly before that date¹⁵.

A person who so gives notice must submit to the Secretary of State or the Assembly, either when giving the notice or within the prescribed time¹⁶, a statement in writing:

- 2374 (i) specifying the grounds on which he is appealing against the enforcement notice; and
- 2375 (ii) giving such further information as may be prescribed¹⁷.

If, where more than one ground is specified in that statement, the appellant does not give information required under head (ii) above in relation to each of those grounds within the prescribed time, the Secretary of State or the Assembly may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time¹⁸.

The Secretary of State or the Assembly must¹⁹, if either the appellant or the local planning authority so desires, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by it for the purpose²⁰.

Where an appeal is so brought, the enforcement notice is of no effect²¹ pending the final determination²² or the withdrawal of the appeal²³; and, where any person has appealed to the Secretary of State or the Assembly against an enforcement notice, no person is entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed²⁴.

The submission of an environmental statement on an enforcement appeal is discussed below²⁵.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'enforcement notice' see PARA 561 ante. Rights of appeal against listed building enforcement notices are discussed in a later part of this title: see PARA 1186 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

3 For these purposes, 'relevant occupier' means a person who (1) on the date on which the enforcement notice is issued occupies the land to which the notice relates by virtue of a licence; and (2) continues so to occupy the land when the appeal is brought: Town and Country Planning Act 1990 s 174(6) (amended by the Planning and Compensation Act 1991 ss 32, 74(6), Sch 7 paras 8, 22, Sch 19 Pt 1). See also *Buckinghamshire County Council v Secretary of State for the Environment, Transport and the Regions* (2000) 81 P & CR 342, [2001] 1 PLR 38 (principal shareholder of company renting building to which enforcement notice related was 'relevant occupier').

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 174 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 174(1). As to procedure on appeals see PARA 604 et seq post. Where a claimant appeals against an enforcement notice, the onus of proof is on him to demonstrate that the notice is

invalid: *Hill v Secretary of State for Transport, Local Government and the Regions* [2003] EWCA Civ 1904, [2003] All ER (D) 339 (Nov). It is not normally appropriate to challenge the validity of such a notice in criminal proceedings arising out of a failure to comply with it: see *R v Wicks* [1998] AC 92, [1997] 2 All ER 801, HL. That decision is not, however, concerned with whether the courts are prevented altogether or after a certain date from dealing with an allegation of unlawfulness but only with the type of proceedings in which the issue can be raised: see *Earthline Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599 at [22], [2003] 1 P & CR 393, [2002] All ER (D) 64 (Nov), per Keene LJ.

7 For the meaning of 'breach of planning control' see PARA 551 ante.

8 For the meaning of 'planning permission' see PARA 43 note 6 ante,

9 For the meaning of 'taking enforcement action' see PARA 551 ante. For an example of an unsuccessful appeal under head (4) in the text see *MDJ Light Brothers Ltd v First Secretary of State* [2003] All ER (D) 158 (May).

10 Ie were not served as required by the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante.

11 As to the meaning of 'amenity' see PARA 158 note 8 ante.

12 Ie in accordance with the Town and Country Planning Act 1990 s 173(9) (as substituted): see PARA 563 ante.

13 Ibid s 174(2) (substituted by the Planning and Compensation Act 1991 s 6(1)). The burden of proof in an appeal against an enforcement notice is upon the appellant in so far as establishing that no breach of planning control has occurred against which enforcement action may be taken: *Nelsovil Ltd v Minister of Housing and Local Government* [1962] 1 All ER 423, [1962] 1 WLR 404, DC; *ZZZ Incorporated v First Secretary of State* [2003] EWHC 1092 (Admin), [2003] All ER (D) 201 (Apr).

14 For the meaning of 'electronic communications' see PARA 54 note 2 ante.

15 Town and Country Planning Act 1990 s 174(3) (substituted by the Planning and Compensation Act 1991 s 6(1); amended in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, arts 1(2), (3); and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 1(2), (3)). As to the service of notices generally see PARA 54 ante.

16 The prescribed time is 14 days: see PARA 605 post. For the meaning of 'prescribed' see PARA 16 note 5 ante.

17 Town and Country Planning Act 1990 s 174(4); and see *Miller-Mead v Minister of Housing and Local Government* [1963] 2 QB 196, [1963] 1 All ER 459, CA.

18 Town and Country Planning Act 1990 s 174(5).

19 Ie subject to ibid s 176(4): see PARA 609 post.

20 Ibid s 175(3). Section 175(6), Sch 6 (as amended) (see PARA 621 et seq post) applies to appeals under s 174 (as amended), including appeals under s 174 (as amended) as applied by regulations under any other provisions of the Town and Country Planning Act 1990: s 175(6). Section 175(3) does not apply to appeals which so fall to be determined by an appointed person: see Sch 6 para 2(2) (as amended) and PARA 623 post.

21 Ie subject to any order under ibid s 289(4A) (as added): see PARA 648 post.

22 For these purposes, 'final determination' of an appeal against an enforcement notice does not necessarily occur when an appeal to the Secretary of State or the Assembly under ibid s 174 (as amended) is determined since such an appeal is not an entirely self-contained procedure but may be subject to a further appeal to the High Court on a point of law under s 289 (as amended) (see PARA 648 post), in which case the court may remit the case to the Secretary of State or the Assembly for rehearing and determination (see CPR Sch 1 RSC Ord 94 r 13(7); and PARA 649 post). Accordingly, by virtue of the Town and Country Planning Act 1990 s 175(4) (as amended: see note 23 infra), an enforcement notice is of no effect where the appeal procedure under s 289 (as amended) is still alive; and, if the case is remitted to the Secretary of State or the Assembly, the notice has no effect until any further appeal under s 289 (as amended) is disposed of: *R v Kuxhaus* [1988] QB 631, [1988] 2 All ER 705, CA. As to the court's power to give interim effect to an enforcement notice, however, see the Town and Country Planning Act 1990 s 289(4A) (as added); and PARA 648 post.

As to the limited extent to which the doctrine of issue estoppel may prevent the authority from issuing a fresh notice in respect of the same breach of planning control see *Thrasyvoulou v Secretary of State for the*

Environment [1988] QB 809, [1988] 2 All ER 781, CA; affd [1990] 2 AC 273, [1990] 1 All ER 65, HL; and PARA 561 note 5 ante.

23 Ibid s 175(4) (amended by the Planning and Compensation Act 1991 s 6(2)). As to the acceptance in error of an invalid appeal see *R v Melton and Belvoir Justices, ex p Tynan* (1977) 33 P & CR 214, DC. It is important not to attach too much significance to procedural requirements with regard to the appeal notice; thus where an appeal notice referred in error to an enforcement notice which had been withdrawn, rather than to the notice against which the appeal was made, it was held that the notice of appeal was not invalid and the inspector should have proceeded to hear the appeal against the latter enforcement notice: see *R (on the application of McKay) v First Secretary of State* [2005] EWCA Civ 774, [2005] All ER (D) 48 (Jun); distinguished in *R (on the application of Corbett) v First Secretary of State* [2005] All ER (D) 244 (Jul), [2005] 30 EG 88 (CS).

24 Town and Country Planning Act 1990 s 175(5). By virtue of the Planning (Consequential Provisions) Act 1990 s 6, Sch 4 para 1(1)(a), Table, PARA 1(3), the Town and Country Planning Act 1990 s 175 (as amended) has effect, until a day to be appointed by the Secretary of State, with the addition of the following subsection:

35 '(7) subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under s 174 as if those proceedings were an inquiry held by the Secretary of State under s 250'.

The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

In relation to special enforcement notices, the Town and Country Planning Act 1990 s 175(5), (7) has effect as if the references therein to an enforcement notice were references to a special enforcement notice: Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule. As to special enforcement notices see PARA 572 ante.

25 See PARAS 619-620 post.

UPDATE

603 Right of appeal

TEXT AND NOTES--Where the Secretary of State has given a decision in proceedings on an appeal under the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) against an enforcement notice (1) the appellant; (2) the local planning authority; or (3) another person having an interest in the land to which the notice relates, may appeal to the High Court against the decision on a point of law: CPR 52.20(1) (CPR 52.20 added by SI 2007/2204). In such a statutory appeal, any person may apply for permission to file evidence; or to make representations at the appeal hearing: CPR 52.12A(1) (CPR 52.12A added by SI 2007/2204). Such an application must be made promptly: CPR 52.12A(2) (CPR 52.12A as so added).

NOTE 13--See *R (on the application of Fidler) v Secretary of State for Communities and Local Government* [2010] EWHC 143 (Admin), [2010] 15 EG 96, [2010] All ER (D) 29 (Feb).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/604. Power to make regulations.

604. Power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe the procedure which is to be followed on appeals against enforcement notices³. He or it may in particular⁴:

- 2376 (1) require the local planning authority⁵ to submit, within such time as may be prescribed⁶, a statement indicating the submissions which it proposes to put forward on the appeal;
- 2377 (2) specify the matters to be included in such a statement;
- 2378 (3) require the authority or the appellant to give such notice of such an appeal as may be prescribed⁷;
- 2379 (4) require the authority to send to the Secretary of State or the Assembly, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 175 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Town and Country Planning Act 1990 s 175(1). The appeals referred to in the text are appeals under s 174 (as amended): see PARA 603 ante. For the meaning of 'enforcement notice' see PARA 561 ante.

4 Ie but without prejudice to the generality of *ibid* s 175(1).

5 As to local planning authorities see PARA 28 et seq ante.

6 The prescribed time is 14 days: see PARA 606 post. For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 The notice to be so prescribed must be such notice as in the opinion of the Secretary of State or the Assembly is likely to bring the appeal to the attention of persons in the locality in which the land to which the enforcement notice relates is situated: Town and Country Planning Act 1990 s 175(2). As to public notification of the appeal see PARA 606 post. For the meaning of 'land' see PARA 2 note 10 ante.

8 *Ibid* s 175(1). As to the making of regulations generally see PARA 3 ante.

In exercise of the power conferred by s 175 (as amended) the Secretary of State has made (1) the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, regs 6-11 (as amended) (see PARAS 605-608 post); and (2) the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended) (see PARAS 631-633 post). The National Assembly for Wales has made (a) the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, regs 5-10 (as amended) (see PARAS 605-608 post); and (b) the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended) (see PARAS 631-633 post).

The Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682 (as amended), except regs 7, 8 (see PARA 606 post), apply to enforcement notices issued by the Secretary of State under the Town and Country Planning Act 1990 s 182 (see PARA 562 ante), to appeals made to him against such notices and to appeals against notices issued by him under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended) (see PARA 1152 post) as they apply to such notices issued by local planning authorities and to appeals made against them (1) as if for references to a local planning authority there were substituted references to the Secretary of State; and (2) subject to other specified amendments (see PARA 564 notes 4, 14 ante, PARA 607 note 7 post): Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 11. Similarly, the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394 (as amended), except regs 6, 7 (see PARA 606 post), apply to enforcement notices issued by the Assembly under the Town and Country Planning Act 1990 s 182 (see PARA 562 ante), to appeals made to it against such notices and to appeals against notices issued by it under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended) as they apply to such notices issued by local planning authorities and to appeals made against them (1) as if for references to a local planning authority there were substituted references to the Assembly; and (2) subject to

other specified amendments (see PARA 564 notes 4, 14 ante, PARA 607 note 7 post): Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 10.

UPDATE

604-606 Power to make regulations ... Local planning authority to send copy of notice to the Secretary of State or to the Assembly

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/605. Statement of appeal.

605. Statement of appeal.

A person who makes an appeal¹ to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ against an enforcement notice⁴ must submit to him or to it a statement in writing⁵:

- 2380 (1) specifying the grounds on which he is appealing against the notice; and
- 2381 (2) setting out briefly the facts on which he proposes to rely in support of each of those grounds⁶.

If such a statement is not included with the appeal he must:

- 2382 (a) deliver it to the Secretary of State not later than 14 days from the date on which the Secretary of State sends him a notice requiring him to do so⁷; or
- 2383 (b) in relation to Wales, send it to the Assembly so that it is received by the Assembly not later than 14 days from the date on which the Assembly sends the appellant a notice requiring him to do so⁸.

Upon receipt of the statement the Secretary of State or the Assembly must notify the local planning authority⁹ in writing that an appeal has been made and copy to the authority the appeal and the statement so made¹⁰.

1 le under the Town and Country Planning Act 1990 s 174(3) (as substituted and amended) (see PARA 603 ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(2) (as substituted and amended: see PARA 1193 post).

2 As to the Secretary of State see PARA 19 ante.

3 As to the Assembly see PARA 20 ante.

4 For the meaning of 'enforcement notice' see PARA 564 note 1 ante. Rights of appeal against listed building and conservation area enforcement notices are discussed in a later part of this title: see PARA 1191 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

5 The following provisions apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, Pt 3 (regs 6-10A) (as amended) to give or send any statement, notice or other document to any other person ('the recipient'): reg 10A(1) (reg 10A added by SI 2003/956). For these purposes 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 3(1) (definition as so added). The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes, 'legible in all material respects' means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: reg 10A(2), (3) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 10A(4) (as so added). A requirement that any notice or other document should be in writing is fulfilled where that document meets the criteria in heads (1)-(3) supra, and 'written' and cognate expressions are to be construed accordingly: reg 10A(5) (as so added). Where a person makes an appeal to the Secretary of State under reg 6 using electronic communications, the person is to be taken to have agreed: (a) to the use of such communications for all purposes relating to his appeal which are capable of being carried out electronically; (b) that his address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his statement of appeal; (c) that his deemed agreement under this provision is to subsist until he gives notice in accordance with reg 10A(7) (as added) that he wishes to revoke the agreement: reg 10A(6) (as so added). Where a person is no longer willing to accept the use of electronic communications for the purposes of an appeal under the 2002 Regulations, he must give notice in writing (i) withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose; or (ii) revoking any agreement entered into with the Secretary of State or with a local planning authority for that purpose, and such withdrawal or revocation is to be final and is to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: reg 10A(7) (as so added).

For similar provisions with regard to the use of electronic communications in appeals to the National Assembly for Wales for the purposes of the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, Pt 3 (regs 5-9A) (as amended) see regs 9A(1)-(6), 12A (added by SI 2004/3157). As to the transmission of documents generally see the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 12 (substituted by SI 2004/3157).

6 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 6; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 5. As to the application of these provisions to appeals against enforcement notices issued by the Secretary of State or the Assembly see PARA 604 note 8 ante.

7 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 6.

8 Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 5.

9 For the meaning of 'local planning authority' for these purposes see PARA 564 note 2 ante.

10 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 7; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 6.

UPDATE

604-606 Power to make regulations ... Local planning authority to send copy of notice to the Secretary of State or to the Assembly

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/606. Local planning authority to send copy of notice to the Secretary of State or to the Assembly.

606. Local planning authority to send copy of notice to the Secretary of State or to the Assembly.

Where the local planning authority¹ receives notification² that an appeal has been made to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴, the local planning authority must send to him or to it, not later than 14 days from the date of that notification, a certified copy of the enforcement notice⁵ and a list of names and addresses of the persons on whom a copy of the notice has been served⁶ under the relevant statutory provision⁷.

1 For the meaning of 'local planning authority' for these purposes see PARA 564 note 2 ante.

2 I.e. under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 7 or, as the case may be, under the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 6: see PARA 605 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 For the meaning of 'enforcement notice' see PARA 564 note 1 ante. Rights of appeal against listed building and conservation area enforcement notices are discussed in a later part of this title: see PARA 1191 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

6 I.e. served under the Town and Country Planning Act 1990 s 172(2) (as substituted) (see PARA 561 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(4) (as amended) (see PARA 1146 post).

7 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 8; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 7.

UPDATE

604-606 Power to make regulations ... Local planning authority to send copy of notice to the Secretary of State or to the Assembly

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/607. Statement by local planning authority.

607. Statement by local planning authority.

Where an appeal has been made to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² against an enforcement notice³ issued by a local planning authority⁴, the authority must submit to him or to it and to any person on whom a copy of the enforcement notice has been served a statement indicating the submissions which the authority proposes to put forward on the appeal, including:

- 2384 (1) a summary of the authority's response to each of the grounds on which the appeal is brought by the appellant;
- 2385 (2) a statement whether the authority would be prepared to grant planning permission⁵ for the matters alleged in the enforcement notice to constitute the breach of planning control⁶, or grant listed building consent⁷ or conservation area consent⁸ for the works to which the listed building enforcement notice⁹ or conservation area enforcement notice¹⁰ relates, as the case may be, and, if so, particulars of the conditions, if any, which the authority would wish to impose on the permission or consent¹¹.

Any statement which is so required to be submitted must be submitted within six weeks of the starting date¹².

When the Secretary of State or the Assembly considers that he or it has received all the documents required to enable him or it to entertain the appeal, he or the Assembly must send a notice¹³ to this effect to the appellant and the local planning authority¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 For the meaning of 'enforcement notice' see PARA 564 note 1 ante. Rights of appeal against listed building and conservation area enforcement notices are discussed in a later part of this title: see PARA 1191 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

4 For the meaning of 'local planning authority' for these purposes see PARA 564 note 2 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For the meaning of 'breach of planning control' see PARA 551 ante.

7 For the meaning of 'listed building consent' see PARA 1109 post.

8 For the meaning of 'conservation area consent' see PARA 1174 post.

9 For the meaning of 'listed building enforcement notice' see PARA 1146 post.

10 For the meaning of 'conservation area enforcement notice' see PARA 1180 post.

11 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 9(1); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 8(1).

12 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 9(2); Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 8(2). For these purposes, 'starting date' in relation to England means the date of (1) the Secretary of State's written notice under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10 (see the text to notes 13-14 infra); or (2) the Secretary of State's written notice under Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4 (see PARA 642 post), the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 4 (see PARA 696 note 5 post) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 4 (see PARA 669 note 6 post) informing the appellant and the local planning authority that an inquiry or hearing, as the case may be, is to be held, whichever is the later: Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, regs 3, 9(3).

Similarly, for these purposes in relation to Wales, 'starting date' means the date of (a) the Assembly's written notice under the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9 (see the text to notes 13-14 *infra*); or (b) the Assembly's written notice served in accordance with rules made under the Tribunals and Inquiries Act 1992 s 9 (as amended), informing the appellant and the local planning authority that an inquiry or hearing, as the case may be, is to be held, whichever is the later: Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 8(3). For the relevant rules see the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 4; and PARA 642 post; the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 4; and PARA 696 note 5 post; and the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 4; and PARA 669 note 6 post.

13 As to the use of electronic communications see PARA 605 note 5 ante.

14 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9.

UPDATE

607 Statement by local planning authority

NOTE 12--SI 2003/1268 r 4, SI 2003/1269 r 4, SI 2003/1270 r 4 amended: SI 2007/2285.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/608. Statement by the Secretary of State or the Assembly where he or it issued the enforcement notice.

608. Statement by the Secretary of State or the Assembly where he or it issued the enforcement notice.

Where an appeal has been made to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² against an enforcement notice³ which he or it has issued⁴, the Secretary of State or the Assembly must serve⁵ on the appellant a statement indicating the submissions which he or it proposes to put forward on the appeal⁶. The statement must include a summary of his or its response to each ground of appeal pleaded by the appellant and must be served within six weeks of the starting date⁷.

When the Secretary of State or the Assembly considers that he or it has received all the documents required to enable him or it to entertain the appeal, he or the Assembly must send a notice to this effect to the appellant and the local planning authority⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 For the meaning of 'enforcement notice' see PARA 564 note 1 ante. Rights of appeal against listed building and conservation area enforcement notices are discussed in a later part of this title: see PARA 1191 *et seq* post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

4 *Ie* under the Town and Country Planning Act 1990 s 182 (see PARA 562 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended) (see PARA 1152 post).

5 As to the use of electronic communications see PARA 605 note 5 ante.

6 See the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 9(1) (substituted for these purposes by reg 11(d)); the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 8 (substituted for these purposes by reg 10(d)).

7 See note 6 supra. In relation to England, 'starting date' for these purposes means the date of (1) the Secretary of State's written notice under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10 (see the text to note 8 infra); or (2) the Secretary of State's written notice under Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4 (see PARA 642 post), the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 4 (see PARA 696 note 5 post) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 4 (see PARA 669 note 6 post) informing the appellant and the local planning authority that an inquiry or hearing, as the case may be, is to be held, whichever is the later: Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, regs 3, 9(2) (reg 9(2) substituted for these purposes by reg 10(d)). 'Starting date' is not similarly defined for these purposes in relation to Wales, but it is apprehended that the definition set out in PARA 607 note 12 applies.

8 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9.

UPDATE

608 Statement by the Secretary of State or the Assembly where he or it issued the enforcement notice

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/609. Determination of appeal.

609. Determination of appeal.

On an appeal against an enforcement notice¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 2386 (1) correct any defect, error or misdescription in the enforcement notice; or
- 2387 (2) vary the terms of the enforcement notice,

if he or it is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority⁴.

Where the Secretary of State or the Assembly determines to allow the appeal, he or it may quash the notice⁵; and he or the Assembly must give any directions necessary to give effect to his or its determination on the appeal⁶.

The Secretary of State or the Assembly:

- 2388 (a) may dismiss an appeal if the appellant fails to submit a statement in writing⁷ within the prescribed time⁸; and
- 2389 (b) may allow an appeal and quash the enforcement notice if the local planning authority fails to comply with any requirement of the relevant regulations⁹ within the prescribed period¹⁰.

Where it would otherwise be a ground for determining an appeal against an enforcement notice in favour of the appellant that a person required to be served with a copy of the enforcement notice was not served, the Secretary of State or the Assembly may disregard that fact if neither the appellant nor that person has been substantially prejudiced¹¹ by the failure to serve him¹².

It has been held that separate appeals against individual enforcement notices are to be treated individually, each on its own merits¹³.

1 le an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante. For the meaning of 'enforcement notice' see PARA 561 ante. The determination of appeals against listed building and conservation area enforcement notices is discussed in a later part of this title: see PARA 1191 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 176 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 s 176(1) (s 176(1), (2), (2A) substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 23). As to local planning authorities see PARA 28 et seq ante.

The power to correct or vary the notice so long as no injustice is done to the appellant or the local planning authority may be used to vary the steps required to be taken by the appellant or to extend the time limits set by the notice; but the Secretary of State may not thereby set requirements exceeding what is necessary to remedy the relevant breach, especially if to do so would interfere with established uses: see *Mansi v Elstree RDC* (1964) 16 P & CR 153, DC (land used for the sale of produce etc but sales from a glasshouse on the land had intensified until it became primarily a shop; local planning authority served an enforcement notice requiring the sale of goods to be discontinued; court directed the minister to amend the notice so as to safeguard the appellant's established right to carry on retail trade as a subsidiary use). See also *Clare and Ridgeway Ltd v Minister of Housing and Local Government* (1970) 217 Estates Gazette 873, DC; *Decorative and Caravan and Paints Ltd v Minister of Housing and Local Government* (1970) 214 Estates Gazette 1355, DC; *Trevors Warehouses Ltd v Secretary of State for the Environment and Solihull Metropolitan District Council* (1972) 23 P & CR 215, DC; *Day and Mid-Warwickshire Motors Ltd v Secretary of State for the Environment* [1979] JPL 538, DC; *Newport v Secretary of State for the Environment* (1980) 40 P & CR 261, DC; *Cleaver v Secretary of State for the Environment and Warwick District Council* [1981] JPL 38, DC. The Secretary of State may also prescribe different steps from those originally required: see *Murfitt v Secretary of State for the Environment* (1980) 40 P & CR 254, DC.

There is no duty upon the Secretary of State to use the power in order to protect or preserve obvious ancillary usages: see *Cord v Secretary of State for the Environment and Torbay Borough Council* [1981] JPL 40, DC; *North Sea Land Equipment v Secretary of State for the Environment and Thurrock Borough Council* [1982] JPL 384; *Haigh v Secretary of State for the Environment and Kirklees Borough Council* [1983] JPL 40.

It has been held to be the duty of the Secretary of State to get an enforcement notice in order by curing errors in it so long as that would be possible without doing injustice to the parties: see *Hammersmith London Borough Council v Secretary of State for the Environment* (1975) 30 P & CR 19, DC (Secretary of State held to have a duty to get an enforcement notice in order and that, in doing so, he was entitled to amend the 'label' given in the notice to the activity complained of if he considered it unsuitable; phrase 'guest house' unsuitable and the Secretary of State could properly substitute 'lodging house' or 'hostel'). See also *Scurlock v Secretary of State for Wales* (1976) 33 P & CR 202, DC; *Hammond v Secretary of State for the Environment and Maldon District Council* (1997) 74 P & CR 134, CA (correction to allegation of stationing a mobile home to include allegation of such stationing for the purposes of human habitation).

The power to vary a notice has been held to be wider than the power to correct one, and either may be exercised if no injustice will be done thereby to the appellant or to the local planning authority: see *Wealden District Council v Secretary of State for the Environment and Innocent* [1983] JPL 234; *Harrogate Borough Council v Secretary of State for the Environment and Proctor* [1987] JPL 288. The power of correction or variation under the Town and Country Planning Act 1990 s 176(1) (as substituted) does not, however, permit

the Secretary of State to make an addition to a local planning authority's enforcement notice which could not have been included in the first place: *Tandridge District Council v Verrechia* [2000] QB 318, [1999] 3 All ER 247, CA.

5 Town and Country Planning Act 1990 s 176(2) (as substituted: see note 4 supra).

6 Ibid s 176(2A) (as substituted: see note 4 supra).

7 Ie if the appellant has failed to comply with ibid s 174(4): see PARA 603 ante.

8 The prescribed time is 14 days: see PARA 605 ante. For the meaning of 'prescribed' see PARA 16 note 5 ante.

9 Ie regulations made by virtue of the Town and Country Planning Act 1990 s 175(1)(a), (b) or (d): see PARA 604 ante at heads (1), (2), (4) in the text.

10 Ibid s 176(3). If the Secretary of State or the Assembly proposes to dismiss an appeal under s 176(3)(a) (see head (a) in the text) or to allow an appeal and quash the enforcement notice under s 176(3)(b) (see head (b) in the text), he or it need not comply with s 175(3) (see PARA 603 ante): s 176(4). See also *R v Wychavon District Council and the Secretary of State for the Environment, ex p Saunders* (1991) 64 P & CR 120 (cited in PARA 561 note 5 ante).

11 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

12 Town and Country Planning Act 1990 s 176(5).

13 See *Bruschweiler v Secretary of State for the Environment and Chelmsford Borough Council* (1994) 70 P & CR 150, [1994] EGCS 206.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/610. Grant or modification of planning permission on appeals against enforcement notices.

610. Grant or modification of planning permission on appeals against enforcement notices.

On the determination of an appeal against an enforcement notice¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 2390 (1) grant planning permission⁴ in respect of the matters stated in the enforcement notice as constituting a breach of planning control, whether in relation to the whole or any part of those matters or in relation to the whole or any part of the land⁵ to which the notice relates;
- 2391 (2) discharge any condition or limitation⁶ subject to which planning permission was granted;
- 2392 (3) determine whether, on the date on which the appeal was made, any existing use⁷ of the land was lawful, any operations which had been carried out in, on, over or under the land were lawful or any matter constituting a failure to comply with any condition or limitation subject to which planning permission was granted was lawful and, if so, issue⁸ a certificate of lawful use or development⁹.

In considering whether so to grant planning permission, the Secretary of State or the Assembly must have regard to the provisions of the development plan¹⁰, so far as material to the subject matter of the enforcement notice, and to any other material considerations¹¹.

In relation to a grant of planning permission or a determination under the above provisions the Secretary of State's or the Assembly's decision is final¹².

Where particulars of any planning permission granted by the Secretary of State or the Assembly on an appeal against an enforcement notice are entered in Part II of the register¹³ the relevant planning authority¹⁴ must take steps to secure that that Part also contains a copy of any of the specified documents relating to environmental impact assessment¹⁵ as are relevant to the development for which planning permission has been granted¹⁶.

1 le an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante. For the meaning of 'enforcement notice' see PARA 561 ante. Appeals against listed building and conservation area enforcement notices are discussed in a later part of this title: see PARA 1191 et seq post. As to appeals against enforcement notices relating to trees see PARAS 885-886 post.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 177 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 The planning permission which may be so granted is any planning permission which might be granted on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante): s 177(3) (s 177(1)(a), (1)(c), (1A), (1B), (3), substituted, and s 177(5) amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 24).

Where an appeal against an enforcement notice is brought under the Town and Country Planning Act 1990 s 174 (as amended), the appellant is deemed to have made an application for planning permission in respect of the matters stated in the enforcement notice as constituting a breach of planning control: s 177(5) (as so amended).

Where (1) the statement under s 174(4) (see PARA 603 ante) specified the ground mentioned in s 174(2)(a) (as substituted) (see PARA 603 ante at head (1) in the text); (2) any fee is payable under regulations made by virtue of s 303 (as amended) (see PARA 458 ante) in respect of the application deemed to be made by virtue of the appeal; and (3) the Secretary of State or the Assembly gives notice in writing to the appellant specifying the period within which the fee must be paid, then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application lapse at the end of that period: s 177(5A) (added by the Planning and Compensation Act 1991 s 6(3)). As to the fee payable see PARAS 461-462 ante.

Any planning permission so granted on an appeal is treated as granted on an application deemed to have been made by the appellant: Town and Country Planning Act 1990 s 177(6). For the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'breach of planning control' see PARA 551 ante; and for the meaning of 'development' see PARA 217 ante.

The combined effect of ss 174, 177 (as amended) is to impose a duty on an inspector considering separate appeals against enforcement notices in relation to separate parts of a site to treat each individual appeal as a separate application for planning permission. Each appeal is to be treated individually and on its own merits: *Bruschweiler v Secretary of State for the Environment and Chelmsford Borough Council* (1994) 70 P & CR 150, [1994] EGCS 206.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Where the Secretary of State or the Assembly so discharges a condition or limitation, he or it may substitute another condition or limitation for it, whether more or less onerous: Town and Country Planning Act 1990 s 177(4).

7 For the meaning of 'use' see PARA 221 note 4 ante.

8 le under the Town and Country Planning Act 1990 s 191 (as substituted): see PARA 586 ante. The provisions of s 191(5)-(7) (as substituted) (see PARA 586 ante), s 193(4) (as substituted) (see PARAS 586-587 ante), so far as it relates to the form of the certificate, s 193(6), (7) (as substituted) (see PARAS 466, 593 respectively ante) and s 194 (as substituted) (see PARA 595 ante) apply for the purposes of s 177(1)(c) (as substituted: see note 4 supra) as they apply for the purposes of s 191 (as substituted), but as if (1) any reference to an application for a certificate were a reference to the appeal and any reference to the date of such an application were a reference to the date on which the appeal is made; and (2) references to the local planning authority were references to the Secretary of State or the Assembly: s 177(1A), (1B) (as so substituted). As to local planning authorities see PARA 28 et seq ante.

9 Ibid s 177(1) (as amended: see note 4 supra).

10 For the meaning of 'development plan' see PARA 91 ante.

11 Town and Country Planning Act 1990 s 177(2). For the purposes of s 69 (as substituted) (see PARA 466 ante), the Secretary of State's or Assembly's decision is treated as having been given by him or by it in dealing with an application for planning permission made to the local planning authority: s 177(8). As to material considerations see PARA 485 ante.

12 Ibid s 177(7). The validity of such a decision may, however, be challenged on certain statutory grounds or on an application for judicial review: see PARA 601 the text and notes 19-22 ante.

13 For the meaning of 'the register' see PARA 507 note 1 ante.

14 For the meaning of 'the relevant planning authority' see PARA 491 note 1 ante.

15 In the documents referred to in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(19). Those documents are: (1) every regulation 25 notice given by the authority (see reg 25(19)(a); and PARA 561 ante); (2) every notice received by the authority under reg 25(12)(d) (see PARA 619 post) (see reg 25(19)(b); and PARA 619 post); and (3) every statement and all further information received by the authority under reg 25(13)(a) (see PARA 620 post) (see reg 25(19)(c); and PARA 620 post). For the meaning of 'regulation 25 notice' see PARA 561 ante.

16 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(20). The provisions of reg 21(2), (3) (see PARA 508 ante) apply to a deemed application and a grant of planning permission under the Town and Country Planning Act 1990 s 177 (as amended) as they apply to an application for and grant of planning permission under Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(21)).

UPDATE

610 Grant or modification of planning permission on appeals against enforcement notices

TEXT AND NOTES 13-16--SI 1999/293 reg 25(20) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/611. Restrictions on granting of planning permission for unauthorised EIA development.

611. Restrictions on granting of planning permission for unauthorised EIA development.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may not grant planning permission on an appeal against an enforcement notice³ in respect of EIA development⁴ which is the subject of such a notice⁵ ('unauthorised EIA development') unless he or the Assembly has first taken the environmental information⁶ into consideration, and he or the Assembly states in his or its decision that he or it has done so⁷. The validity of a grant of planning permission made in contravention of this provision may be challenged on an application⁸ to the High Court⁹.

The provisions relating to development with significant transboundary effects¹⁰ apply to unauthorised EIA development with prescribed modifications¹¹.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 Ie under the Town and Country Planning Act 1990 s 177(1) (as amended) (grant or modification of planning permission on appeals against enforcement notice): see PARA 610 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 For the meaning of 'EIA development' see PARA 488 ante.

5 Ie under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante.

6 For the meaning of 'environmental information' see PARA 491 note 6 ante.

7 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(1).

8 Ie under the Town and Country Planning Act 1990 s 288 (as amended): see PARA 47 ante.

9 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 30; and PARA 47 note 6 ante.

10 Ie *ibid* reg 27 (as amended): see PARA 514 ante.

11 See *ibid* reg 26(1) (as amended); and PARA 514 notes 8, 11, 18 ante.

UPDATE

611 Restrictions on granting of planning permission for unauthorised EIA development

TEXT AND NOTES 1-7--SI 1999/293 reg 25(1) amended, in relation to England, by SI 2008/2093, and, in relation to Wales by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Appeals against Enforcement Notices; in general/612. Special enforcement notices; in general.

612. Special enforcement notices; in general.

At the date at which this title states the law, the following provisions apply. Any person¹ who carried out the development² alleged in a special enforcement notice³ and any person who is occupying the land⁴ when the notice is issued may appeal against the notice to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ on the ground that the matters alleged in the notice have not taken place or do not constitute such development⁷. A person may so appeal against a special enforcement notice whether or not he was served with a copy of it⁸.

These provisions are, however, prospectively repealed by the Planning and Compulsory Purchase Act 2004⁹.

1 Ie any such person as is mentioned in the Town and Country Planning Act 1990 s 295(1)(a) or (b) (prospectively repealed): see PARA 572 ante.

2 Ie development to which *ibid* s 294 (prospectively repealed) applies: see PARA 572 ante.

3 For the meaning of 'special enforcement notice' see PARA 572 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 295 (prospectively repealed), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 295(3) (prospectively repealed: see note 9 infra).

8 Ibid s 295(4) (prospectively repealed: see note 9 infra). The provisions contained in or having effect under s 174(3)-(5) (as amended) (see PARA 603 ante), s 175(1)-(4) (as amended) (see PARAS 603-604 ante) and s 176(1)-(4) (as amended) (see PARA 609 ante) apply to appeals against special enforcement notices as they apply to appeals under s 174 (as amended): s 295(5) (prospectively repealed: see note 9 infra). Section 289 (as amended) also applies to such appeals, with specified modifications: see the Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule; and PARA 648 note 10 post.

9 See the Planning and Compulsory Purchase Act 2004 ss 79(4), 120, Sch 3 para 9(1), Sch 9, which will come into force on a day to be appointed under s 121. At the date at which this title states the law, that repeal was not in force.

UPDATE

612 Special enforcement notices; in general

TEXT AND NOTE 9--Repeal now in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Appeals regarding Certificates of Lawful Use or Development/613. Right of appeal.

(iii) Appeals regarding Certificates of Lawful Use or Development

613. Right of appeal.

Where an application is made to a local planning authority¹ for a certificate of existing or proposed lawful use or development² and:

2393 (1) the application is refused or is refused in part³; or

2394 (2) the authority does not give notice to the applicant of its decision on the application within such period as may be prescribed by a development order⁴ or within such extended period as may at any time be agreed upon in writing between the applicant and the authority,

the applicant may by notice appeal to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶.

Before determining such an appeal, the Secretary of State or the Assembly must, if either the appellant or the local planning authority so wishes, give each of them an opportunity of

appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 le a certificate under the Town and Country Planning Act 1990 s 191 (as substituted) (commonly known as a 'CLEUD') (see PARA 586 ante) or s 192 (as substituted) (commonly known as a 'CLOPUD') (see PARA 587 ante).

3 For these purposes, references to a refusal of an application in part include a modification or substitution of the description in the application of the use, operations or other matter in question: *ibid* s 195(4) (s 195(1) amended, and s 195(4) substituted, by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 32). For the meaning of 'use' see PARA 221 note 4 ante.

4 The prescribed period is eight weeks: see PARA 592 ante. For the meaning of 'development order' see PARA 252 ante.

5 As to the Secretary of State see PARA 19 ante.

6 Town and Country Planning Act 1990 s 195(1) (as amended: see note 3 supra). As to the transfer of functions under ss 195, 196 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

For the purposes of the application of the Town and Country Planning Act 1990 s 288(10)(b) (see PARA 47 ante) in relation to an appeal in a case within s 195(1)(b) (see head (2) in the text), it is assumed that the authority decided to refuse the application in question: s 195(5).

7 *Ibid* s 196(1) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 33(a)). The Town and Country Planning Act 1990 s 195(6), Sch 6 (as amended) (see PARA 621 et seq post) applies to appeals under s 195 (as amended): s 195(6). Section 196(1) (as so amended) does not apply to appeals which so fall to be determined by an appointed person: see Sch 6 para 2(2) (as amended); and PARA 623 post.

UPDATE

613 Right of appeal

TEXT AND NOTES--Town and Country Planning Act 1990 s 195(1B)-(1F) added: Planning Act 2008 Sch 11 paras 1, 3 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Appeals regarding Certificates of Lawful Use or Development/614. Determination.

614. Determination.

On an appeal against a refusal or failure to give a decision on an application for a certificate of existing or proposed lawful use or development¹, if and in so far as the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ is satisfied:

2395 (1) in the case of an appeal where the application is refused or is refused in part⁴, that the authority's refusal is not well-founded; or

2396 (2) in the case of an appeal where the authority does not give notice of its decision within the prescribed period⁵, that, if the authority had refused the application, its refusal would not have been well-founded,

he or the Assembly must grant the appellant a certificate of existing or proposed lawful use or development⁶ accordingly or, in the case of a refusal in part, modify the certificate granted by the authority on the application⁷. Where the Secretary of State or the Assembly grants such a certificate on an appeal, he or it must give notice to the local planning authority⁸ of that fact⁹.

If and so far as the Secretary of State or the Assembly is satisfied that the authority's refusal is or, as the case may be, would have been well-founded, he or it must dismiss the appeal¹⁰.

The decision of the Secretary of State or the Assembly on such an appeal is final¹¹.

1 Ile an appeal under the Town and Country Planning Act 1990 s 195(1) (as amended): see PARA 613 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 ss 195, 196 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ile in the case of an appeal under the Town and Country Planning Act 1990 s 195(1)(a): see PARA 613 ante at head (1) in the text. For the meaning of references to refusal of an application in part see PARA 613 note 3 ante.

5 Ile in the case of an appeal under *ibid* s 195(1)(b): see PARA 613 ante at head (2) in the text.

6 Ile a certificate under *ibid* s 191 (as substituted) (commonly known as a 'CLEUD') (see PARA 586 ante) or s 192 (as substituted) (commonly known as a 'CLOPUD') (see PARA 587 ante).

7 *Ibid* s 195(2) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 32(b)). The information which may be prescribed as being required to be contained in a register kept under the Town and Country Planning Act 1990 s 69 (as amended) (see PARA 466 ante) must include information with respect to certificates under s 191 (as substituted) or s 192 (as substituted): s 196(4) (s 196(2)-(4) amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 33).

8 As to local planning authorities see PARA 28 et seq ante.

9 Town and Country Planning Act 1990 s 196(2) (as amended: see note 7 supra).

10 Town and Country Planning Act 1990 s 195(3).

11 *Ibid* s 196(3) (as amended: see note 7 supra). The validity of such a decision may, however, be challenged on certain statutory grounds or on an application for judicial review: see PARA 601 the text and notes 19-22 ante.

By virtue of the Planning (Consequential Provisions) Act 1990 s 6, Sch 4 para 1(1)(a), Table, 1(3), PARA 4, the Town and Country Planning Act 1990 s 196 (as amended) has effect, until a day to be appointed by the Secretary of State, with the addition of the following subsection:

36 '(8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on a appeal under section 195 as if those proceedings were an inquiry held by the Secretary of State under section 250'.

The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Appeals regarding Planning Obligations/615. Introduction.

(iv) Appeals regarding Planning Obligations

615. Introduction.

Under the Planning and Compulsory Purchase Act 2004, new provisions are made for the procedures under which developers may make a planning contribution¹. Once those provisions come into force, the system under which negotiated planning obligations operate will move from primary legislation to the regulations to be made under the 2004 Act². At the date at which this title states the law, the relevant provisions of the 2004 Act were not in force and the provisions of the Town and Country Planning Act 1990 with regard to planning obligations continued to apply³. The following paragraphs set out the arrangements for appeals in relation to such obligations⁴.

1 See the Planning and Compulsory Purchase Act 2004 ss 46-48; and PARAS 241-243 ante.

2 See PARA 241 ante.

3 See the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9, which prospectively repeal the Town and Country Planning Act 1990 ss 106-106B (as substituted) were not in force: see PARA 241 ante.

4 See PARAS 616-617 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Appeals regarding Planning Obligations/616. Right of appeal.

616. Right of appeal.

Where a local planning authority¹:

- 2397 (1) fails to give a notice of modification or discharge of a planning obligation²;
or
- 2398 (2) determines that a planning obligation shall continue to have effect without modification,

the applicant may appeal to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴.

Such an appeal must be made by notice served within such period and in such manner as may be prescribed⁵. It must be made with six months of:

- 2399 (a) the date of the notice of the decision giving rise to the appeal; or
- 2400 (b) in the case of an appeal under head (1) above, the expiry of the specified period⁶;

or within such longer period as the Secretary of State or the Assembly may, at any time, allow⁷. The appeal must be made on a form obtained from the Secretary of State or the Assembly, must include the information specified in the form and must be accompanied by a copy of:

- 2401 (i) the application made to the local planning authority which has occasioned the appeal;
- 2402 (ii) the certificate which accompanied the application⁸;
- 2403 (iii) the instrument by which the planning obligation which is the subject of the application was entered into;
- 2404 (iv) any correspondence with the authority relating to the application; and
- 2405 (v) the notice of decision, if any⁹.

An appellant must send a copy of the completed notice of appeal form to the local planning authority at the same time as the appeal is made to the Secretary of State or the Assembly¹⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 If fails to give notice as mentioned in the Town and Country Planning Act 1990 s 106A(7) (as substituted; prospectively repealed): see PARA 249 ante. For the meaning of 'planning obligation' see PARA 244 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Town and Country Planning Act 1990 s 106B(1) (s 106B substituted by the Planning and Compensation Act 1991 s 12(1); prospectively repealed by the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). As to the transfer of functions under the Town and Country Planning Act 1990 s 106B (as so substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the prospective repeal of the provisions set out in the text see further PARA 241 ante.

For the purposes of an appeal under the Town and Country Planning Act 1990 s 106B(1)(a) (as so substituted) (see head (1) in the text), it is assumed that the authority has determined that the planning obligation shall continue to have effect without modification: s 106B(2) (as so substituted).

Section 106A(6)-(9) (as substituted; prospectively repealed) (see PARA 249 ante) applies in relation to appeals to the Secretary of State or the Assembly under s 106B (as substituted) as it applies in relation to applications to authorities under s 106A (as substituted): s 106B(4) (as so substituted). See also PARA 617 note 4 post.

5 Ibid s 106B(3) (as substituted and prospectively repealed: see note 4 supra). For the meaning of 'prescribed' see PARA 16 note 5 ante.

6 If the period specified in the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 6(2): see PARA 249 ante.

7 Ibid reg 7(1).

8 If in accordance with ibid reg 4(5): see PARA 248 ante.

9 Ibid reg 7(2).

10 Ibid reg 7(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(1) RIGHTS OF APPEAL TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Appeals regarding Planning Obligations/617. Determination of appeal.

617. Determination of appeal.

Before determining an appeal relating to a planning obligation¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ must, if either the applicant or the authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or the Assembly for the purpose⁴.

The determination of such an appeal by the Secretary of State or the Assembly is final⁵.

1 le an appeal under the Town and Country Planning Act 1990 s 106B(1) (as substituted; prospectively repealed): see PARA 616 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 106B (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 s 106B(5) (s 106B substituted by the Planning and Compensation Act 1991 s 12(1); prospectively repealed by the Planning and Compulsory Purchase Act 2004 ss 118, 120, Sch 6 para 5, Sch 9, as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). As to the prospective repeal of the provisions set out in the text see further PARA 241 ante.

The Town and Country Planning Act 1990 s 106B(7), Sch 6 (as respectively substituted and amended) (see PARA 621 et seq post) applies to appeals under s 106B (as substituted): s 106B(7) (as substituted and prospectively repealed: see note 4 supra). The Town and Country Planning Act 1990 s 106B(4) (sic) (as substituted; prospectively repealed) (see PARA 616 ante) does not apply to appeals which so fall to be determined by an appointed person: see Sch 6 para 2(2) (as amended) and PARA 623 post. Quaere whether, by analogy with the other provisions listed in Sch 6 para 2(2) (as amended), the intended reference is to s 106B(5) (as substituted) and not s 106B(4) (as substituted).

Appeals under s 106B (as so substituted and prospectively repealed) are prescribed for the purposes of Sch 6 para 1(1) (as amended) as a class of appeals which are to be determined by a person appointed by the Secretary of State or the Assembly for the purpose instead of by him or by the Assembly: see the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 8. As to such appeals (known as 'transferred appeals') see PARA 621 et seq post.

The duty imposed on a planning inspector hearing such an appeal is to decide the case, not to undertake research on behalf of the parties; and he is not obliged to take into account a relevant decision of a colleague which has not been drawn to his attention: see *Granchester Retail Park v First Secretary of State* [2003] EWHC 92 (Admin), [2003] All ER (D) 34 (Jan).

5 Town and Country Planning Act 1990 s 106B(6) (as substituted and prospectively repealed: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Submission of Environmental Statements on Appeal/618. Appeals against planning decisions etc without an environmental statement.

(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY

(i) Submission of Environmental Statements on Appeal

618. Appeals against planning decisions etc without an environmental statement.

Where on consideration of an appeal against a planning decision or failure to take such a decision¹ it appears to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ that:

- 2406 (1) the relevant application is a Schedule 1 application⁴ or Schedule 2 application⁵; and
- 2407 (2) the development⁶ in question has not been the subject of a screening opinion⁷ or screening direction⁸; and
- 2408 (3) the relevant application is not accompanied by a statement referred to by the appellant as an environmental statement⁹ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹⁰,

the relevant provisions with regard to making a screening direction¹¹ apply as if the appeal were a request for a screening direction made¹² by the appellant¹³.

Where an inspector¹⁴ is dealing with an appeal and a question arises as to whether the relevant application is an EIA application¹⁵ and it appears to the inspector that it may be such an application, the inspector must refer that question to the Secretary of State or the Assembly and may not determine the appeal, except by refusing planning permission¹⁶, before he receives a screening direction¹⁷. Where it appears to the Secretary of State or the Assembly that the relevant application is an EIA application and is not accompanied by a statement referred to by the appellant as an environmental statement for the purposes of the 1999 Regulations, he or the Assembly must notify the appellant in writing¹⁸ that the submission of an environmental statement is required and must send a copy of that notification to the relevant planning authority¹⁹. An appellant who receives such a notification may within three weeks beginning with the date of the notification write to the Secretary of State or the Assembly stating that he proposes to provide an environmental statement²⁰. If the appellant does not write in accordance with this provision, the Secretary of State or the Assembly or, where relevant, the inspector is under no duty to deal with the appeal; and at the end of the three-week period he or the Assembly must inform the appellant that no further action is being taken on the appeal²¹.

Where the Secretary of State or the Assembly has given a notification that the submission of an environmental statement is required²², he or it or, where relevant, the inspector may determine the appeal only by refusing planning permission if the appellant does not submit an environmental statement and comply with the requirements²³ concerning publicity²⁴.

1 Ie an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

2 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

4 For the meaning of 'Schedule 1 application' see PARA 495 note 3 ante.

5 For the meaning of 'Schedule 2 application' see PARA 495 note 4 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

8 For the meaning of 'screening direction' see PARA 492 note 20 ante.

9 For the meaning of 'environmental statement' see PARA 497 ante.

10 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARAS 619-620 post.

11 le ibid reg 6(3), (4): see PARA 494 ante.

12 le under ibid reg 5(6): see PARA 494 ante.

13 Ibid reg 9(1).

14 For the meaning of 'inspector' see PARA 488 note 5 ante.

15 For the meaning of 'EIA application' see PARA 491 note 8 ante.

16 For the meaning of 'planning permission' see PARA 43 note 6 ante.

17 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 9(2). Regulation 6(3), (4) (see PARA 494 ante) applies to a question referred under reg 9(2) as if the referral of that question were a request made by the appellant pursuant to reg 5(6): reg 9(3).

18 As to service of notices etc see PARA 492 note 8 ante.

19 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 9(4). For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

20 Ibid reg 9(5).

21 Ibid reg 9(6).

22 le a notification under ibid reg 9(4): see the text and notes 18-19 supra.

23 le comply with ibid reg 14(5): see PARA 502 ante.

24 Ibid reg 9(7).

UPDATE

618 Appeals against planning decisions etc without an environmental statement

TEXT AND NOTES 1-13--SI 1999/293 reg 9(1) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 14-17--SI 1999/293 reg 9(2) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

NOTE 19--SI 1999/293 reg 9(4A) added, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

TEXT AND NOTES 22-24--SI 1999/293 reg 9(7) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Submission of Environmental Statements on Appeal/619. Enforcement appeals without an environmental statement.

619. Enforcement appeals without an environmental statement.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is considering an appeal against an enforcement notice³ and the matters which are alleged to constitute the breach of planning control comprise or include unauthorised EIA development⁴, and the documents submitted to him or to the Assembly for the purposes of the appeal do not include a statement referred to by the appellant as an environmental statement⁵ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁶, the following procedure applies⁷. The Secretary of State or the Assembly must within the period of three weeks beginning with the day on which he or it receives the appeal, or such longer period as he or it may reasonably require, notify the appellant in writing of the specified⁸ requirements regarding submission of an environmental statement⁹. Notice need not, however, be so given where the appellant has submitted a statement which he refers to as an environmental statement for the purposes of the 1999 Regulations to the Secretary of State or the Assembly for the purposes of an appeal against a planning decision or a failure to take such decision¹⁰ which:

- 2409 (1) relates to the development to which the enforcement appeal relates; and
- 2410 (2) is to be determined at the same time as that enforcement appeal;

and that statement, any further information¹¹, and the representations, if any, made in relation to it are to be treated¹² as the environmental statement and representations¹³.

The Secretary of State or the Assembly must send to the relevant planning authority¹⁴ a copy of any notice sent to the appellant under the above provisions¹⁵. If an appellant to whom notice has been so given fails to comply with the specified requirements¹⁶, the deemed application¹⁷ and the ground (a) appeal¹⁸, if any, lapse at the end of the period specified or allowed, as the case may be¹⁹. As soon as reasonably practicable after the occurrence of that event, the Secretary of State or the Assembly must notify the appellant and the local planning authority²⁰ in writing that the deemed application and the ground (a) appeal, if any, have lapsed²¹.

Where, however, on consideration of an appeal against an enforcement notice it appears to the Secretary of State or the Assembly that the matters which are alleged to constitute the breach of planning control comprise or include Schedule 1 development²² or Schedule 2 development²³ and, in either case, no screening opinion²⁴ has been adopted and no screening direction²⁵ has been made in respect of that development, the Secretary of State or the Assembly must, before any notice is served pursuant to the above provisions²⁶, make such a screening direction²⁷. If the Secretary of State or Assembly considers that he or it has not been provided with sufficient information to make a screening direction he or the Assembly must notify the applicant and the authority by which the regulation 25 notice²⁸ was served of the matters in respect of which he or the Assembly requires additional information; and the information so requested must be provided by the applicant within such reasonable period as may be specified in the notice²⁹. If an appellant to whom such notice has been given fails to comply with the requirements of that notice, the application which is deemed to have been made by virtue of the appeal made³⁰ ('the deemed application') and the appeal in so far as it is brought under the ground that, in respect of any breach of planning control which may be constituted by the matters stated in the enforcement notice, planning permission ought to be granted or, as the case may be, the condition or limitation concerned ought to be discharged³¹ ('the ground (a) appeal'), lapses at the end of the period specified in the notice³².

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 I.e. an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante.

4 For the meaning of 'EIA development' see PARA 488 ante.

5 For the meaning of 'environmental statement' see PARA 497 ante.

6 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante, PARA 620 post.

7 Ibid reg 25(12).

8 le the requirements of ibid reg 25(12)(c). Those requirements are that the appellant must, within the period specified in the notice or such longer period as the Secretary of State or the Assembly may allow, submit to the Secretary of State or to the Assembly four copies of an environmental statement relating to the unauthorised EIA development in question: reg 25(12)(c). As to service of notices and documents etc see PARA 492 note 8 ante.

9 Ibid reg 25(12)(a).

10 le an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante

11 For the meaning of 'further information' see PARA 506 ante.

12 le for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(1): see PARA 611 ante.

13 Ibid reg 25(12)(b).

14 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

15 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(12)(d). The relevant planning authority must make available for public inspection at all reasonable hours at the place where the appropriate register, or relevant part of that register, is kept, a copy of every notice received by the authority under reg 25(12)(d), and copies of those documents must remain so available for a period of two years or until they are entered in Part II of the register in accordance with reg 25(20) (see PARA 610 ante), whichever is the sooner: reg 25(19)(b). For the meaning of 'register' see PARA 507 note 1 ante; and for the meaning of 'appropriate register' see PARA 508 note 7 ante.

16 See note 8 supra.

17 For the meaning of 'deemed application' see the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(11)(a); and the text to note 30 infra.

18 For the meaning of 'ground (a) appeal' see ibid reg 25(11)(b); and the text to note 31 infra.

19 Ibid reg 25(12)(e).

20 As to local planning authorities see PARA 28 et seq ante.

21 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(12)(f).

22 For the meaning of 'Schedule 1 development' see PARA 489 ante.

23 For the meaning of 'Schedule 2 development' see PARA 490 ante.

24 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

25 For the meaning of 'screening direction' see PARA 492 note 20 ante.

26 le pursuant to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(12): see the text and notes 1-21 supra.

27 Ibid reg 25(9).

28 For the meaning of 'regulation 25 notice' see PARA 561 ante.

29 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(10).

30 lie under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante.

31 lie on the ground mentioned in the Town and Country Planning Act 1990 s 174(2)(a) (as substituted): see PARA 603 ante.

32 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(11).

UPDATE

619 Enforcement appeals without an environmental statement

TEXT AND NOTES 1-7--SI 1999/293 reg 25(12) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 10-13--SI 1999/293 reg 25(12)(b) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099.

TEXT AND NOTES 22-27--SI 1999/293 reg 25(9) amended, reg 25(9A)-9D) added, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 30-32--SI 1999/293 reg 25(11) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(i) Submission of Environmental Statements on Appeal/620. Enforcement appeals where an environmental statement is submitted.

620. Enforcement appeals where an environmental statement is submitted.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² receives, in connection with an enforcement appeal³ and otherwise than by way of a statement submitted in connection with an appeal against a planning decision or failure to take a decision⁴, a statement which the appellant refers to as an environmental statement⁵ for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁶, he or the Assembly must:

2411 (1) send a copy of that statement to the relevant planning authority⁷, advise the authority that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal⁸, if any, and inform that authority that it may make representations⁹; and

2412 (2) notify the persons to whom a copy of the relevant regulation 25 notice¹⁰ was sent that the statement will be taken into consideration in determining the deemed application and the ground (a) appeal, if any, and inform them that they may make representations and that, if they wish to receive a copy of the statement or any part of it, they must notify the Secretary of State or the Assembly of their requirements within seven days of the receipt of the Secretary of State's or Assembly's notice; and

2413 (3) respond to requirements notified in accordance with head (2) above by providing a copy of the statement or of the part requested, as the case may be¹¹.

The above provisions apply in relation to further information received¹² by the Secretary of State or the Assembly as they apply to such a statement as is referred to above¹³.

Where an authority receives a copy of a statement or further information by virtue of head (1) above, it must publish in a local newspaper circulating in the locality in which the land¹⁴ is situated a notice stating:

- 2414 (a) the name of the appellant and that he has appealed to the Secretary of State or the Assembly against the enforcement notice;
- 2415 (b) the address or location of the land to which the notice relates and the nature of the development¹⁵;
- 2416 (c) that a copy of the statement or further information may be inspected by members of the public at all reasonable hours;
- 2417 (d) an address in the locality in which the land is situated at which the statement or further information may be inspected, and the latest date on which it will be available for inspection, being a date not less than 21 days later than the date on which the notice is published;
- 2418 (e) that any person wishing to make representations about any matter dealt with in the statement or further information should make them in writing, no later than 14 days after the date named in accordance with head (d) above, to the Secretary of State or the Assembly; and
- 2419 (f) the address to which any such representations should be sent¹⁶.

The authority must as soon as practicable after publication of a notice in accordance with these provisions send to the Secretary of State or the Assembly a copy of the notice certified by or on behalf of the authority as having been published in a named newspaper on a date specified in the certificate¹⁷. Where the Secretary of State or the Assembly receives such a certificate he or the Assembly may not determine the deemed application or the ground (a) appeal in respect of the development to which the certificate relates until the expiry of 14 days from the date stated in the published notice as the last date on which the statement or further information was available for inspection¹⁸.

1 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

3 As to enforcement appeals see PARA 603 et seq ante.

4 Ie otherwise than as mentioned in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(12)(b): see PARA 619 ante.

5 Ibid reg 19(1), (10) (further information and evidence: see PARA 506 ante) applies to statements provided in accordance with reg 25 with the following modifications: (1) where the Secretary of State or the Assembly notifies the appellant under reg 19(1), the appellant must provide the further information within such period as the Secretary of State or the Assembly may specify in the notice or such longer period as the Secretary of State or Assembly may allow; (2) if an appellant to whom a notice has been given under head (1) supra fails to provide the further information within the period specified or allowed, as the case may be, the deemed application and the ground (a) appeal, if any, lapse at the end of that period: reg 25(14). For the meaning of 'environmental statement' see PARA 497 ante; for the meaning of 'further information' see PARA 506 ante; and for the meaning of 'deemed application' and 'ground (a) appeal' see PARA 619 ante.

6 Ie for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARAS 488 et seq 618-619 ante.

7 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

8 See note 5 supra.

9 The relevant planning authority must make available for public inspection at all reasonable hours at the place where the appropriate register, or relevant part of that register, is kept, a copy of every statement and all further information received by the authority under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(13)(a) (see head (1) in the text), and copies of those documents must remain so available for a period of two years or until they are entered in Part II of the register in accordance with reg 25(20) (see PARA 610 ante), whichever is the sooner: reg 25(19)(c). For the meaning of 'register' see PARA 507 note 1 ante; and for the meaning of 'appropriate register' see PARA 508 note 7 ante.

10 For the meaning of 'regulation 25 notice' see PARA 561 ante.

11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(13).

12 *Ie* in accordance with *ibid* reg 25(14): see note 5 *supra*.

13 *Ibid* reg 25(15).

14 For the meaning of 'the land' see PARA 493 note 4 ante.

15 For the meaning of 'development' see PARA 217 ante.

16 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 25(16).

17 *Ibid* reg 25(17).

18 *Ibid* reg 25(18).

UPDATE

620 Enforcement appeals where an environmental statement is submitted

NOTE 5--SI 1999/293 reg 25(14) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTES 12-17--SI 1999/293 reg 25(15)-(17) amended, in relation to England, by SI 2006/3295, and, in relation to Wales, by SI 2006/3099. SI 1999/293 reg 25(16) further amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

TEXT AND NOTE 18--SI 1999/293 reg 25(18) amended, in relation to England, by SI 2008/2093, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Whether Appeals to be Determined by Appointed Person/621. Power to make regulations prescribing classes of appeals to be transferred.

(ii) Whether Appeals to be Determined by Appointed Person

621. Power to make regulations prescribing classes of appeals to be transferred.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe classes of appeals³ which are to be determined by a person appointed by

him or the Assembly ('an appointed person') for the purpose instead of by the Secretary of State or by the Assembly⁴. Such appeals are known as 'transferred appeals'⁵. Those classes of appeals must be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State or the Assembly⁶; and regulations so made may provide for the giving of publicity to any directions so given by him or by it⁷.

The above provisions do not, however, affect any provision in the Town and Country Planning Act 1990 or any instrument made under it that an appeal is to lie to, or a notice of appeal is to be served on, the Secretary of State or the Assembly⁸.

There are similar powers to prescribe classes of appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990⁹ and the Planning (Hazardous Substances) Act 1990¹⁰. These are discussed in later parts of this title¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to appeals under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante), s 106B (as substituted; prospectively repealed) (see PARA 616 ante), s 174 (as amended) (see PARA 603 ante), s 195 (as amended) (see PARA 613 ante) and s 208 (as amended) (see PARA 885 post) and under the Environment Act 1995 s 96(1), Sch 13 paras 6(11), (12), 11(1), Sch 14 para 91(1) (see PARA 740 post).

4 Town and Country Planning Act 1990 Sch 6 para 1(1), (5) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 54(1), (2); and by the Environment Act 1995 s 120(1), Sch 22 para 44). As to the exercise of this power see the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420; the Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 8; and PARA 617 note 4 ante, PARA 622 et seq post. As to the making of regulations generally see PARA 3 ante.

If, before or during the determination of an appeal under the Town and Country Planning Act 1990 s 78 (as amended) which is to be or is being determined in accordance with Sch 6 para 1 (as amended), the Secretary of State or the Assembly forms the opinion mentioned in s 79(6) (see PARA 601 ante), he or it may direct that the determination is not to be begun or proceeded with: Sch 6 para 7.

Where an appointed person is an officer of the relevant government department or of the Assembly, the functions of determining an appeal and doing anything in connection therewith conferred on him by Sch 6 (as amended) (see PARA 623 et seq post) are treated for the purposes of the Parliamentary Commissioner Act 1967 or, as the case may be, of the Government of Wales Act 1998 Sch 9 (as amended; prospectively repealed by the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 65, 69, as from a day to be appointed under s 40; at the date at which this title states the law, those repeals were not in force) (see PARA 23 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45): (1) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that department; and (2) if he was appointed by the Assembly, as functions of the Assembly: see the Town and Country Planning Act 1990 Sch 6 para 8(2) (modified by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 15(1), (5)). The relevant government department at the date at which this title states the law is the Office of the Deputy Prime Minister: see PARA 19 ante. For the meaning of 'functions' see PARA 2 note 1 ante.

5 See the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956); the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as so renumbered); the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (renumbered by SI 2004/3172); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as so renumbered); and PARA 634 et seq post.

6 Town and Country Planning Act 1990 Sch 6 para 1(2). On the giving by the Secretary of State or the Assembly of such a direction he or it may by notice in writing enclosing a copy of the direction require the local planning authority for every area in respect of which the direction has effect to publish as soon as may be a notice in at least one newspaper circulating in the area; and such notice must contain a concise statement of the direction and must specify the place or places where a copy of the direction may be seen at all reasonable hours: Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes)

Regulations 1997, SI 1997/420, reg 5(1). For these purposes, 'local planning authority' means, as respects any class of appeal, a local planning authority against whose decision (or failure to take a decision) an appeal of that class may be made: reg 5(2). As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 Sch 6 para 1(3); and see note 6 supra.

8 Ibid Sch 6 para 1(4).

9 See the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended); and PARA 1199 et seq post.

10 See the Planning (Hazardous Substances) Act 1990 Schedule (as amended); and PARA 1297 et seq post.

11 See PARAS 1199 et seq, 1297 et seq post.

UPDATE

621-622 Power to make regulations prescribing classes of appeals to be transferred, Jurisdiction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

621 Power to make regulations prescribing classes of appeals to be transferred

TEXT AND NOTES 1-4--1990 Act Sch 6 para 1(1) further amended: Planning Act 2008 s 198(1), (2)(a) (in force in relation to England).

NOTE 4--Repeal of 1998 Act Sch 9 now in force: SI 2005/2800. SI 1997/420 amended, in relation to England, by SI 2006/2227, SI 2008/595, SI 2008/2093, SI 2009/380, and, in relation to Wales, by SI 2008/2335. 1990 Act Sch 6 para 8(2) amended: SI 2006/1926.

TEXT AND NOTE 8--1990 Act Sch 6 para 1(4) amended: Planning Act 2008 s 198(1), (2)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Whether Appeals to be Determined by Appointed Person/622. Jurisdiction.

622. Jurisdiction.

Subject to the exceptions set out below¹, the following classes of appeal are prescribed² as appeals to be determined by a person appointed by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴ instead of being determined by the Secretary of State or the Assembly:

- 2420 (1) appeals against planning decisions and failure to take such decisions⁵, including appeals against refusal of, or the failure to take a decision on, an application for express consent to display an advertisement⁶;
- 2421 (2) appeals against enforcement notices⁷;

- 2422 (3) appeals⁸ against the refusal of or failure to give a decision on an application for a certificate of lawfulness of an existing or proposed use or development⁹;
- 2423 (4) appeals¹⁰ relating to planning obligations¹¹.

The following classes of appeal are, however, reserved for determination by the Secretary of State or the Assembly:

- 2424 (a) appeals by statutory undertakers¹² against planning decisions and failure to take such decisions¹³ where the relevant application related to land¹⁴ which is operational land¹⁵ or in which the statutory undertakers propose to acquire an interest¹⁶;
- 2425 (b) appeals by statutory undertakers against enforcement notices¹⁷ where the breach of planning control¹⁸ alleged in the enforcement notice consists in the carrying out of development on land such as is described in head (a) above, or failure to comply with a condition or limitation on a grant of planning permission for development of any such land;
- 2426 (c) appeals against enforcement notices¹⁹ relating to development²⁰ in respect of which an environmental statement is required²¹ for the statutory purposes²².

Appeals falling within heads (1) to (4) above are known as 'transferred appeals'²³ and appeals falling within heads (a) to (c) above are known as 'non-transferred appeals'²⁴. Transferred appeals and non-transferred appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Planning (Hazardous Substances) Act 1990 are discussed in later parts of this title²⁵.

1 le subject to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4(a)-(c): see heads (a)-(c) in the text.

2 le for the purposes of the Town and Country Planning Act 1990 Sch 6 para 1(1) (as amended): see PARA 621 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions in relation to the appeals described in the text, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 le appeals under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

6 le appeals under ibid s 78 (as amended) as applied by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15: see PARA 833 post.

7 le appeals under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante.

8 le appeals under ibid s 195 (as amended): see PARA 613 ante.

9 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 3(1).

10 le appeals under the Town and Country Planning Act 1990 s 106B (as substituted and prospectively repealed): see PARA 616 ante.

11 Town and Country Planning (Modification and Discharge of Planning Obligations) Regulations 1992, SI 1992/2832, reg 8.

12 For these purposes, 'statutory undertakers' means statutory undertakers within the meaning of the Town and Country Planning Act 1990 s 262 (as amended) (see PARA 1009 post) and other persons who, by virtue of s 262(3) (as amended) or s 262(6), are deemed to be statutory undertakers for the purposes of s 266 (as

amended) (see PARA 1013 post): Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 2.

13 See note 5 *supra*.

14 For the meaning of 'land' see PARA 2 note 10 *ante*.

15 For the meaning of 'operational land' see PARA see PARA 1010 post.

16 The land to which the Town and Country Planning Act 1990 s 266(1) applies: see PARA 1013 post.

17 See note 7 *supra*.

18 For the meaning of 'breach of planning control' see PARA 551 *ante*.

19 See note 7 *supra*.

20 For the meaning of 'development' see PARA 217 *ante*.

21 The required for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 497 *et seq ante*.

22 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4(a)-(c); Interpretation Act 1978 s 17(2).

23 See PARA 621 note 5 *ante*.

24 See the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956); the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as so renumbered); the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (renumbered by SI 2004/3172); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as so renumbered); and PARA 631 *et seq post*.

25 See PARAS 1207-1208, 1304 post.

UPDATE

621-622 Power to make regulations prescribing classes of appeals to be transferred, Jurisdiction

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

622 Jurisdiction

NOTE 9--SI 1997/420 reg 3(1) amended: SI 2008/595, SI 2009/380 (England).

TEXT AND NOTES 12-22--SI 1997/420 reg 4 amended, in relation to England, by SI 2008/2093, SI 2009/380, and, in relation to Wales, by SI 2008/2335.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Whether Appeals to be Determined by Appointed Person/623. Powers and duties of appointed persons.

623. Powers and duties of appointed persons.

An appointed person¹ has the same powers and duties as the Secretary of State² or the National Assembly for Wales³ has⁴ in relation to appeals⁵.

If both the parties express a wish not to appear and be heard, the appeal may be determined without their being heard⁶; but, if either of the parties expresses a wish to appear and be heard, the appointed person must give them both an opportunity of doing so⁷.

Where an appeal has been determined by an appointed person, his decision is treated as that of the Secretary of State or, in relation to Wales, that of the Assembly⁸; and the validity of that decision may not, except as provided by the relevant provisions of the Town and Country Planning Act 1990⁹, be questioned in any proceedings whatsoever¹⁰.

Where in any enactment¹¹ there is a reference to the Secretary of State or the Assembly in a context relating to or capable of relating to:

- 2427 (1) an appeal to which these provisions¹² apply; or
- 2428 (2) any thing done or authorised or required to be done by, to or before the Secretary of State or the Assembly on or in connection with any such appeal,

then, so far as the context permits, it is to be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him¹³.

1 For the meaning of 'an appointed person' see PARA 621 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ie an appointed person has the same powers and duties (1) in relation to an appeal under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante), as the Secretary of State or the Assembly has under s 79(1), (4), (6A) (as amended) (see PARA 601 ante); (2) in relation to an appeal under s 106B (as substituted; prospectively repealed), as he or it has under s 106B (as substituted) (see PARA 616 ante); (3) in relation to an appeal under s 174 (as amended) (see PARA 603 ante), as he or it has under s 176(1)-(2A), (5) (as amended) (see PARA 609 ante) and s 177(1)-(4) (as amended) (see PARA 610 ante); (4) in relation to an appeal under s 195 (as amended) (see PARA 613 ante), as he or it has under s 195(2), (3) (as amended) (see PARA 614 ante); (5) in relation to an appeal under s 208 (as amended) (see PARA 885 post), as he or it has under s 208(7)-(8A) (as amended) (see PARA 886 post).

5 Ibid Sch 6 para 2(1) (Sch 6 para 2 amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 54, Sch 19 Pt I).

The Town and Country Planning Act 1990 s 79(2) (see PARA 601 ante), s 106B(4) (as substituted and prospectively repealed) (see PARA 616 ante), s 175(3) (see PARA 603 ante), s 196(1) (as amended) (see PARA 613 ante) and s 208(5) (see PARA 886 post) do not apply to an appeal which falls to be determined by an appointed person; but, before the appeal is determined, the Secretary of State or the Assembly must ask the appellant and the local planning authority whether they wish to appear before, and be heard by, the appointed person: Sch 6 para 2(2) (as so amended). Schedule 6 para 2(2) (as so amended) does not, however, apply in the case of an appeal under s 78 (as amended) if the appeal is referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 et seq post): Sch 6 para 2(5). As to local planning authorities see PARA 28 et seq ante.

An inspector (ie an appointed person) has a duty to take into account relevant decisions of his colleagues but this duty only extends to decisions drawn to his attention: see *Granchester Retail Park v First Secretary of State* [2003] EWHC 92 (Admin) at [26], [2003] All ER (D) 34 (Jan), per Jackson J, and the authorities there cited. See also *JS Bloor Sudbury Ltd v First Secretary of State* [2003] EWHC 1898 (Admin), [2003] All ER (D) 279 (Jul) (matter coming before the local authority on two different occasions; doctrines of res judicata and issue estoppel do not apply to decisions of inspectors but previous inspector's decision a material consideration which second inspector obliged to take into account). Where a matter is treated by the parties as not material, it is not incumbent on a planning inspector to seek that matter out, even if there are indications that it might be material to the appeal before him: *R (on the application of Taussig) v First Secretary of State* [2003] EWHC 3281

(Admin), [2003] All ER (D) 83 (Sep). Nor need an inspector make specific reference to the contents of the local planning authority's officers' report on the merits of a duplicate application undecided at the date of the inquiry: *R (on the application of CG Claydon Ltd) v First Secretary of State* [2004] EWHC 226 (Admin), [2004] All ER (D) 188 (Feb). It is not open to an inspector, in deciding whether a proposed development is in conformity with a local policy, to introduce into that policy a new test of 'material harm': see *Richmondshire District Council v First Secretary of State* [2003] EWHC 1627 (Admin), [2003] All ER (D) 352 (Jun). In deciding an appeal against the refusal of planning permission for development of a site on a residential basis, an inspector is under no duty to express a view as to the future possibilities should an application emerge in relation to mixed development of the site: *Chris Jaram Developments Ltd v First Secretary of State* [2004] EWHC 1220 (Admin), [2004] All ER (D) 110 (May). An inspector is entitled to refuse to consider the argument that an application for planning permission was originally made under a misapprehension and is not to be criticised for deciding the matter on the basis upon which it comes before him: *Fasuyi v First Secretary of State* [2003] EWHC 1457 (Admin), [2003] All ER (D) 92 (Jun).

6 Town and Country Planning Act 1990 Sch 6 para 2(3). As to the determination of appeals by written representations see PARA 627 et seq post.

7 Ibid Sch 6 para 2(4).

8 Ibid Sch 6 para 2(6).

9 Ie except as provided by ibid Pt XII (ss 284-292) (as amended): see PARA 43 et seq ante, PARA 648 post. It is not, however, a ground of application to the High Court under s 288 (as amended) (see PARA 47 ante), or of appeal to the High Court under s 289 (as amended) (see PARA 648 post) that an appeal ought to have been determined by the Secretary of State or the Assembly and not by an appointed person, unless the appellant or the local planning authority challenges the appointed person's power to determine the appeal before his decision on the appeal is given: Sch 6 para 2(8) (as amended: see note 5 supra).

10 Ibid Sch 6 para 2(7).

11 Ie including the Town and Country Planning Act 1990. For the meaning of 'enactment' see PARA 2 note 11 ante.

12 Ie an appeal to which ibid Sch 6 (as amended) applies.

13 Ibid Sch 6 para 2(9).

UPDATE

623 Powers and duties of appointed persons

TEXT AND NOTES 1-5--1990 Act Sch 6 para 2(1), (2) further amended: Planning Act 2008 s 198(1), (3) (in force in relation to England).

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624. Determination of appeals by the Secretary of State or the Assembly instead of by an inspector.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may, if he or it thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person³ is instead be determined by the Secretary of State or the Assembly⁴. Such a direction must state the reasons for which it is given and must be served on the person, if any, so appointed, the appellant, the local planning authority⁵, and any person who has made

representations relating to the subject matter of the appeal which the authority is required⁶ to take into account⁷.

The Secretary of State or the Assembly must give the appellant, the local planning authority and any person who has made representations⁸ an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for that purpose if:

2429 (1) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or

2430 (2) in the case of an appellant or the local planning authority, either of them was not asked⁹ whether he or it wished to appear before, and be heard by, the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so¹⁰.

In determining the appeal, the Secretary of State or the Assembly may take into account any report made to him or to it by any person previously appointed to determine the appeal¹¹.

The Secretary of State or the Assembly may by a further direction revoke a direction given by him or by it under the above provisions at any time before the determination of the appeal¹². Such a further direction must state the reasons for which it is given and must be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who has made representations relating to the subject matter of the appeal which the authority is required¹³ to take into account¹⁴. Where such a further direction has been given, anything done by or on behalf of the Secretary of State or the Assembly in connection with the appeal which might have been done by the appointed person, including any arrangements made for the holding of a hearing or local inquiry, is to be treated, unless that person directs otherwise, as having been done by him¹⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under Sch 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'an appointed person' see PARA 621 ante.

4 Town and Country Planning Act 1990 Sch 6 para 3(1).

If the appeal does not fall within the guidelines to which the Secretary of State is to have regard when deciding not to call in an appeal under Sch 6 para 3(1), his refusal to do so cannot be categorised as perverse or absurd: see eg *Morbaine Ltd v Secretary of State for the Environment, South Northamptonshire Council v Secretary of State for the Environment* (1995) 70 P & CR 224, (1995) 160 LG Rev 281, CA.

5 As to local planning authorities see PARA 28 et seq ante.

6 Ie under any provision of a development order made by virtue of the Town and Country Planning Act 1990 s 71(2)(a) (as substituted): see PARA 473 ante. For the meaning of 'development order' see PARA 252 ante.

7 Ibid Sch 6 para 3(2) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 54(1), (4)). Where in consequence of such a direction an appeal falls to be determined by the Secretary of State or the Assembly, the provisions of the Town and Country Planning Act 1990 which are relevant to the appeal apply to it, subject to Sch 6 para 3(4)-(6) (see the text and notes 8-10 infra), as if Sch 6 (as amended) had never applied to it: Sch 6 para 3(3).

8 Ie any such representations as are mentioned in ibid Sch 6 para 3(2) (as amended): see the text to notes 5-7 supra.

9 Ie in pursuance of ibid Sch 6 para 2(2) (as amended): see PARA 623 ante.

10 Ibid Sch 6 para 3(4). Schedule 6 para 3(4) does not, however, apply in the case of an appeal under s 78 (as amended) (see PARA 598 ante) if the appeal is referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 post): Sch 6 para 3(5).

Except as provided by Sch 6 para 3(4), the Secretary of State or the Assembly need not give any person an opportunity of appearing before, and being heard by, a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made: Sch 6 para 3(6).

11 Ibid Sch 6 para 3(7).

12 Ibid Sch 6 para 4(1).

13 See note 6 supra.

14 Town and Country Planning Act 1990 Sch 6 para 4(2) (amended by the Planning and Compensation Act 1991 Sch 7 paras 8, 54(1), (4)). Where such a further direction has been given, the provisions of the Town and Country Planning Act 1990 Sch 6 (as amended) relevant to the appeal apply, subject to Sch 6 para 4(4) (see the text to note 15 infra), as if no direction under Sch 6 para 3 (as amended) had been given: Sch 6 para 4(3).

15 Ibid Sch 6 para 4(4).

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625. Appointment of another person to determine appeal.

At any time before the appointed person¹ has determined the appeal the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 2431 (1) revoke that person's appointment; and
- 2432 (2) appoint another person⁴ to determine the appeal instead⁵.

Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing in connection with it must be begun afresh⁶.

1 For the meaning of 'an appointed person' see PARA 621 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ie under the Town and Country Planning Act 1990 Sch 6 para 1 (as amended): see PARA 621 ante.

5 Ibid Sch 6 para 5(1).

6 Ibid Sch 6 para 5(2). Nothing in Sch 6 para 5(2) requires (1) the question referred to in Sch 6 para 2(2) (as amended) (see PARA 623 ante) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person, any answers being treated as given with reference to the new appointed person; or (2) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made: Sch 6 para 5(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(ii) Whether Appeals to be Determined by Appointed Person/626. Local inquiries and hearings.

626. Local inquiries and hearings.

Whether or not the parties to an appeal have asked for an opportunity to appear and to be heard, an appointed person¹:

- 2433 (1) may hold a local inquiry in connection with the appeal; and
- 2434 (2) must do so if the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ so directs⁴.

Where an appointed person holds a hearing⁵ or holds an inquiry⁶, an assessor may be appointed by the Secretary of State or the Assembly to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal⁷. The statutory requirements with regard to evidence at such an inquiry are discussed in a later part of this title⁸.

The costs of any such hearing or inquiry must⁹ be defrayed by the Secretary of State or the Assembly¹⁰.

The detailed rules with regard to hearings before an inspector appointed to hear an appeal are discussed below¹¹; and the rules with regard to inquiries held by an inspector so appointed are discussed in a later part of this title¹².

1 For the meaning of 'an appointed person' see PARA 621 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 Sch 6 para 6(1). The Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held in pursuance of the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) as it applies to a statutory inquiry held by the Secretary of State, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State or the Assembly were a reference to a decision taken by an appointed person: Town and Country Planning Act 1990 Sch 6 para 8(1) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 28).

5 Ie by virtue of the Town and Country Planning Act 1990 Sch 6 para 2(4): see PARA 623 ante.

6 Ie by virtue of ibid Sch 6 para 6.

7 Ibid Sch 6 para 6(2).

8 See ibid s 321-321B (as amended); and PARA 652 post.

9 Ie subject to ibid Sch 6 para 6(4): see note 10 infra.

10 Ibid Sch 6 para 6(3). The Local Government Act 1972 s 250(2)-(5) (as amended) (evidence at and costs of local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held by virtue of the Town and Country Planning Act 1990 Sch 6 para 6 with the following adaptations: (1) for the references in the Local Government Act 1972 s 250(4) (recovery of costs of holding inquiry) to the minister causing the inquiry to be held there must be substituted references to the Secretary of State or the Assembly; and (2) for the reference in s 250(5) (orders as to costs of the parties) to the minister causing the inquiry to be held there must be

substituted a reference to the appointed person or the Secretary of State or, as the case may be, the Assembly: Town and Country Planning Act 1990 Sch 6 para 6(4).

The appointed person or the Secretary of State or Assembly has the same power to make orders under the Local Government Act 1972 s 250(5) in relation to proceedings under the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) which do not give rise to an inquiry as he has in relation to such an inquiry: Sch 6 para 6(5).

Schedule 6 (as amended) has effect with the omission of Sch 6 para 6(5) until a day to be appointed by the Secretary of State: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 7. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

11 See PARA 631 et seq post.

12 See PARA 686 et seq post.

UPDATE

626 Local inquiries and hearings

NOTE 4--A local inquiry or hearing held in pursuance of the 1990 Act Sch 6 is a statutory inquiry for the purposes of the Tribunals, Courts and Enforcement Act 2007 Sch 7 (functions etc of Administrative Justice and Tribunals Council): 1990 Act Sch 6 para 8(1A) (added by 2007 Act Sch 8 para 10).

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(iii) Determination of Certain Appeals by Written Representations

A. POWER TO MAKE REGULATIONS

627. Procedure on certain appeals and applications; power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe the procedure to be followed in connection with proceedings under the Town and Country Planning Act 1990 where he or the Assembly is required, before reaching a decision, to give any person an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly and which are to be disposed of without an inquiry or hearing to which rules under the Tribunals and Inquiries Act 1992³ apply⁴.

The regulations may in particular make provision as to the procedure to be followed:

- 2435 (1) where steps have been taken with a view to the holding of such an inquiry or hearing which does not take place; or
- 2436 (2) where steps have been taken with a view to the determination of any matter by a person appointed by the Secretary of State or the Assembly and the

proceedings are the subject of a direction that the matter is instead to be determined by the Secretary of State or the Assembly; or
 2437 (3) where steps have been taken in pursuance of such a direction and a further direction is made revoking that direction,

and may provide that such steps are to be treated as compliance, in whole or in part, with the requirements of the regulations⁵.

The regulations may also:

- 2438 (a) provide for a time limit within which any party to the proceedings must submit representations in writing and any supporting documents;
- 2439 (b) prescribe the time limit, which may be different for different classes of proceedings, or enable the Secretary of State or the Assembly to give directions setting the time limit in a particular case or class of case;
- 2440 (c) empower the Secretary of State or the Assembly to proceed to a decision taking into account only such written representations and supporting documents as were submitted within the time limit; and
- 2441 (d) empower the Secretary of State or the Assembly, after giving the parties written notice of his or its intention to do so, to proceed to a decision notwithstanding that no written representations were made within the time limit, if it appears to him or to the Assembly that he or it has sufficient material before him or before it to enable him, or to enable the Assembly, to reach a decision on the merits of the case⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 323 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie without an inquiry or hearing to which rules under the Tribunals and Inquiries Act 1992 s 9 (as amended) apply: see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15.

4 Town and Country Planning Act 1990 s 323(1) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 26). As to the making of regulations generally see PARA 3 ante; and as to the exercise of this power see the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended); the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, regs 11-16 (revoked in relation to Wales); the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390; and PARAS 628-630 post. See also the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended); the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended); and PARAS 631-633 post.

5 Town and Country Planning Act 1990 s 323(2).

6 Ibid s 323(3).

UPDATE

627-631 Procedure on certain appeals and applications; power to make regulations ... Jurisdiction

SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

627 Procedure on certain appeals and applications; power to make regulations

NOTE 4--In relation to England, SI 1999/1892 regs 11-16 now regs 11-17 (substituted by SI 2008/2260; and amended by SI 2008/3202).

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B. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS

628. Jurisdiction.

In relation to England, the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000¹ apply where an appellant against a planning decision or a failure to take such a decision² informs the Secretary of State³ in the notice of appeal⁴ that he wishes the appeal to be disposed of on the basis of written representations⁵. Where an appeal against a planning decision or a failure to take such a decision⁶ is not being disposed of on the basis of written representations and the appellant and the local planning authority⁷ inform the Secretary of State that they wish it to be disposed of on that basis, those 2000 Regulations apply to the proceedings to such extent as the Secretary of State may specify having regard to any steps already taken in relation to those proceedings⁸.

Where an appeal arises from an application in respect of which the Mayor of London⁹ has directed the local planning authority to refuse the application and where the written representations procedure is adopted in accordance with the above provisions, the 2000 Regulations apply subject to prescribed modifications¹⁰.

In relation to Wales, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003¹¹ apply where an appellant¹²:

- 2442 (1) against a planning decision or a failure to take such a decision;
- 2443 (2) against a decision relating to a consent under a tree preservation order¹³;
- or
- 2444 (3) against a decision requiring the planting of trees¹⁴,

informs the National Assembly for Wales¹⁵ in the relevant notice¹⁶ of a wish for the appeal to be disposed of on the basis of written representations¹⁷; and for these purposes 'appeal' also includes certain applications¹⁸. Where an appeal such as is described in head (1) or head (2) above is not being disposed of on the basis of written representations and the appellant and the local planning authority inform the Assembly that they wish it to be disposed of on that basis, those 2003 Regulations apply to the appeal to such extent as the Assembly may specify having regard to any steps already taken in relation to the appeal¹⁹.

Where an appellant or, as the case may be, the appellant and the local planning authority, informs the Secretary of State or the Assembly of a wish for the appeal to be disposed of on the basis of written representations and so informs him or it using electronic communications²⁰, the appellant is to be taken to have agreed:

- 2445 (a) to the use of such communications for all purposes of the relevant regulations²¹ relating to his appeal which are capable of being carried out electronically;
- 2446 (b) that his address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his communication so informing the Secretary of State or the Assembly; and
- 2447 (c) that his deemed agreement under these provisions is to subsist until he gives notice²² that he wishes to revoke the agreement²³.

The relevant regulations²⁴ cease to apply to an appeal if the Secretary of State or, as the case may be, the Assembly informs the appellant and the local planning authority that he or it will afford to them an opportunity of attending and taking part in a hearing or a local inquiry held by a person appointed by him or by it for the purpose²⁵. There is, however, no statutory requirement to order an inquiry or hearing to determine an appeal which both parties have indicated they are content to be dealt with by way of written representations²⁶.

1 Ie the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended): see PARAS 629-630 post.

2 For these purposes, 'appellant' means a person giving notice of appeal to the Secretary of State; and 'notice of appeal' means a notice of appeal under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante): Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(1) (renumbered by SI 2003/956). The 2000 Regulations do not, however, appear to apply to appeals relating to consents under tree preservation orders. In England, the procedure on such appeals continues to be regulated by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Pt IV (regs 11-16) (revoked in relation to Wales by SI 2003/390). As to tree preservation orders see PARA 850 et seq post.

3 As to the Secretary of State see PARA 19 ante.

4 As to the notice of appeal see note 2 supra; and as to the use of electronic communications see the text and notes 18-21 infra.

5 Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(1). 'Written representations' includes supporting documents; and 'document' includes a photograph, map or plan: reg 2(1) (as renumbered: see note 2 supra). Identical definitions apply in Wales: see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (renumbered by SI 2004/3157).

6 Ie an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

7 For these purposes, 'local planning authority' means the body which was responsible for dealing with the application occasioning the appeal: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(1) (as renumbered: see note 2 supra). As to local planning authorities see PARA 28 et seq ante. A similar definition applies in Wales: see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (renumbered by SI 2004/3157).

8 Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(2).

9 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

10 See the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 11.

11 Ie the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended): see PARAS 629-630 post.

12 For these purposes, 'appellant' means (1) in the case of an application referred to the Assembly under the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post) or s 19 (as amended) (see PARA 1131 post), the person who made that application to the local planning authority; (2) in the case of an appeal under

the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 post), the person whose application was refused, granted subject to conditions or not determined, by the local planning authority; and in the case of an appeal under the Town and Country Planning Act 1990 s 208 (as amended) (see PARA 885 post), the person on whom a notice has been served under s 207(1) (see PARA 874 post): Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (as renumbered: see note 5 supra). See also note 13 infra.

13 For these purposes, references to the Town and Country Planning Act 1990 s 78 (as amended) include references to that section as applied to applications for tree preservation orders made under that Act: Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (as renumbered: see note 5 supra). As to such appeals see PARAS 883-884 post.

14 In an appeal under the Town and Country Planning Act 1990 s 208 (as amended): see PARA 885 post.

15 As to the Assembly see PARA 20 ante.

16 For these purposes, 'relevant notice', in relation to an appeal brought under the Town and Country Planning Act 1990 s 78 (as amended) or s 208 (as amended) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 post), means a written notice served by the appellant notifying the Assembly of his wish that the appeal be disposed of on the basis of written representations: Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (as renumbered: see note 5 supra).

17 Ibid reg 3(1). Notices or documents required or authorised to be sent or supplied under the 2003 Regulations may be sent or supplied by post or by using electronic communications to transmit the notice or document (as the case may be) to a person at such address as may for the time being be specified by that person for such purpose: reg 12 (added by SI 2004/3157). As to the use of electronic communications see the text and notes 20-23 infra.

18 For these purposes, 'appeal' in relation to the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post) or s 19 (as amended) (see PARA 1131 post), means the determination of an application which has been referred to the Assembly, but does not include an application which is deemed to have been so referred by virtue of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(3) (applications by local planning authorities: see PARA 1115 post): Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (as renumbered: see note 5 supra).

19 Ibid reg 3(2).

20 For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(1) (as renumbered: see note 2 supra); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (as renumbered: see note 5 supra).

In relation to England, for these purposes, and in relation to the use of electronic communications for any purpose of the 2000 Regulations which is capable of being effected electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that, where those regulations impose an obligation on any person to provide a name and address to any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address; and references to notices, representations or other documents, or to copies of such things, include references to such things or copies of them in electronic form: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(2) (reg 2(2)-(7) added by SI 2003/956). The following provisions apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in those regulations to give or send any statement, notice or other document to any other person ('the recipient'): Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(3) (as so added). The requirement will be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes, 'legible in all material respects' means that the information contained in the notice or other document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: reg 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it will be taken to have been received on the next working day; and, for this purpose, 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 2(6) (as so added). A requirement in the 2000 Regulations

that any document should be in writing is fulfilled where that document meets the criteria in reg 2(4) (as so added); and 'written' and cognate expressions are to be construed accordingly: reg 2(7) (as so added).

See further, in relation to Wales, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(2)-(7) (added by SI 2004/3157). Notices or documents required or authorised to be sent or supplied under the 2003 Regulations may be sent or supplied by post or using electronic communications to transmit the notice or document (as the case may be) to a person at such address as may for the time being be specified by that person for such purpose: Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 12 (substituted by SI 2004/3157).

21 In all purposes of the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended), or, as the case may be, of the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended).

22 In accordance with the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 11A (as added) or, as the case may be, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 12A (as added). Where a person is no longer willing to accept the use of electronic communications for any purpose of the relevant regulations which is capable of being effected electronically, the person must give notice in writing (1) withdrawing any address notified to the Secretary of State (or, as the case may be, to the Assembly) or to a local planning authority for that purpose; or (2) revoking any agreement entered into with the Secretary of State (or, as the case may be, with the Assembly) or with a local planning authority for that purpose, and such withdrawal or revocation is to be final and is to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 11A (added by SI 2003/956); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 12A (added by SI 2004/3157).

23 Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(2A) (added by SI 2003/956); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 3(2A) (added by SI 2004/3157). The references in the text to notes 1-18 *supra* to an appeal being disposed of on the basis of written representations are not to be taken to preclude the use of electronic communications in accordance with the provisions set out in the text and note 20 *supra* and in accordance with the provisions cited in this note: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(2A) (as so added; Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 3(2A) (as so added).

24 In the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended), or, as the case may be, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended).

25 Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 3(3); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 3(3).

26 See *Waltham Forest London Borough Council v First Secretary of State* [2005] All ER (D) 15 (Oct).

UPDATE

627-631 Procedure on certain appeals and applications; power to make regulations ... Jurisdiction

SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

628-629 Jurisdiction, Procedure before determination of the appeal

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

628 Jurisdiction

NOTE 2--In relation to England, SI 1999/1892 Pt IV (regs 11-16) now Pt 4 (regs 11-17) (substituted by SI 2008/2260 and amended by SI 2008/3202).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Determination of Certain Appeals by Written Representations/B. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/629. Procedure before determination of the appeal.

629. Procedure before determination of the appeal.

The relevant regulations applying to appeals against planning decisions or failure to take such decisions which are to be determined on the basis of written representations¹ make provision with regard to:

- 2448 (1) notification of the starting date²;
- 2449 (2) notice to interested persons³;
- 2450 (3) the appeals questionnaire⁴;
- 2451 (4) representations by the parties in relation to the appeal⁵;
- 2452 (5) representations by third parties⁶; and
- 2453 (6) the extension of time limits⁷.

1 As to the relevant regulations see PARA 628 ante.

2 The Secretary of State or, in relation to Wales, the National Assembly for Wales must, as soon as practicable after receipt of the notice of appeal, advise the appellant and the local planning authority in writing of (1) the starting date; (2) the reference number allocated to the appeal; and (3) the address to which written communications to the Secretary of State or the Assembly about the appeal are to be sent: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 4; Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 4. 'Starting date' means the date of (1) the Secretary of State's or the Assembly's written notice to the appellant and the local planning authority that he or it has received all the documents required to enable him or it to entertain the appeal; or (2) the date of his or its written notice as described supra, whichever is later: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(1) (renumbered by SI 2003/956); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (renumbered by SI 2004/3157). As to the use of electronic communications see PARA 628 the text and notes 20-23 ante.

As to notification of the starting date see also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 12 (revoked in relation to Wales by SI 2003/390); and as to the circumstances in which that provision applies see PARA 628 note 2 ante.

3 The local planning authority must give written notice of the appeal within two weeks of the starting date to (1) any person notified or consulted in accordance with the Town and Country Planning Act 1990 (or, in Wales, the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990) or a development order about the application which has given rise to the appeal; and (2) any other person who made representations to the local planning authority about that application: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 5(1); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 5(1). Such a notice must (a) state the name of the appellant and the address of the site to which the appeal relates; (b) describe the application; (c) set out the matters notified to the appellant and local planning authority under the provisions set out in note 2 supra; (d) state that copies of any representations made by any person mentioned in heads (1)-(2) supra will be sent to the Secretary of State (or, in Wales, to the

National Assembly for Wales) and the appellant; (e) state that any such representations will be considered by the Secretary of State or the Assembly when determining the appeal unless any person mentioned in heads (1)-(2) supra withdraws them within six weeks of the starting date; and (f) state that further written representations may be submitted to the Secretary of State or the Assembly within six weeks of the starting date: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 5(2); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 5(2).

Note that the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Pt IV (regs 11-16) (revoked in relation to Wales by SI 2003/390) does not make equivalent provision to that set out in this note.

4 The local planning authority must within two weeks of the starting date submit to the Secretary of State and copy to the appellant (or, in Wales, must send to the Assembly, and copy to the appellant, so as to be received within two weeks of the starting date) (1) a completed questionnaire; (2) a copy of each of the documents referred to in it; and the questionnaire must state the date on which it is submitted to the Secretary of State or the Assembly: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 6(1), (2); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 6(1), (2). 'Questionnaire' means a document in the form supplied by the Secretary of State or, in Wales, by the Assembly to local planning authorities for the purpose of proceedings under the relevant regulations; and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified the local planning authority of (a) publication of the form on the website; (b) the address of the website; and (c) the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 2(1) (renumbered and amended by SI 2003/956); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (renumbered and amended by SI 2004/3157). For the meaning of 'document' see PARA 628 note 5 ante.

See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 13 (revoked in relation to Wales by SI 2003/390).

5 See, in relation to England, the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 7 (as amended). The notice of appeal and the documents accompanying it comprise the appellant's representations in relation to the appeal: reg 7(1). The local planning authority may elect to treat the questionnaire and the documents submitted with it as its representations in relation to the appeal; and, where it does so, it must notify the Secretary of State and the appellant accordingly when submitting the questionnaire or sending the copy in accordance with reg 6 (see note 4 supra): reg 7(2). Where the local planning authority does not elect as so described, it must submit two copies of its written representations to the Secretary of State within six weeks of the starting date: reg 7(3). If the appellant wishes to make any further representations to those in reg 7(1), he must submit two copies of those further representations to the Secretary of State within six weeks of the starting date: reg 7(4). Any representations made to the Secretary of State under reg 7(3), (4) are to be dated and submitted to the Secretary of State on the date they bear: reg 7(5). The Secretary of State must, as soon as practicable after receipt, send a copy of any representations made to him by the local planning authority to the appellant and must send a copy of any representations made to him by the appellant to the local planning authority: reg 7(6). The appellant and the local planning authority must submit two copies of any comments they have on each other's representations to the Secretary of State within nine weeks of the starting date; and the Secretary of State must, as soon as practicable after receipt, send a copy of these further comments to the other party: reg 7(7). The Secretary of State may disregard further information from the appellant and the local planning authority which was not submitted within nine weeks of the starting date unless that further information has been requested by him: reg 7(8). Where a party to which reg 7 (as amended) applies elects to use electronic communications for submitting, sending, copying, or sending a copy of any representations, questionnaire or other document, reg 7 (as amended) has effect subject to the following modifications: (1) where the party so electing is the local planning authority, reg 7(3), (7) applies to it as if the words 'two copies of' were omitted; (2) where the party so electing is the appellant, reg 7(4), (7) applies to him as if the words 'two copies of' were omitted; (3) where the party so electing is, by virtue of the application of reg 11, the Mayor of London, reg 7(4A) (added for those purposes by reg 11) applies as if the words 'three copies of' were omitted: reg 7(9) (added by SI 2003/956). For the meaning of 'electronic communications' see PARA 628 note 20 ante; as to their use see PARA 628 the text and notes 20-23 ante; and as to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

See further, in relation to Wales, the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 7(1)-(9) (amended by SI 2004/3157) which makes similar provision but refers to the Assembly rather than to the Secretary of State and specifies that the relevant representations and copies must be sent so as to be received within the prescribed time limits.

See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 14 (revoked in relation to Wales by SI 2003/390).

It is incumbent on the parties to a planning appeal, where the written representations procedure is used, to place before the inspector as part of their written representations the material on which they rely; the inspector is entitled to reach his decision on the basis of the material put before him and need not inquire whether there is additional evidence or information which might support the claimant's case: see *West v First Secretary of State* [2005] EWHC 729 (Admin), [2005] All ER (D) 378 (Apr).

6 If an interested person notified under the provisions set out in note 3 *supra* wishes to submit representations to the Secretary of State or, in relation to Wales, to the Assembly, he must do so within six weeks of the starting date (or, in Wales, so that they are received within six weeks of the starting date); and the Secretary of State or the Assembly must (1) send to the appellant and the local planning authority, as soon as practicable after receipt, a copy each of all of the representations received from interested parties; and (2) specify a period of not less than two weeks within which any comments on the representations must be submitted: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 8(1), (2); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 8(1), (2). The Secretary of State or the Assembly may, however, disregard comments made by the local planning authority under head (2) *supra* where the authority has failed to notify interested persons in accordance with the provisions set out in note 3 *supra*: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 8(3); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 8(3).

Note that the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Pt IV (regs 11-16) (revoked in relation to Wales by SI 2003/390) does not make equivalent provision to that set out in this note.

7 The Secretary of State or, in relation to Wales, the Assembly may in a particular case give directions setting later time limits than those prescribed by the relevant regulations: see the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 9; the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 9.

See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 15 (revoked in relation to Wales by SI 2003/390).

UPDATE

627-631 Procedure on certain appeals and applications; power to make regulations ... Jurisdiction

SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

628-629 Jurisdiction, Procedure before determination of the appeal

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

629 Procedure before determination of the appeal

NOTES 2-7--In relation to England, SI 1999/1892 Pt IV (regs 11-16) now Pt 4 (regs 11-17) (substituted by SI 2008/2260 and amended by SI 2008/3202).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Determination of Certain

Appeals by Written Representations/B. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/630. Decision on appeal.

630. Decision on appeal.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may proceed to a decision on an appeal against a planning decision or a failure to take such a decision³ taking into account only such written representations⁴ as have been submitted within the relevant time limits⁵. He or it may also, after giving the appellant⁶ and the local planning authority⁷ written notice⁸ of his or its intention to do so, proceed to a decision on an appeal notwithstanding that no written representations have been made within the relevant time limits if it appears to him or to the Assembly that he or it has sufficient material before him or before it to enable him or it to reach a decision on the merits of the case⁹.

Provision is made for the notification of the Assembly's decision¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 ie on such an appeal as is described in PARA 628 ante.

4 For the meaning of 'written representations' see PARA 628 note 5 ante.

5 See the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 10(1); the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 10(1). For these purposes, 'relevant time limits' means the time limits prescribed by the relevant regulations or, where the Secretary of State or the Assembly has exercised his or its power to extend them (see PARA 629 note 7 ante) any later time limit: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 10(3); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 10(3).

See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 16(1) (revoked in relation to Wales by SI 2003/390).

6 For the meaning of 'the appellant' see PARA 628 notes 2, 12 ante.

7 For the meaning of 'local planning authority' for these purposes see PARA 628 note 7 ante.

8 As to the use of electronic communications see PARA 628 the text and notes 20-23 ante.

9 Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, reg 10(2); Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 10(2).

See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 16(2) (revoked in relation to Wales by SI 2003/390).

10 The Assembly must notify the decision on an appeal, and its reasons for reaching that decision, in writing to (1) the appellant; (2) the local planning authority; (3) any interested person; and (4) any other person who has asked to be notified of the decision whom the Assembly considers it reasonable to notify: Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 11. No equivalent provision appears to be made by the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended).

UPDATE

627-631 Procedure on certain appeals and applications; power to make regulations ... Jurisdiction

SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

630 Decision on appeal

NOTES 5, 9--In relation to England, SI 1999/1892 reg 16 substituted by SI 2008/2260.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Determination of Certain Appeals by Written Representations/C. ENFORCEMENT APPEALS/631. Jurisdiction.

C. ENFORCEMENT APPEALS

631. Jurisdiction.

In relation to England, the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002¹ apply where an appellant² informs the Secretary of State³ in the notice of appeal⁴ that he wishes the appeal to be disposed of on the basis of written representations⁵. Where an enforcement appeal⁶ is not being disposed of on the basis of written representations and the appellant and the local planning authority⁷ inform the Secretary of State that they wish it to be disposed of on that basis, those 2002 Regulations apply to the proceedings to such extent as the Secretary of State may specify having regard to any steps already taken in relation to those proceedings⁸.

Similarly, in relation to Wales, the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003⁹ apply where an appellant¹⁰ informs the National Assembly for Wales¹¹ in the notice of appeal of a wish for the appeal to be disposed of on the basis of written representations¹². Where an appeal against an enforcement notice¹³ or an appeal against a listed building or conservation area enforcement notice¹⁴ is not being disposed of on the basis of written representations and the appellant and the local planning authority inform the Assembly that they wish it to be disposed of on that basis, those 2003 Regulations apply to the proceedings to such extent as the Assembly may specify having regard to any steps already taken in relation to those proceedings¹⁵.

Where an appellant or, as the case may be, the appellant and the local planning authority, informs the Secretary of State or the Assembly of a wish for the appeal to be disposed of on the basis of written representations and so informs him or it using electronic communications¹⁶, the appellant is to be taken to have agreed:

- 2454 (1) to the use of such communications for all purposes of the relevant regulations¹⁷ relating to his appeal which are capable of being carried out electronically;
- 2455 (2) that his address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his communication so informing the Secretary of State or the Assembly; and
- 2456 (3) that his deemed agreement under these provisions is to subsist until he gives notice¹⁸ that he wishes to revoke the agreement¹⁹.

The relevant regulations cease to apply to proceedings if the Secretary of State or the Assembly informs the appellant and the local planning authority that he or it will give them an

opportunity of appearing before and being heard by a person appointed by him or by the Assembly for the purpose²⁰.

Appeals against enforcement notices requiring the planting of trees²¹ in Wales which are to be disposed of on the basis of written representations are not, however, governed by the 2003 Regulations referred to above but by the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003²² which have already been discussed²³.

1 Ie the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended): see PARAS 632-633 post.

2 'The appellant' means a person giving notice of appeal to the Secretary of State under the Town and Country Planning Act 1990 s 174 (as amended) (see PARA 603 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) (see PARAS 1193, 1197 post): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (renumbered by SI 2003/956).

3 As to the Secretary of State see PARA 19 ante.

4 For these purposes, 'notice of appeal' means a notice of appeal under the Town and Country Planning Act 1990 s 174(3) (as substituted) (see PARA 603 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(2) (as substituted and amended) (see PARAS 1193, 1197 post): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (as renumbered: see note 2 supra). An identical definition applies in Wales: see the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(1) (renumbered by SI 2004/3157).

5 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(1). 'Written representations' includes supporting documents; and 'document' includes a photograph, map or plan: reg 2(1) (as renumbered: see note 2 supra). Identical definitions apply in Wales: see the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as renumbered: see note 4 supra). As to the use of electronic communications see the text and notes 16-19 infra.

6 Ie an appeal under the Town and Country Planning Act 1990 s 174 (as amended) (see PARA 603 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) (see PARAS 1193, 1197 post).

7 For these purposes, 'local planning authority' means the body which issued the relevant enforcement notice; and 'enforcement notice' means a notice issued under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 172(1) (as substituted) (see PARA 561 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(1) (see PARA 1146 post): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (as renumbered: see note 2 supra). Identical definitions apply in Wales: see the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as renumbered: see note 4 supra).

8 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(2).

9 Ie the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended): see PARAS 632-633 post.

10 'The appellant' means a person giving notice of appeal to the Assembly: *ibid* reg 2(1) (as renumbered: see note 4 supra).

11 As to the Assembly see PARA 20 ante.

12 Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(1).

13 Ie an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante.

14 Ie an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARAS 1193, 1197 post.

15 Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(2).

16 For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (as renumbered and amended: see note 2 supra); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(1) (as renumbered and amended: see note 4 supra).

See, in relation to England, the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(2)-(7) (added by SI 2003/956). For these purposes, and in relation to the use of electronic communications for any purpose of the 2002 Regulations which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those regulations impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address; and references to notices, representations, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(2) (as so added). Regulation 2(4)-(7) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in regs 4-8 (as amended) (see PARA 632 post) that representations or other documents should be sent or submitted to any other person ('the recipient'): reg 2(3) (as so added). The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and 'legible in all material respects' means that the information contained in the document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: reg 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 2(5) (as so added). A requirement in the 2002 Regulations that any notice or document should be in writing is fulfilled where that document meets the criteria in heads (1)-(3) supra, and (except in reg 5) 'written' and cognate expressions are to be construed accordingly: reg 2(7) (as so added).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(2)-(7) (added by SI 2004/3157). Notices or documents required or authorised to be served, sent or supplied under those 2003 Regulations may be served, sent or supplied by post or using electronic communications to serve, send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 11 (substituted by SI 2004/3157).

17 Ie all purposes of the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended), or of the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended).

18 Ie under the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 10A (as added) or, as the case may be, the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 11A (as added). Where a person is no longer willing to accept the use of electronic communications for any purpose under the relevant regulations which is capable of being carried out electronically, the person must give notice in writing (1) withdrawing any address notified to the Secretary of State (or, in Wales, to the Assembly) or to a local planning authority for that purpose; or (2) revoking any agreement entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose, and such withdrawal or revocation is to be final and is to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 10A (added by SI 2003/956); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 11A (added by SI 2004/3157).

19 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(2A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(2A) (added by SI 2004/3157). The references in the text to notes 1-15 supra to an appeal being disposed of on the basis of written representations are not to be taken to preclude the use of electronic communications in accordance with the provisions set out in the text and note 16 supra and in accordance with the provisions cited in this note: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(2A) (as so added); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(2A) (as so added).

20 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(3); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(3).

21 le appeals under the Town and Country Planning Act 1990 s 208 (as amended): see PARA 885 post.

22 le the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 20003/390 (as amended): see PARAS 628-630 ante.

23 See PARAS 628-630 ante. At the date at which this title states the law, there appear to be no equivalent regulations applying in England with regard to the disposal of such appeals, as the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended) apply only to appeals under the Town and Country Planning Act 1990 s 78 (as amended) and the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Pt IV (regs 11-16) (revoked in relation to Wales by SI 2003/390) applies only to appeals made under the Town and Country Planning Act 1990 s 78 (as amended) as applied to applications under tree preservation orders: see PARA 628 ante.

UPDATE

627-631 Procedure on certain appeals and applications; power to make regulations ... Jurisdiction

SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

631-632 Jurisdiction, Procedure before determination of the appeal

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

631 Jurisdiction

NOTE 23--In relation to England, SI 1999/1892 Pt IV (regs 11-16) now Pt 4 (regs 11-17) (substituted by SI 2008/2260 and amended by SI 2008/3202).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Determination of Certain Appeals by Written Representations/C. ENFORCEMENT APPEALS/632. Procedure before determination of the appeal.

632. Procedure before determination of the appeal.

The relevant regulations applying to enforcement appeals which are to be determined on the basis of written representations¹ make provision with regard to:

- 2457 (1) notification of the starting date²;
- 2458 (2) notice to interested persons³;
- 2459 (3) the appeals questionnaire⁴;
- 2460 (4) representations by the parties in relation to the appeal⁵;

- 2461 (5) representations by third parties⁶; and
 2462 (6) the extension of time limits⁷.

1 As to the relevant regulations see PARA 631 ante.

2 The Secretary of State or, in relation to Wales, the National Assembly for Wales must, as soon as practicable after receipt of the written notice of appeal, advise the appellant and the local planning authority in writing of (1) the starting date; (2) the reference number allocated to the appeal; (3) the address to which written communications to the Secretary of State or the Assembly about the appeal are to be sent; and (4) the ground, or grounds, under the Town and Country Planning Act 1990 s 174(2) (as substituted) (see PARA 603 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(1) (as amended) (see PARAS 1193, 1197 post), as the case may be, on which the appeal has been brought: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 4; Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 4. 'Starting date' means the date of the Secretary of State's or the Assembly's written notice to the appellant and the local planning authority under these provisions: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(1) (renumbered by SI 2004/3157). For the meaning of 'appellant' see PARA 631 notes 2, 10 ante; for the meaning of 'notice of appeal' see PARA 631 note 4 ante; and for the meaning of 'local planning authority' for these purposes see PARA 631 note 7 ante. As to the Secretary of State and the Assembly see PARAS 19-20 ante; and as to the use of electronic communications see PARA 631 the text and notes 16-19 ante.

3 The local planning authority must, within two weeks of the starting date, give written notice of the appeal to any (1) person on whom a copy of the enforcement notice has been served; (2) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and (3) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 5(1); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 5(1). The notice so given must include: (a) the name of the appellant and the address of the land to which the appeal relates; (b) the starting date; (c) the reference number allocated to the appeal; (d) a description of the alleged breach of control; (e) in the case of an appeal against an enforcement notice under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 ante), a statement setting out the specified additional matters; (f) the ground, or grounds, under s 174(2) (as substituted) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(1) (as amended), as the case may be, on which the appeal is made; (g) a statement that representations may be submitted to the Secretary of State within six weeks of the starting date (or, in Wales, may be submitted to the Assembly so as to be received by it within six weeks of the starting date) and the address to which such representations should be sent; (h) a statement that any representations made by any person mentioned in heads (1)-(3) supra will be sent to the appellant and the local planning authority; and (i) a statement that any such representations will be considered by the Secretary of State or the Assembly when determining the appeal unless any person mentioned in heads (1)-(3) supra withdraws them within six weeks of the starting date: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 5(2); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 5(2). The specified additional matters referred to in head (e) supra are the additional matters specified in the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 4 or, as the case may be, in the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 3 (see PARA 564 ante): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (as renumbered: see note 2 supra), reg 5(2)(e); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(1) (as renumbered: see note 2 supra), reg 5(2)(e).

4 The local planning authority must submit to the Secretary of State or, in relation to Wales, to the Assembly, and copy to the appellant within two weeks of the starting date (or in Wales, so as to be received within two weeks of that date) (1) a completed questionnaire; and (2) a copy of each of the documents referred to in it; and the questionnaire must state the date on which it is submitted to the Secretary of State or the Assembly: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 6(1), (2); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 6(1), (2). 'Questionnaire' means a document in the form supplied by the Secretary of State or, in Wales, by the Assembly to local planning authorities for the purpose of proceedings under the relevant regulations, and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified a local planning authority of (a) publication of the form on the website; (b) the address of the website; and (c) the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 2(1) (as renumbered and amended: see note 2 supra); Town and Country Planning (Enforcement) (Written

Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 2(1) (as renumbered and amended: see note 2 supra).

5 See, in relation to England, the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 7 (as amended). The notice of appeal, the documents accompanying it and any statement submitted under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 6 (see PARA 605 ante) is to comprise the appellant's representations in relation to the appeal: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 7(1). The local planning authority may elect to treat the questionnaire, the documents submitted with it and the statement submitted under the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 9 (see PARA 607 ante) as its representations in relation to the appeal; and, where it does so, it must notify the Secretary of State and the appellant accordingly when submitting the questionnaire or sending the copy in accordance with the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 6 (see note 4 supra): reg 7(2). If the appellant wishes to make any further representations to those in reg 7(1), he must submit two copies of those further representations to the Secretary of State within six weeks of the starting date: reg 7(3). Where the local planning authority does not elect as described in reg 7(2), it must submit two copies of its written representations to the Secretary of State within six weeks of the starting date and these must include (1) a summary of the local planning authority's response to each of the grounds on which the appeal is brought; and (2) a statement as to whether it would be prepared to grant planning permission for the matters alleged in the enforcement notice to constitute a breach of planning control, or to grant listed building consent or conservation area consent for the works to which the listed building enforcement notice or conservation area enforcement notice relates, as the case may be, and, if so, particulars of the conditions, if any, which the authority would wish to impose on the permission or consent: reg 7(4). Any representations made to the Secretary of State under reg 7(3) or (4) are to be dated and submitted to the Secretary of State on the date they bear: reg 7(5). The Secretary of State must, as soon as practicable after receipt, send a copy of any representations made to him by the local planning authority to the appellant and must send a copy of any representations made to him by the appellant to the local planning authority: reg 7(6). The appellant and the local planning authority must submit two copies of any comments they have on each other's representations to the Secretary of State within nine weeks of the starting date; and the Secretary of State must, as soon as practicable after receipt, send a copy of these further comments to the other party: reg 7(7). The Secretary of State may disregard further information from the appellant and the local planning authority which was not submitted within nine weeks of the starting date unless that further information has been requested by him: reg 7(8). Where a party to which reg 7 (as amended) applies elects to use electronic communications for submitting, sending, copying, or sending a copy of any representations, questionnaire or other document, reg 7 (as amended) has effect subject to the following modifications (a) where the party so electing is the appellant, in reg 7(3) and (7) omit the words 'two copies of'; (b) where the party so electing is the local planning authority, in reg 7(4) and (7) omit the words 'two copies of': reg 7(9) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 7(1)-(9) (reg 7(9) added by SI 2004/3157) which refers to the Assembly rather than to the Secretary of State, and to the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, regs 5, 8.

6 If an interested person notified under the provisions set out in note 3 supra wishes to submit representations to the Secretary of State or, in relation to Wales, to the Assembly, he must do so within six weeks of the starting date (or, in Wales, so as to be received within six weeks of the starting date): Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 8(1); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 8(1). The Secretary of State or the Assembly must (1) send to the appellant and the local planning authority, as soon as practicable after receipt, a copy each of all of the representations received from interested persons; and (2) specify a period of not less than two weeks within which any comments on the representations must be submitted; but he or the Assembly may disregard comments made by the local planning authority under head (2) supra where the authority failed to notify interested persons in accordance with the provisions set out in note 3 supra: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 8(2), (3); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 8(2), (3).

7 The Secretary of State or the Assembly may in a particular case give directions setting later time limits than those prescribed by the relevant regulations: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 9; Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 9.

UPDATE

631-632 Jurisdiction, Procedure before determination of the appeal

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iii) Determination of Certain Appeals by Written Representations/C. ENFORCEMENT APPEALS/633. Decision on appeal.

633. Decision on appeal.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may proceed to a decision on an enforcement appeal³ taking into account only such written representations⁴ as have been submitted within the relevant time limits⁵. He or the Assembly may also, after giving the appellant and the local planning authority written notice⁶ of his or its intention to do so, proceed to a decision on an appeal notwithstanding that no written representations have been made within the relevant time limits if it appears to him or to the Assembly that he or it has sufficient material before him or before the Assembly to enable him or it to reach a decision on the merits of the case⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 Ie such an appeal as is described in PARA 631 ante.

4 For the meaning of 'written representations' see PARA 631 note 5 ante.

5 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 10(1); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 10(1). For these purposes, 'relevant time limits' means the time limits prescribed by the relevant regulations or, where the Secretary of State or the Assembly has exercised his or its power to extend them under the provisions set out in PARA 632 note 7 ante, any later time limits: Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 10(3); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 10(3).

6 As to the use of electronic communications see PARA 631 the text and notes 16-19 ante.

7 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 10(2); Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 10(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/634. Jurisdiction.

(iv) Hearing of Transferred and Non-transferred Appeals

A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS

634. Jurisdiction.

The Town and Country Planning (Hearings Procedure) (England) Rules 2000¹ apply in relation to any hearing² held in England for the purposes of a non-transferred or a transferred appeal³ made on or after 1 August 2000 against a planning decision or failure to take such a decision under the specified provisions of the Town and Country Planning Act 1990⁴ or of the Planning (Listed Buildings and Conservation Areas) Act 1990⁵, but do not apply to any hearing by reason of the application of any provision mentioned above by any other enactment⁶. Where a hearing is held into an appeal arising from an application in respect of which the Mayor of London⁷ has directed the local planning authority to refuse the application, the 2000 Rules apply subject to prescribed modifications⁸.

Similarly, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003⁹ apply in relation to any hearing¹⁰ caused by the National Assembly for Wales¹¹ to be held in Wales for the purposes of a non-transferred or transferred appeal¹² made on or after 1 June 2003 before it determines:

- 2463 (1) an application for planning permission referred to it¹³, or an appeal to it¹⁴, under specified provisions of the Town and Country Planning Act 1990¹⁵, including an appeal made the specified provision¹⁶ of that Act as it is applied to tree preservation orders¹⁷;
- 2464 (2) an application for listed building consent referred to it¹⁸, or for the variation or discharge of conditions referred to it¹⁹, or an appeal to it²⁰ under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990²¹;
- 2465 (3) an application for conservation area consent referred to it²² or an appeal to it²³ under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 as those provisions are applied²⁴ in relation to such consent; or
- 2466 (4) an appeal against the service of a tree preservation enforcement notice²⁵ under specified provisions²⁶ of the Town and Country Planning Act 1990²⁷.

Those rules do not, however, apply to any hearing by reason of the application of any provision mentioned in heads (1) to (4) above by any other enactment²⁸.

1 I.e. the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626 (as amended): see PARA 635 et seq post.

2 For these purposes, 'hearing' means a hearing in relation to which the relevant rules apply: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956).

3 For these purposes, 'non-transferred appeal' means an appeal which falls to be determined by the Secretary of State, including an appeal which falls to be so determined by virtue of a direction under the Town and Country Planning Act 1990 Sch 6 para 3(1) (see PARA 624 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 3(1) (see PARA 1202 post); and 'transferred appeal' means an appeal which falls to be determined by a person appointed by the Secretary of State under the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 et seq post): Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 2 supra). As to the Secretary of State see PARA 19 ante.

4 I.e. under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

5 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 post) or under s 20 as applied by s 74(3) (see PARA 1190 post).

6 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 3(1). For transitional provisions see r 3(2).

7 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

8 See the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 20.

9 le the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271 (as amended): see PARA 635 et seq post.

10 For these purposes, 'hearing' means a hearing in relation to which the relevant rules apply: *ibid* r 2(1) (renumbered by SI 2004/3172).

11 As to the Assembly see PARA 20 ante.

12 For these purposes, 'non-transferred appeal' means an appeal which falls to be determined by the Assembly, including an appeal which falls to be so determined by virtue of a direction under the Town and Country Planning Act 1990 Sch 6 para 3(1) (see PARA 624 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 3(1) (see PARA 1202 post); and 'transferred appeal' means an appeal which falls to be determined by a person appointed by the Assembly under the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 et seq post): Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 10 supra).

13 le under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

14 le under *ibid* s 78 (as amended): see PARA 598 ante.

15 See notes 13-14 supra.

16 See note 14 supra.

17 As to the application of the Town and Country Planning Act 1990 s 78 (as amended) to tree preservation orders see PARA 883 post.

18 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended): see PARA 1115 post.

19 le under *ibid* s 12 (as amended) as applied by s 19 (as amended): see PARA 1131 post.

20 le under *ibid* s 20 (as amended): see PARA 1186 post.

21 See notes 18-20 supra.

22 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post) including s 12 (as amended) as applied by s 19 (as amended) (see PARA 1131 post).

23 See note 20 supra.

24 le applied by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3): see PARA 1190 post.

25 As to tree preservation enforcement notices see PARA 874 post.

26 le under the Town and Country Planning Act 1990 s 208 (as amended): see PARA 885 post.

27 Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 3(1). For transitional provisions see r 3(2).

28 *Ibid* r 3(1).

UPDATE

634 Jurisdiction

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--See also SI 2000/1626 r 3A (added by SI 2009/455).

NOTE 8--SI 2000/1626 r 20 amended: SI 2009/455.

NOTE 27--See also SI 2003/1271 r 3A (added by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/635. Pre-hearing procedure; in general.

635. Pre-hearing procedure; in general.

The local planning authority¹ must, on receipt of the relevant notice², forthwith inform the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ and the appellant⁵ in writing⁶ of the name and address of any statutory party⁷ who has made representations to the authority⁸. The Secretary of State or the Assembly must, as soon as practicable thereafter, inform the appellant and the local planning authority in writing of the name and address of any statutory party who has made representations to him or to it⁹.

The local planning authority must ensure that within two weeks of the starting date¹⁰;

- 2467 (1) the Secretary of State (or the Assembly) and the appellant have received a completed questionnaire¹¹ and a copy of each of the documents referred to in it;
- 2468 (2) any statutory party and other person who made representations to the local planning authority about the application occasioning the appeal¹²,

has been notified that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State or to the Assembly¹³.

Where a hearing is to be held for the purposes of a transferred appeal¹⁴, the Secretary of State or the Assembly must notify the name of the inspector¹⁵ to every person entitled to appear at or take part in¹⁶ the hearing¹⁷. Where, however, the Secretary of State or the Assembly appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the hearing is held, the inspector holding the hearing must, at its commencement, announce his name and the fact of his appointment¹⁸.

The appellant and the local planning authority must ensure that, within six weeks of the starting date, two copies of their hearing statement¹⁹ have been received by the Secretary of State or the Assembly and a copy has been received by any statutory party²⁰. The Secretary of State or the Assembly may in writing require the appellant and the local planning authority to provide such further information about the matters contained in their hearing statement as he or it may specify²¹. Any statutory party, and any person who made representations to the local planning authority about the application occasioning the appeal or who was notified about the application occasioning the appeal, must ensure that the Secretary of State or the Assembly has received three copies of any written comments they wish to make concerning the appeal

within six weeks of the starting date²². The appellant and the local planning authority must ensure that the Secretary of State or the Assembly has received two copies, and any statutory party a copy, of any comments the local planning authority and the appellant wish to make on:

- 2469 (a) each other's hearing statement;
- 2470 (b) comments made pursuant to the above provisions²³; and
- 2471 (c) comments made to them by any other person,

within nine weeks of the starting date²⁴.

The Secretary of State or the Assembly must send, as soon as practicable after receipt, a copy of any hearing statement received by him or by it²⁵, of any further information provided²⁶ and of any comments received²⁷ from, in each case, the appellant or the local planning authority to the other of those two parties²⁸. He or the Assembly must also send a copy of any written comments made by persons pursuant to the above provisions²⁹ to the local planning authority and the appellant³⁰.

The local planning authority must afford to any person who so requests a reasonable opportunity³¹ to inspect, and where practicable, take copies of:

- 2472 (i) the local planning authority's completed questionnaire, hearing statement and any document copied to the authority³²; and
- 2473 (ii) further information provided by the authority³³ and comments made by the authority³⁴,

and must specify in its hearing statement the time and place where such opportunity is to be afforded³⁵.

The Secretary of State or the Assembly must send to the inspector, as soon as practicable after receipt, any hearing statement, document, part of any document or written comments received by the Secretary of State or the Assembly within the relevant period specified³⁶ for receiving such documents³⁷. In the case of a non-transferred appeal, the Secretary of State or the Assembly, and in the case of a transferred appeal, the inspector, may in determining the appeal disregard any comments made³⁸ which are received after the relevant period specified for receipt³⁹.

1 For these purposes, 'local planning authority' means the body which was responsible for dealing with the application occasioning the appeal: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (renumbered by SI 2004/3172). As to the appeals to which the relevant rules apply see PARA 634 ante; and as to local planning authorities generally see PARA 28 et seq ante.

2 'The relevant notice' means the Secretary of State's or Assembly's written notice informing the appellant and the local planning authority that a hearing is to be held: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra). As to the use of electronic communications see note 6 infra.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 In relation to Wales, 'appellant', in the case of an application, means the applicant: Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra). There is no equivalent definition in relation to England.

6 As to the use of electronic communications see, in relation to England, the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(2)-(8) (added by SI 2003/956). In those 2000 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of

being effected electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address; and references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(2) (as so added). Rule 2(4)-(8) (as added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules to give or send any statement, notice or other document to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 2(6) (as so added). A requirement in those rules that any document should be in writing is fulfilled where that document meets the criteria in heads (1)-(3) supra and 'written' and cognate expressions are to be construed accordingly: r 2(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or other document in question: r 2(8) (as so added). Notices or documents required or authorised to be sent or supplied under those rules may be sent or supplied by post or by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: r 19 (substituted by SI 2003/956). For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616); and 'document' includes a photograph, map or plan: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra).

Where a person is no longer willing to accept the use of electronic communications for any purpose under those rules which is capable of being effected electronically, the person must give notice in writing (a) withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose; or (b) revoking any agreement entered into with the Secretary of State or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and is to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: r 19A (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, rr 2(2)-(8), 19, 19A, which refer to the Assembly rather than to the Secretary of State (rr 2(2)-(8), 19A added, and r 19 substituted, by SI 2004/3172); and for the relevant definitions see the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra). Any obligation imposed by those 2003 Rules to send more than one copy of a statement or other document may, where sending is carried out using electronic communications, be complied with by sending one copy only of the statement or (as the case may be) document in question: Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 18(3) (added by SI 2004/3172).

7 For these purposes, 'statutory party' means (1) a person mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1)(b)(i) (see PARA 474 ante at head (2)(a) in the text) whose representations the Secretary of State or the Assembly is required by art 19(3) to take into account in determining the appeal to which a hearing relates; and such a person whose representations the local planning authority was required by art 19(1) to take into account in determining the application occasioning the appeal; and (2) a person whose representations the Secretary of State or the Assembly is required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(3)(b), (5) (see PARA 1114 post) to take into account in determining the appeal to which a hearing relates and a person whose representations the local planning authority was required by reg 6(3)(b) to take into account in determining the application occasioning the appeal: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra).

8 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 4(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 4(1).

9 See note 8 supra.

10 'Starting date' means the date of the (1) Secretary of State's or Assembly's written notice to the appellant and the local planning authority that he or it has received all the documents required to enable him or the Assembly to entertain the appeal; or (2) relevant notice, whichever is the later: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra).

The Secretary of State or the Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the relevant rules, and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 18(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 18(1). Where a hearing is to be held in respect of a transferred appeal, an inspector may in place of the Secretary of State or the Assembly allow such further time: see the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 10(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 10(1), (2).

11 'Questionnaire' means a document in the form supplied by the Secretary of State or the Assembly to local planning authorities for the purpose of proceedings under the relevant rules; and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified the local planning authority of (1) publication of the form on the website; (2) the address of the website; and (3) the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered and amended: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered and amended: see note 1 supra).

12 As to the appeals to which the rules set out in the text apply see PARA 634 ante.

13 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 4(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 4(2).

14 For the meaning of 'transferred appeal' see PARA 634 notes 3, 12 ante.

15 For these purposes, 'inspector' means, in relation to a transferred appeal, a person appointed by the Secretary of State or the Assembly to determine an appeal: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra). In relation to a non-transferred appeal, 'inspector' means a person appointed by the Secretary of State or the Assembly to hold a hearing or a reopened hearing: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as so renumbered); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as so renumbered). For the meaning of 'non-transferred appeal' see PARA 634 notes 3, 12 ante.

16 As to the persons so entitled see PARA 638 post.

17 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 5(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 5(1), (2).

18 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 5(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 5(3).

19 'Hearing statement' means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at a hearing and copies of any documents which that person intends to refer to or put in evidence: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (as renumbered: see note 1 supra); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (as renumbered: see note 1 supra).

20 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(1).

21 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(2). Such information must be provided in writing and the appellant or the local planning authority, as the case may be, must ensure that two copies are received by the Secretary of State or the Assembly and a copy is received by any statutory party within such period as the Secretary of State or the Assembly may reasonably require: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(2).

Where a hearing is to be held in respect of a transferred appeal, an inspector may in place of the Secretary of State or the Assembly take such steps as the Secretary of State or the Assembly is required or enabled to take under or by virtue of the rules cited in this note; and where an inspector requires further information or copies pursuant to those rules, that information or copies must be sent to him: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 10(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 10(1), (2).

22 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(3).

23 Ie pursuant to the rules cited in note 22 supra.

24 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(4).

25 Ie pursuant to the rules cited in note 20 supra.

26 Ie pursuant to the rules cited in note 21 supra.

27 Ie pursuant to the rules cited in note 24 supra.

28 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(5)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(5)(a). Where a hearing is to be held in respect of a transferred appeal, an inspector may in place of the Secretary of State or the Assembly take such steps as the Secretary of State or the Assembly is required or enabled to take under or by virtue of the rules cited in this note: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 10(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 10(1), (2).

29 Ie pursuant to the rules cited in note 22 supra.

30 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(5)(b); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(5)(b); and see note 28 supra.

31 For these purposes, an opportunity is to be taken to have been afforded to a person where the person is notified of (1) publication on a website of any document mentioned in heads (i)-(ii) in the text; (2) the address of the website; (3) the place on the website where the document may be accessed, and how it may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(6A) (added by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(6A) (added by SI 2004/3172).

32 Ie under the rules cited in notes 28, 30 supra.

33 Ie under the rules cited in note 21 supra.

34 Ie under the rules cited in note 24 supra.

35 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(6); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(6).

36 Ie pursuant to the rules cited in notes 20-24 supra.

37 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(7); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(7).

38 Ie pursuant to the rules cited in notes 22, 24 supra.

39 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6(8); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6(8).

UPDATE

635 Pre-hearing procedure; in general

TEXT AND NOTES 2, 8--For 'relevant notice' read 'notice under SI 2000/1626 r 3A' (see PARA 634); SI 2000/1626 r 4(1) (amended by SI 2009/455). Definition of 'relevant notice' omitted in consequence: SI 2000/1626 r 2(1) (amended by SI 2009/455). See also SI 2003/1271 r 4(A) (added by SI 2007/2285).

NOTE 10--'Starting date' now means the date of the notice given by the Secretary of State under r 3A above: SI 2000/1626 r 2(1) (definition substituted by SI 2009/455).

TEXT AND NOTES 13-17--Local planning authority's notification and notification of the name of the inspector must be in writing: SI 2000/1626 rr 4(2), 5(2) (amended by SI 2009/455).

TEXT AND NOTE 24--SI 2000/1626 r 6(4) revoked: SI 2009/455.

TEXT AND NOTES 27, 28--Words 'and of any comments received' omitted: SI 2000/1626 r 6(5)(a) (amended by SI 2009/455).

TEXT AND NOTES 34, 35--Words 'and comments made by the authority' omitted: SI 2000/1626 r 6(6) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/636. Date and notification of hearing.

636. Date and notification of hearing.

The date fixed by the Secretary of State¹ or, in relation to Wales, by the National Assembly for Wales² for the holding of a hearing³ must be:

- 2474 (1) not later than 12 weeks after the starting date⁴, unless he or it considers such a date impracticable; or
- 2475 (2) the earliest date after that period which he or it considers to be practicable⁵.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the appellant⁶ and the local planning authority⁷, he or the Assembly must give not less than four weeks' written notice⁸ of the date, time and place fixed by him or by the Assembly for the holding of a hearing to every person entitled to appear at or take part in⁹ the hearing¹⁰.

The Secretary of State or the Assembly may vary the date fixed for the holding of a hearing, whether or not the date as varied is within the period of 12 weeks mentioned above¹¹. He or the Assembly may also vary the time or place for the holding of a hearing and must give such notice of any variation as appears to him or to the Assembly to be reasonable¹².

The Secretary of State or the Assembly may in writing¹³ require the local planning authority to take one or both of the following steps:

- 2476 (a) not less than two weeks¹⁴ before the date fixed for the holding of a hearing, to publish a notice of the hearing in one or more newspapers circulating in the locality in which the land¹⁵ is situated;
- 2477 (b) to send a notice of the hearing to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify¹⁶.

Every notice of hearing so published or sent must contain:

- 2478 (i) a clear statement of the date, time and place of the hearing and of the powers enabling the Secretary of State (or the Assembly) or the inspector¹⁷ to determine the appeal in question;

- 2479 (ii) a written description of the land sufficient to identify approximately its location;
- 2480 (iii) a brief description of the subject matter of the appeal; and
- 2481 (iv) details of where and when copies of the local planning authority's completed questionnaire¹⁸ and documents¹⁹ sent by and copied to the authority²⁰ may be inspected²¹.

Where a hearing is to be held in respect of a transferred appeal²², an inspector may in place of the Secretary of State or the Assembly take such steps as he or it is required or enabled to take under or by virtue of the provisions set out above²³.

1 As to the Secretary of State see PARA 19 ante. See also the text and notes 22-23 infra.

2 As to the Assembly see PARA 20 ante. See also the text and notes 22-23 infra.

3 For the meaning of 'hearing' for these purposes see PARA 634 notes 2, 10 ante.

4 For the meaning of 'starting date' see PARA 635 note 10 ante.

5 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(1).

6 For the meaning of 'appellant' see PARA 635 note 5 ante.

7 For the meaning of 'local planning authority' for these purposes see PARA 635 note 1 ante.

8 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he and any person entitled to appear at or take part in the hearing have agreed that notice of the matters mentioned in the text may instead be accessed by that person via a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published the notice on a website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry [sic], the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(2A) (added by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(2A) (added by SI 2004/3172). It is apprehended that references to the 'inquiry' in the rules cited in this note are drafting errors, and that the references are intended to be references to the 'hearing'.

9 As to the persons so entitled see PARA 638 post.

10 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(2).

11 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(3). The rules cited in notes 8, 10 supra apply to a variation of a date as they applied to the date originally fixed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(3) (amended by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(3) (amended by SI 2004/3172).

12 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(4).

13 As to the use of electronic communications see PARA 635 note 6 ante.

14 As to the extension of time limits see PARA 635 note 10 ante.

15 For these purposes, 'land' means the land or building to which a hearing relates: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (renumbered by SI 2004/3172).

16 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(5); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(5).

- 17 For the meaning of 'inspector' see PARA 635 note 15 ante.
- 18 For the meaning of 'questionnaire' see PARA 635 note 11 ante.
- 19 For the meaning of 'document' see PARA 635 note 6 ante.
- 20 le under the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6 (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6 (as amended): see PARA 635 ante.
- 21 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(6); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(6).
- 22 For the meaning of 'transferred appeal' see PARA 634 notes 3, 12 ante.
- 23 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 10(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 10(1), (2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/637. Whether hearings procedure or local inquiry is appropriate.

637. Whether hearings procedure or local inquiry is appropriate.

If either the appellant¹ or the local planning authority² at any time before or during the hearing³ is of the opinion that the hearings procedure⁴ is inappropriate in determining the appeal⁵ and that the appeal should not proceed in this way then they may inform the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ before the hearing, or the inspector⁸ during the hearing, of their opinion and the reasons for it⁹. Either:

- 2482 (1) the Secretary of State or the Assembly, before the hearing, must, after consulting the other party who may inform him or it of his opinion¹⁰, decide whether an inquiry¹¹ should be arranged instead¹²; or
- 2483 (2) the inspector, during the hearing, must, after consulting the other party who may inform the inspector of his opinion¹³, decide whether the hearing should be closed and an inquiry held instead¹⁴.

If at any time during a hearing it appears to the inspector that the hearings procedure is inappropriate, he may, after consulting the appellant and the local planning authority, decide to close the proceedings and arrange for an inquiry to be held instead¹⁵.

- 1 For the meaning of 'the appellant' see PARA 635 note 5 ante.
- 2 For the meaning of 'local planning authority' for these purposes see PARA 635 note 1 ante.
- 3 For the meaning of 'hearing' see PARA 634 notes 2, 10 ante.
- 4 le the procedure under the rules described in PARA 634 ante.
- 5 le an appeal such as is described in PARA 634 ante.
- 6 As to the Secretary of State see PARA 19 ante.
- 7 As to the Assembly see PARA 20 ante.

8 For the meaning of 'inspector' for these purposes see PARA 635 note 15 ante.

9 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 8(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 8(1).

10 le pursuant to the rules cited in note 9 supra.

11 For these purposes, 'inquiry' means (1) a local inquiry in relation to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended) or the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended) apply; or (2) a local inquiry in relation to which the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended) or the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended) apply: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 2(1) (renumbered by SI 2003/3172). As to such local inquiries see PARA 677 et seq post.

12 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 8(1)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 8(1)(a).

13 See note 10 supra.

14 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 8(1)(b); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 8(1)(b).

15 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 8(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 8(2).

UPDATE

637 Whether hearings procedure or local inquiry is appropriate

TEXT AND NOTES 1-14--This provision is now subject to r 8(3), (4): SI 2000/1626 r 8(1) (amended by SI 2009/455). In the case of an appeal under the Town and Country Planning Act 1990 s 78 (see PARA 833), if either the appellant or the local planning authority at any time before or during a hearing is of the opinion that the hearings procedure is inappropriate to determine the appeal and that the appeal should not proceed in this way then they may inform the Secretary of State in writing, before the hearing, or the inspector, during the hearing and the reasons for it: SI 2000/1626 r 8(3) (added by SI 2009/455). Where r 8(3) applies, the Secretary of State must consult the other party, who may inform the Secretary of State of his opinion in writing, before exercising the power in the Town and Country Planning Act 1990 s 319A(4): SI 2000/1626 r 8(4) (added by SI 2009/455).

TEXT AND NOTES 6-9--After 'may inform the Secretary of State' read 'in writing': SI 2000/1626 r 8(1) (amended by SI 2009/455).

TEXT AND NOTES 10-12--In head (1), after 'may inform him or it of his opinion' read 'in writing': SI 2000/1626 r 8(1)(a) (amended by SI 2009/455).

TEXT AND NOTE 15--An appeal under the Town and Country Planning Act 1990 s 78 (see PARA 833) is now excepted from this provision: SI 2000/1626 r 8(2) (amended by SI 2009/455).

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Non-transferred Appeals/A. APPEALS REGARDING PLANNING APPLICATIONS AND DECISIONS/638. Participation in and procedure at the hearing; site inspections.

638. Participation in and procedure at the hearing; site inspections.

The persons entitled to appear at or take part in the hearing¹ are the appellant², the local planning authority³ and any statutory party⁴; but nothing in the above provision prevents the inspector⁵ from permitting any other person to appear at or take part in a hearing, and such permission must not be unreasonably withheld⁶. Any person entitled or permitted to appear or take part may do so on his own behalf or be represented by any other person⁷.

Except as otherwise provided in the relevant rules⁸, the inspector is to determine the procedure at a hearing⁹. A hearing must take the form of a discussion led by the inspector and cross-examination is not to be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues¹⁰, in which case he must consider, after consulting the appellant and the local planning authority, whether the hearing should be closed and an inquiry¹¹ held instead¹².

At the start of the hearing the inspector must identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear or take part¹³; but nothing in the above provision precludes any person so entitled or permitted from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues so identified by the inspector¹⁴.

A person entitled to appear at or take part in a hearing is to be entitled to call evidence but, subject to that and to the specific provisions set out below¹⁵, the calling of evidence is otherwise to be at the inspector's discretion¹⁶. The inspector may refuse to permit the giving or production of evidence or the presentation of any other matter which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the hearing¹⁷.

The inspector may require any person appearing or present at a hearing who, in his opinion, is behaving in a disruptive manner to leave¹⁸ and may refuse to permit that person to return or permit him to return only on such conditions as he may specify¹⁹; but any such person may submit to him any evidence or other matter in writing before the close of the hearing²⁰. The inspector may proceed with a hearing in the absence of any person entitled to appear at or take part in it²¹.

The inspector may allow any person to alter or add to a hearing statement²² so far as may be necessary for the purposes of the hearing; but he must, if necessary by adjourning the hearing, give every other person entitled to appear or take part who is appearing at or taking part in the hearing an adequate opportunity of considering any fresh matter or document²³. He may take into account any written representation or evidence or any other document received by him from any person before a hearing opens or during the hearing provided that he discloses it at the hearing²⁴.

The inspector may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is to be required²⁵.

Where it appears to the inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the appeal site he may adjourn the hearing to that site and conclude the hearing there provided he is satisfied that:

- 2484 (1) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- 2485 (2) all parties present at the hearing would have the opportunity to attend the adjourned hearing; and
- 2486 (3) the local planning authority, the appellant or any statutory party has not raised reasonable objections to it being continued at the appeal site²⁶.

Unless the hearing is to be so adjourned to the appeal site, the inspector may inspect the land²⁷ during the hearing or after its close and must inspect the land if requested to do so by the appellant or the local planning authority before or during the hearing²⁸. Where the inspector intends to make such an inspection, he must ask the appellant and the local planning authority whether they wish to be present²⁹. Where either of them has indicated a wish to be present the inspector must announce the date and time at which he proposes to make the inspection during the hearing and must make the inspection in the company of:

- 2487 (a) the appellant and the local planning authority; and
- 2488 (b) at the inspector's discretion, any other person entitled or permitted to appear at or take part in the hearing who is appearing or taking part, or did appear at or take part in it³⁰.

The inspector is not, however, bound to defer a site inspection where any person mentioned in heads (a) and (b) above is not present at the time appointed³¹.

1 For the meaning of 'hearing' for these purposes see PARA 634 notes 2, 10 ante.

2 For the meaning of 'the appellant' see PARA 635 note 5 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 635 note 1 ante.

4 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 9(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 9(1). For the meaning of 'statutory party' see PARA 635 note 7 ante.

The Secretary of State or, in relation to Wales, the National Assembly for Wales may at any time before the close of a hearing request from any person so entitled additional copies of the following (1) a hearing statement or comments sent in accordance with the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6 (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6 (as amended) (see PARA 635 ante); or (2) any other document or information sent to the Secretary of State or the Assembly before or during a hearing, and may specify the time within which such copies should be received by him or by it; and any person so requested must ensure that the copies are received within the period specified: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 18(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 18(2). Where a hearing is to be held or has been held in respect of a transferred appeal, an inspector may in place of the Secretary of State or the Assembly take such steps as the Secretary of State or the Assembly is so required or enabled to take; and where an inspector so requires further information or copies that information or copies must be sent to him: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 10(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 10(1), (2). As to the Secretary of State and the Assembly see PARAS 19-20 ante; and for the meaning of 'document' see PARA 635 note 6 ante.

5 For the meaning of 'inspector' for these purposes see PARA 635 note 15 ante.

6 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 9(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 9(2).

7 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 9(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 9(3).

8 As to the relevant rules see PARA 634 ante.

- 9 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(1).
- 10 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(2).
- 11 For the meaning of 'inquiry' see PARA 637 note 11 ante.
- 12 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(3).
- 13 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(4).
- 14 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(5); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(5).
- 15 le subject to the rules cited in notes 17-20 infra.
- 16 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(6); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(6).
- 17 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(7); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(7).
- 18 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(8)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(8)(a).
- 19 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(8)(b), (c); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(8)(b), (c).
- 20 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(8); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(8).
- 21 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(10); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(10).
- 22 le a hearing statement received under the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 6 (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 6 (as amended): see PARA 635 ante.
- 23 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(9); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(9).
- 24 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(11); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(11).
- 25 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 11(12); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 11(12).
- 26 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 12(1); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 12(1).
- 27 For the meaning of 'land' for these purposes see PARA 636 note 15 ante.
- 28 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 12(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 12(2).
- 29 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 12(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 12(3).
- 30 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 12(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 12(4).
- 31 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 12(5); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 12(5).

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639. Procedure after the hearing.

Where a hearing¹ has been held for the purposes of a non-transferred appeal², then after the close of the hearing, the inspector³ must make a report in writing⁴ to the Secretary of State⁵ or, if the hearing was held in Wales, to the National Assembly for Wales⁶ which must include his conclusions and his recommendations or his reasons for not making any recommendations⁷. When making his or its determination the Secretary of State or the Assembly may disregard any written representations, evidence or other document⁸ received after the hearing has closed⁹. If, after the close of the hearing, the Secretary of State or the Assembly:

- 2489 (1) differs from the inspector on any matter of fact mentioned in, or appearing to him or to it to be material to, a conclusion reached by the inspector; or
- 2490 (2) takes into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy,

and is for that reason disposed to disagree with a recommendation made by the inspector, he or the Assembly may not come to a decision which is at variance with that recommendation without:

- 2491 (a) first notifying the persons entitled to appear at or take part in the hearing¹⁰ who appeared at or took part in it of his or its disagreement and the reasons for it; and
- 2492 (b) affording them an opportunity of making written representations to him or to the Assembly or, if he or it has taken into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy, of asking for the reopening of the hearing¹¹.

Those making written representations or requesting the hearing to be reopened pursuant to head (b) above must ensure that such representations or such a request are or is received by the Secretary of State or the Assembly within three weeks¹² of the date of his or its notification under that head¹³. The Secretary of State or the Assembly may, as he or it thinks fit, cause a hearing to be reopened, and must do so if asked by the appellant¹⁴ or the local planning authority¹⁵ in the circumstances¹⁶ and within the period¹⁷ mentioned above¹⁸. Where a hearing is reopened, whether by the same or a different inspector, the Secretary of State or the Assembly must send to the persons entitled to appear at or take part in the hearing who appeared at or took part in it a written statement of the matters with respect to which further evidence is invited¹⁹.

Where a hearing has been held for the purposes of a transferred appeal²⁰, then when making his decision the inspector may disregard any written representations or evidence or any other document received after the hearing has closed²¹. If, after the close of the hearing, an inspector proposes to take into consideration any new evidence or any new matter of fact, not being a matter of government or Assembly policy, which was not raised at the hearing and which he considers to be material to his decision, he may not come to a decision without first:

- 2493 (i) notifying persons entitled to appear at or take part in the hearing who appeared at or took part in it of the matter in question; and
 2494 (ii) affording them an opportunity of making written representations to him or of asking for the reopening of the hearing;

and they must ensure that such written representations or such a request to reopen the hearing are or is received by the Secretary of State or the Assembly within three weeks of the date of the notification²². An inspector may, as he thinks fit, cause a hearing to be reopened and he must do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned above²³. Where a hearing is reopened the inspector must send to the persons entitled to appear at or take part in the hearing who appeared at or took part in it a written statement of the matters with respect to which further evidence is invited²⁴.

1 For the meaning of 'hearing' for these purposes see PARA 634 notes 2, 10 ante.

2 For the meaning of 'non-transferred appeal' see PARA 634 notes 3, 12 ante.

3 For the meaning of 'inspector' see PARA 635 note 15 ante.

4 As to the use of electronic communications see PARA 634 note 6 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the Assembly see PARA 20 ante.

7 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(1), (2).

8 For the meaning of 'document' see PARA 635 note 6 ante.

9 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(3).

10 As to the persons so entitled see PARA 638 ante.

11 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(4).

12 As to the extension of time limits see PARA 635 note 10 ante.

13 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(5); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(5).

14 For the meaning of 'the appellant' see PARA 635 note 5 ante.

15 For the meaning of 'local planning authority' for these purposes see PARA 635 note 1 ante.

16 Ie in the circumstances mentioned in the rules cited in note 11 supra.

17 Ie within the period mentioned in the rules cited in note 13 supra.

18 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(6); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(6).

19 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(6)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(6)(a). The Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(2)-(6) (as amended) (see PARA 636 ante) apply as if the references to a hearing were references to a reopened hearing: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 13(6)(b); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 13(6)(b).

20 For the meaning of 'transferred appeal' see PARA 634 notes 3, 12 ante.

21 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 14(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 14(1), (2).

22 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 14(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 14(3).

23 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 14(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 14(4).

24 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 14(4)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 14(4)(a). The Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(2)-(6) (as amended) (see PARA 636 ante) apply as if the references to a hearing were references to a reopened hearing: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 14(4)(b); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 14(4)(b).

UPDATE

639 Procedure after the hearing

TEXT AND NOTE 11--In head (a), the notification must be in writing: SI 2000/1626 r 13(4) (amended by SI 2009/455).

TEXT AND NOTE 22--In head (i), the notification must be in writing: SI 2000/1626 r 14(3) (amended by SI 2009/455).

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640. Notification of decision and procedure if decision is subsequently quashed.

Where a hearing¹ has been held for the purposes of a non-transferred appeal², then the Secretary of State³ or, if the hearing was held in Wales, the National Assembly for Wales⁴ must notify his or its decision on an appeal⁵, and his reasons for it, in writing⁶ to all persons entitled to appear at or take part in the hearing⁷ who did appear or take part and to any other person who, having appeared at or taken part in the hearing, has asked to be notified of the decision⁸. Where a copy of the inspector's⁹ report¹⁰ is not sent with the notification of the decision, the notification must be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application¹¹ to the Secretary of State or to the Assembly¹².

Where a hearing has been held for the purposes of a transferred appeal¹³, then an inspector must notify his decision on an appeal, and his reasons for it, in writing to all persons entitled to appear at or take part in the hearing who did appear or take part and to any other person who, having appeared at or taken part in the hearing, has asked to be notified of the decision¹⁴. Any person so entitled to be notified of the inspector's decision may apply to the Secretary of State or the Assembly in writing¹⁵ for an opportunity¹⁶ of inspecting any documents listed in the notification and the Secretary of State or the Assembly must afford him that opportunity¹⁷.

Where a decision of the Secretary of State (or the Assembly) or an inspector on an appeal in respect of which a hearing has been held is quashed in proceedings before any court¹⁸, the Secretary of State or the Assembly:

- 2495 (1) must send to the persons entitled to appear at or take part in the hearing who appeared at or took part in it a written statement of the matters with respect to which further representations are invited for the purposes of his or its further consideration of the appeal;
- 2496 (2) must afford to those persons the opportunity of making written representations to him or to the Assembly in respect of those matters or of asking for the reopening of the hearing¹⁹; and
- 2497 (3) may, as he or the Assembly thinks fit, cause the hearing to be reopened or an inquiry held instead, whether by the same or a different inspector²⁰.

1 For the meaning of 'hearing' for these purposes see PARA 634 notes 2, 10 ante.

2 For the meaning of 'non-transferred appeal' see PARA 634 notes 3, 12 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 le on such an appeal as is described in PARA 634 ante.

6 Notification in writing of a decision and reasons is also to be taken to have been given to a person for these purposes where (1) the Secretary of State or the Assembly and the person have agreed that decisions and reasons so required to be given in writing may instead be accessed by that person on a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(2A) (added by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(2A) (added by SI 2004/3172).

7 As to the persons so entitled see PARA 638 ante.

8 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(1), (2).

9 For the meaning of 'inspector' see PARA 635 note 15 ante.

10 For these purposes, 'report' does not include any documents appended to the inspector's report; but any person who has received a copy of the report may apply to the Secretary of State or the Assembly in writing for an opportunity of inspecting any such documents and the Secretary of State or the Assembly must afford him that opportunity: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(4). A person so applying must ensure that his application is received within six weeks of the Secretary of State's or Assembly's decision: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(5)(b); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(5)(b). For these purposes, an opportunity is to be taken to have been afforded to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(4A) (added by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(4A) (added by SI 2004/3172). For the meaning of 'document' see PARA 635 note 6 ante; and as to the extension of time limits see PARA 635 note 10 ante.

11 A person so applying to the Secretary of State or the Assembly must ensure that his application is received within four weeks of the date of the Secretary of State's or Assembly's decision: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(5)(a); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(5)(a). As to the use of electronic communications see PARA 635 note 6 ante.

12 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 15(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 15(3).

13 For the meaning of 'transferred appeal' see PARA 634 notes 3, 12 ante.

14 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 16(1), (2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 16(1), (2).

15 Any person so making an application must ensure that it is received by the Secretary of State or the Assembly within six weeks of the date of the inspector's decision: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 16(4); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 16(4).

16 For these purposes, an opportunity is to be taken to have been afforded to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 16(4A) (added by SI 2003/956); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 16(5) (added by SI 2004/3172).

17 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 16(3); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 16(3).

18 As to challenging the validity of such a decision see PARA 43 et seq ante, PARA 650 post.

19 Those persons making representations or asking for the hearing to be reopened under head (2) in the text must ensure that such representations or such a request are or is received by the Secretary of State or the Assembly within three weeks of the date of the written statement sent under head (1) in the text: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 17(2); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 17(2).

20 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 17(1)(a)-(c); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 17(1)(a)-(c). If the Secretary of State or the Assembly reopens the hearing, the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 7(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 7(2)-(6) (as amended) (see PARA 636 ante) apply as if the references to a hearing were references to a reopened hearing: Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 17(1)(c); Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 17(1)(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/641. Jurisdiction.

B. ENFORCEMENT APPEALS

641. Jurisdiction.

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002¹ apply in relation to any hearing² held in England for the purposes of a non-transferred or a transferred appeal³ made on or after 23 December 2002 under:

2498 (1) the specified provisions⁴ of the Town and Country Planning Act 1990 regarding appeals against enforcement notices⁵;

2499 (2) the specified provisions⁶ of that Act regarding appeals against the refusal or non-determination of an application for a certificate of lawful use or development⁷;

2500 (3) the specified provisions⁸ of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding appeals against listed building enforcement notices⁹ or conservation area enforcement notices¹⁰.

Those rules do not, however, apply to any hearing by reason of the application of any provision mentioned in heads (1) to (3) above by or under any other enactment¹¹.

Similarly, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003¹² apply in relation to any hearing¹³ held in Wales for the purposes of a non-transferred or a transferred appeal¹⁴ made on or after 1 June 2003 under the statutory provisions mentioned in heads (1) to (3) above, but do not apply to any hearing by reason of the application of any such provision by or under any other enactment¹⁵.

1 Ie the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684 (as amended): see PARA 642 et seq post.

2 For these purposes, 'hearing' means a hearing to which the 2002 Rules apply: *ibid* r 2(1) (renumbered by SI 2003/956).

3 For these purposes, 'non-transferred appeal' means an appeal which falls to be determined by the Secretary of State, including an appeal which falls to be so determined by virtue of a direction under the Town and Country Planning Act 1990 Sch 6 para 3(1) (see PARA 624 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 3(1) (see PARA 1202 post); and 'transferred appeal' means an appeal which falls to be determined by a person appointed by the Secretary of State under the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 et seq post): Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered: see note 2 supra). As to the Secretary of State see PARA 19 ante.

4 Ie under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante.

5 Ie notices under *ibid* s 172 (as substituted): see PARA 561 ante.

6 Ie under *ibid* s 195 (as amended): see PARA 613 ante.

7 Ie a certificate under *ibid* s 191 or s 192 (each as substituted): see PARA 586 et seq ante.

8 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) (see PARAS 1191, 1193 post), or under that section as applied by s 74(3) (see PARAS 1174, 1197 post).

9 As to listed building enforcement notices see *ibid* s 38 (as amended); and PARA 1146 post.

10 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 3(1). For transitional provisions see r 3(2). As to conservation area enforcement notices see PARA 1180 post.

11 *Ibid* r 3(1).

12 Ie the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268 (as amended): see PARA 642 et seq post.

13 For these purposes, 'hearing' means a hearing to which the 2003 Rules apply: *ibid* r 2(1) (renumbered by SI 2004/3172).

14 For these purposes, 'non-transferred appeal' means an appeal which falls to be determined by the National Assembly for Wales, including an appeal which falls to be so determined by virtue of a direction under the Town and Country Planning Act 1990 Sch 6 para 3(1) (see PARA 624 ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 3(1) (see PARA 1202 post); and 'transferred appeal' means an appeal which falls to be determined by a person appointed by the Assembly under the Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 post): Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered: see note 13 supra). As to the Assembly see PARA 20 ante.

15 *Ibid* r 3(1). For transitional provisions see r 3(2).

UPDATE

641-642 Jurisdiction, Pre-hearing procedure; in general

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/642. Pre-hearing procedure; in general.

642. Pre-hearing procedure; in general.

The Secretary of State¹ or, if the hearing is to be held in Wales, the National Assembly for Wales² must, as soon as practicable after it is determined to hold a hearing³ under the relevant rules⁴, inform the appellant and the local planning authority⁵ in writing⁶ that a hearing is to be held⁷. The local planning authority must send to the Secretary of State and the appellant within two weeks of the starting date⁸ (or, if the hearing is to be held in Wales, send to the Assembly and the appellant so as to be received within two weeks of the starting date) a completed questionnaire⁹ and a copy of each of the documents referred to in it¹⁰. In the case of an enforcement appeal, it must also, within that two-week period, notify any:

- 2501 (1) person on whom a copy of the enforcement notice has been served;
- 2502 (2) occupier of property in the locality in which the land¹¹ to which the enforcement notice relates is situated; and
- 2503 (3) other person who in the opinion of the local planning authority is affected by the breach of planning control¹² or contravention of listed building or conservation area control¹³ which is alleged in the enforcement notice,

that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State or the Assembly¹⁴.

The Secretary of State or the Assembly must notify the name of the inspector¹⁵ to every person entitled to appear at or take part¹⁶ in the hearing¹⁷. Where, however, he or the Assembly appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the hearing is held, the inspector holding the hearing must, at its commencement, announce his name and the fact of his appointment¹⁸.

The appellant and the local planning authority must send two copies of their hearing statement¹⁹ to the Secretary of State or to the Assembly within six weeks of the starting date²⁰. He or the Assembly may in writing require the appellant and the local planning authority to provide such further information about the matters contained in their hearing statement as he or it may specify²¹.

Any person who was notified about the appeal under heads (1) to (3) above must send to the Secretary of State or to the Assembly three copies of any written comments they wish to make concerning the appeal within six weeks of the starting date (or, if the hearing is to be held in Wales, so that they are received within six weeks of that date)²². The appellant and the local planning authority must send to the Secretary of State or to the Assembly two copies of any comments the local planning authority and the appellant wish to make on:

- 2504 (a) each other's hearing statement;
- 2505 (b) comments made pursuant to the above provisions²³; and
- 2506 (c) comments made to them by any other person,

within nine weeks of the starting date (or, if the hearing is to be held in Wales, so that they are received within nine weeks of that date)²⁴.

The Secretary of State or the Assembly must send, as soon as practicable after receipt, a copy of any hearing statement received by him or by it²⁵, further information provided²⁶ and any comments received²⁷ from, in each case, the appellant or the local planning authority to the other of those two parties²⁸. He or it must also send a copy of any written comments made by persons notified about the appeal²⁹ to the local planning authority and the appellant³⁰.

The local planning authority must give any person who so requests a reasonable opportunity³¹ to inspect, and where practicable, take copies of the local planning authority's completed questionnaire, hearing statement and any document copied to the authority³² and of further information provided by the authority³³ and comments made by the authority³⁴ under the above provisions, and must specify in its hearing statement the time and place where such documents may be inspected³⁵.

The Secretary of State or the Assembly must send to the inspector, as soon as practicable after receipt, any hearing statement, document, part of any document or written comments sent to him or to it within the relevant period specified³⁶ for sending such documents³⁷. In the case of a non-transferred appeal, the Secretary of State or the Assembly, and in the case of a transferred appeal, the inspector, may in determining the appeal disregard any comments made³⁸ which are sent after the relevant specified period³⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.

4 As to the relevant rules see PARA 641 ante.

5 For these purposes, 'local planning authority' means in relation to (1) an enforcement appeal, the body which issued the relevant enforcement notice; (2) an appeal against the refusal or non-determination of an application for a certificate of lawful use or development, the body to which that application was made; 'enforcement appeal' means an appeal against an enforcement notice; 'enforcement notice' means a notice under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) (see PARA 1146 post); and 'certificate of lawful use or development' means a certificate under the Town and Country Planning Act 1990 s 191 or s 192 (each as substituted) (see PARA 586 et seq ante): Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (renumbered by SI 2004/3172).

6 As to the use of electronic communications see, in relation to England, the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(2)-(8) (added by SI 2003/956). In those 2002 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address; and references to statements, notices, applications, or other documents or to copies of such documents, include references to such documents or copies of them in electronic form: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(2) (as so added). Rule 2(4)-(8) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules that a statement or other document should be sent or given to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent

reference; and for these purposes 'legible in all material respects' means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 2(6) (as so added). A requirement in those 2002 Rules that any notice or document should be in writing is fulfilled where that document meets the criteria in heads (1)-(3) supra, and 'written' and cognate expressions are to be construed accordingly: r 2(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or document in question: r 2(8) (as so added). For these purposes, 'electronic communication' has the meaning assigned to that term by the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616); and 'document' includes a photograph, map or plan: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered: see note 5 supra).

Notices or documents required or authorised to be sent or supplied under the 2002 Rules may be sent or supplied by post or by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: r 19 (substituted by SI 2003/956). Where a person is no longer willing to accept the use of electronic communications for any purpose which under those rules is capable of being carried out electronically, the person must give notice in writing withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose, or revoking any agreement entered into with the Secretary of State or with a local planning authority for that purpose, and such withdrawal or revocation is to be final and is to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 20 (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, rr 2(2)-(8), 19, 20, which refer to the Assembly rather than to the Secretary of State (rr 2(2)-(8), 20 added, and r 19 substituted, by SI 2004/3172).

7 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 4(1).

8 For these purposes, where the hearing is to be held in England, 'starting date' means the date of the (1) Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal pursuant to the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10 (see PARA 607 the text to notes 13-14 ante); or (2) relevant notice, whichever is later; and 'the relevant notice' means the Secretary of State's written notice under the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4(1) (see the text and notes 1-7 supra) informing the appellant and the local planning authority that a hearing is to be held: r 2(1) (as renumbered: see note 5 supra). Where the hearing is to be held in Wales, 'starting date' means the date of the Assembly's written notice to the appellant and the local planning authority that it has received all the documents required to enable it to entertain the appeal pursuant to the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9 (see PARA 607 the text to notes 13-14 ante); or (2) relevant notice, whichever is later; and 'the relevant notice' means the Assembly's written notice informing the appellant and the local planning authority that a hearing is to be held: Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered: see note 5 supra).

The Secretary of State or the Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken pursuant to the relevant rules, and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 18(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 18(1). Where a hearing is to be held or has been held for the purposes of a transferred appeal, an inspector may take such steps as the Secretary of State or the Assembly is enabled to take under or by virtue of this power to extend time limits, in place of the Secretary of State or the Assembly: see the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 10(1), (2); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 10(1), (2). For the meaning of 'transferred appeal' see PARA 641 notes 3, 14 ante; and for the meaning of 'inspector' see note 15 infra.

9 For these purposes, 'questionnaire' means a document in the form supplied by the Secretary of State or the Assembly to local planning authorities for the purpose of proceedings under the relevant rules; and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified the local planning authority, in a manner for the time being agreed between the Secretary of State or the Assembly and the authority for that purpose, of (1) publication of the form on the website; (2) the address of the website; and (3) the place on the website where the form may be accessed, and

how it may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered and amended: see note 5 supra); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered and amended: see note 5 supra).

10 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4(2)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 4(2)(a).

11 For these purposes, 'land' means the land or building to which the hearing relates: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered: see note 5 supra).

12 For the meaning of 'breach of planning control' see PARA 551 ante.

13 As to contravention of listed building control and contravention of conservation area control see PARAS 1110, 1175 post.

14 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 4(2)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 4(2)(b).

15 For these purposes, 'inspector' means (1) in relation to a transferred appeal, a person appointed by the Secretary of State or the Assembly to determine an appeal; (2) in relation to a non-transferred appeal, a person appointed by the Secretary of State or the Assembly to hold a hearing or a reopened hearing: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered: see note 5 supra). For the meaning of 'non-transferred appeal' see PARA 641 notes 3, 14 ante.

16 As to the persons so entitled see PARA 645 post.

17 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 7(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 7(1).

18 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 7(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 7(2).

19 For these purposes, 'hearing statement' means, and consists of, a written statement which contains full particulars of the case which a person proposes to put forward at a hearing and copies of any documents which that person intends to refer to or put in evidence: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (as renumbered: see note 5 supra).

20 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(1). As to the extension of time limits see note 8 supra.

21 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(2). Such information must be provided in writing and the appellant or the local planning authority, as the case may be, must send two copies to the Secretary of State or the Assembly within such period as the Secretary of State or the Assembly may reasonably require: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(2). As to the use of electronic communications see note 6 supra.

Where a hearing is to be held or has been held for the purposes of a transferred appeal, an inspector may take such steps as the Secretary of State or the Assembly is required or enabled to take under or by virtue of the rules cited supra, in place of the Secretary of State or the Assembly; and where an inspector requires further information or copies pursuant to those rules that information or those copies must be sent to him: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 10(1)-(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 10(1)-(3).

22 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(3).

23 Ie pursuant to the rules cited in note 22 supra.

24 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(4).

25 Ie pursuant to the rules cited in note 20 supra.

26 Ie pursuant to the rules cited in note 21 supra.

27 Ie pursuant to the rules cited in note 24 supra.

28 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(5)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(5)(a). Where a hearing is to be held or has been held for the purposes of a transferred appeal, an inspector may take such steps as the Secretary of State or the Assembly is required or enabled to take under or by virtue of the rules cited supra and in note 30 infra, in place of the Secretary of State or the Assembly: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 10(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 10(1), (2).

29 See note 23 supra.

30 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(5)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(5)(b). See also note 28 supra.

31 For these purposes, an opportunity is to be taken to have been given to a person where the person is notified of (1) publication on a website of any document mentioned in the text to notes 32-34 infra; (2) the address of the website; (3) the place on the website where the document may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(6A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(6A) (added by SI 2004/3172).

32 Ie copied under the rules cited in notes 28, 30 supra.

33 Ie provided under the rules cited in note 21 supra.

34 Ie made under the rules cited in note 24 supra.

35 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(6); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(6).

36 Ie specified pursuant to the text and notes 19-24 supra.

37 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(7); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(7).

38 Ie pursuant to the rules cited in notes 22, 24 supra.

39 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5(8); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5(8).

UPDATE

641-642 Jurisdiction, Pre-hearing procedure; in general

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

642 Pre-hearing procedure; in general

TEXT AND NOTE 7--For 'inform the appellant and the local planning authority in writing that a hearing is to be held', read 'send a copy of the relevant notice to the appellant and the local planning authority': SI 2003/1268 r 4(1) (amended by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/643. Date and notification of hearing.

643. Date and notification of hearing.

The date fixed by the Secretary of State¹ for the holding of a hearing² in England, or by the National Assembly for Wales³ for the holding of a hearing⁴ in Wales, must be:

- 2507 (1) not later than 12 weeks after the starting date⁵, unless he or it considers such a date impracticable; or
- 2508 (2) the earliest date after that period which he or it considers to be practicable⁶.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the appellant and the local planning authority⁷, he or the Assembly must give not less than four weeks' written notice⁸ of the date, time and place fixed by him or by it for the holding of a hearing to every person entitled to appear at or take part in⁹ the hearing¹⁰.

The Secretary of State or the Assembly may vary the date fixed for the holding of a hearing, whether or not the date as varied is within the period of 12 weeks mentioned above¹¹. He or it may also vary the time or place for the holding of a hearing and must give notice of any such variation as appears to him or to the Assembly to be reasonable¹².

The Secretary of State or the Assembly may in writing¹³ require the local planning authority to take one or both of the following steps:

- 2509 (a) not less than two weeks¹⁴ before the date fixed for the holding of a hearing, to publish a notice of the hearing in one or more newspapers circulating in the locality in which the land¹⁵ is situated;
- 2510 (b) to send a notice of the hearing to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify¹⁶.

Every notice of hearing so published or sent must contain:

- 2511 (i) a clear statement of the date, time and place of the hearing and of the powers enabling the Secretary of State (or the Assembly) or the inspector¹⁷ to determine the appeal in question;
- 2512 (ii) a written description of the land sufficient to identify approximately its location;
- 2513 (iii) a brief description of the subject matter of the appeal; and
- 2514 (iv) details of where and when copies of the local planning authority's completed questionnaire¹⁸ and documents¹⁹ sent by and copied to the authority²⁰ may be inspected²¹.

Where a hearing is to be held in respect of a transferred appeal²², an inspector may in place of the Secretary of State or the Assembly take such steps as he or it is required or enabled to take under or by virtue of the provisions set out above²³.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'hearing' for these purposes see PARA 641 note 2 ante.
- 3 As to the Assembly see PARA 20 ante.
- 4 For the meaning of 'hearing' for these purposes see PARA 641 note 13 ante.
- 5 For the meaning of 'starting date' see PARA 642 note 8 ante.
- 6 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(1).
- 7 For the meaning of 'local planning authority' for these purposes see PARA 642 note 5 ante.
- 8 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he or it and any person entitled to appear at or take part in the hearing have agreed that notice of the matters mentioned in the text may instead be accessed by that person on a website and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published the notice on a website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry [sic], the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(2A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(2A) (added by SI 2004/3172). It is apprehended that the references to the 'inquiry' in the rules cited in this note are drafting errors and that the references should instead be to the 'hearing'.
- 9 As to the persons so entitled see PARA 645 post.
- 10 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(2).
- 11 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(3). The rules cited in notes 8, 10 supra apply to a variation of a date as they applied to the date originally fixed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(3) (amended by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(3) (amended by SI 2004/1372).
- 12 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(4).
- 13 As to the use of electronic communications see PARA 642 note 6 ante.
- 14 As to the extension of time limits see PARA 642 note 8 ante.
- 15 For the meaning of 'land' for these purposes see PARA 642 note 11 ante.
- 16 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(5); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(5).
- 17 For the meaning of 'inspector' for these purposes see PARA 642 note 15 ante.
- 18 For the meaning of 'questionnaire' see PARA 642 note 9 ante.
- 19 For the meaning of 'document' for these purposes see PARA 642 note 6 ante.
- 20 Ie pursuant to the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5 (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5 (as amended): see PARA 642 ante.
- 21 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(6); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(6).
- 22 For the meaning of 'transferred appeal' see PARA 641 notes 3, 14 ante.

23 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 10(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 10(1), (2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/644. Whether hearings procedure or local inquiry is appropriate.

644. Whether hearings procedure or local inquiry is appropriate.

If either the appellant or the local planning authority¹ at any time before or during the hearing² is of the opinion that the hearings procedure³ is inappropriate in determining the appeal⁴ and that the appeal should not proceed in this way then he or it may inform the Secretary of State⁵ before the hearing, if it is to be held in England, the National Assembly for Wales⁶ before the hearing, if it is to be held in Wales, or the inspector⁷, during the hearing, of that opinion and the reasons for it⁸. Either:

- 2515 (1) the Secretary of State or the Assembly before the hearing must, after consulting the other party who may inform him or it of his opinion⁹, decide whether an inquiry¹⁰ should be arranged instead¹¹; or
- 2516 (2) the inspector during the hearing must, after consulting the other party who may inform the inspector of his opinion¹², decide whether the hearing should be closed and an inquiry held instead¹³.

If at any time during a hearing it appears to the inspector that the hearings procedure is inappropriate, he may, after consulting the appellant and the local planning authority, decide to close the proceedings and arrange for an inquiry to be held instead¹⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 642 note 5 ante.

2 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.

3 I.e. the procedure under the rules described in PARA 641 ante.

4 I.e. such an appeal as is described in PARA 641 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the Assembly see PARA 20 ante.

7 For the meaning of 'inspector' for these purposes see PARA 642 note 15 ante.

8 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 8(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 8(1).

9 I.e. pursuant to the rules cited in note 8 supra.

10 For these purposes, 'inquiry' means (1) a local inquiry in relation to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended) apply; or (2) a local inquiry in relation to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) or the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended) apply; Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI

2002/2684, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 2(1) (renumbered by SI 2004/1372). As to such local inquiries see PARAS 668 et seq, 695 et seq post.

11 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 8(1)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 8(1)(a).

12 See note 9 supra.

13 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 8(1)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 8(1)(b).

14 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 8(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 8(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/645. Participation in and procedure at the hearing; site inspections.

645. Participation in and procedure at the hearing; site inspections.

The persons entitled to appear at or take part in the hearing¹ are:

- 2517 (1) the appellant;
- 2518 (2) the local planning authority²;
- 2519 (3) in the case of an enforcement appeal³, any person on whom a copy of the enforcement notice⁴ has been served; and
- 2520 (4) in the case of an enforcement appeal or an appeal against the refusal or non-determination of an application for a certificate of lawful use or development⁵, any person having an interest in the land⁶.

Nothing in heads (1) to (4) above, however, prevents the inspector⁷ from permitting any other person to appear at or take part in a hearing, and such permission is not to be unreasonably withheld⁸. Any person entitled or permitted to appear or take part may do so on his own behalf or be represented by any other person⁹.

Except as otherwise provided in the relevant rules¹⁰, the inspector is to determine the procedure at a hearing¹¹. A hearing must take the form of a discussion led by the inspector and cross-examination is not to be permitted unless the inspector considers that cross-examination is required to ensure a thorough examination of the main issues¹². Where the inspector considers that cross-examination is so required he must consider, after consulting the appellant and the local planning authority, whether the hearing should be closed and an inquiry¹³ held instead¹⁴.

At the start of the hearing the inspector must identify what are, in his opinion, the main issues to be considered at the hearing and any matters on which he requires further explanation from any person entitled or permitted to appear or take part¹⁵; but nothing in that provision precludes any person entitled or permitted to appear or to take part from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues so identified by the inspector¹⁶.

A person entitled to appear at or take part in a hearing is to be entitled to call evidence but, subject to that and to the specific rules set out below¹⁷, the calling of evidence is otherwise to be at the inspector's discretion¹⁸. The inspector may refuse to permit the giving or production of evidence or the presentation of any other matter which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing¹⁹ before the close of the hearing²⁰.

The inspector may require any person appearing or present at a hearing who, in his opinion, is behaving in a disruptive manner to leave²¹ and may refuse to permit that person to return or may permit him to return only on such conditions as he may specify²²; but any such person may submit to him any evidence or other matter in writing before the close of the hearing²³. The inspector may proceed with a hearing in the absence of any person entitled to appear at it²⁴.

The inspector may allow any person to alter or add to a hearing statement²⁵ so far as may be necessary for the purposes of the hearing; but he must, if necessary by adjourning the hearing, give every other person entitled to appear or take part who is appearing at or taking part in the hearing an adequate opportunity of considering any fresh matter or document²⁶. He may take into account any written representation or evidence or any other document received by him from any person before a hearing opens or during the hearing provided that he discloses it at the hearing²⁷.

The inspector may from time to time adjourn a hearing and, if the date, time and place of the adjourned hearing are announced at the hearing before the adjournment, no further notice is to be required²⁸.

Where it appears to the inspector that one or more matters would be more satisfactorily resolved by adjourning the hearing to the appeal site he may adjourn the hearing to that site and conclude the hearing there provided he is satisfied that:

- 2521 (a) the hearing would proceed satisfactorily and that no party would be placed at a disadvantage;
- 2522 (b) all parties present at the hearing would have the opportunity to attend the adjourned hearing;
- 2523 (c) the local planning authority and the appellant have not raised reasonable objections to it being continued at the appeal site²⁹.

Unless the hearing is to be adjourned to the appeal site pursuant to the above provisions, the inspector may inspect the land during the hearing or after its close and must inspect the land if requested to do so by the appellant or the local planning authority before or during the hearing³⁰. Where the inspector intends to make such an inspection, he must ask the appellant and the local planning authority whether they wish to be present³¹. Where the appellant or the local planning authority have indicated a wish to be present the inspector must announce the date and time at which he proposes to make the inspection during the hearing and must make the inspection in the company of:

- 2524 (i) the appellant, the local planning authority and any other person who has an interest in the land; and
- 2525 (ii) at the inspector's discretion, any other person entitled or permitted to appear at or take part in the hearing who is appearing or taking part or who did appear at or take part in it³².

The inspector is not, however, bound to defer such an inspection where any person mentioned in heads (i) and (ii) above is not present at the time appointed³³.

- 1 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.
- 2 For the meaning of 'local planning authority' for these purposes see PARA 642 note 5 ante.
- 3 For the meaning of 'enforcement appeal' see PARA 642 note 5 ante.
- 4 For the meaning of 'enforcement notice' see PARA 642 note 5 ante.
- 5 Is an appeal under the Town and Country Planning Act 1990 s 195 (as amended): see PARA 613 ante.
- 6 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 9(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 9(1). For the meaning of 'land' for these purposes see PARA 642 note 11 ante.
 The Secretary of State or the Assembly may at any time before the close of a hearing request from any person entitled to appear additional copies of the following: (1) a hearing statement or comments sent in accordance with the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5 (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5 (as amended) (see PARA 642 ante); or (2) any other document or information sent to the Secretary of State or the Assembly before or during a hearing, and may specify the time within which such copies should be sent to him or to it and any person so requested must ensure that the copies are sent within the specified period: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 18(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 18(2). Where a hearing is to be held or has been held for the purposes of a transferred appeal, an inspector may take such steps as the Secretary of State or the Assembly is so enabled to take, in place of the Secretary of State or the Assembly: and where an inspector so requires further information or copies that information or those copies must be sent to him: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 10(1)-(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 10(1)-(3).
- 7 For the meaning of 'inspector' for these purposes see PARA 642 note 15 ante.
- 8 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 9(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 9(2).
- 9 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 9(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 9(3).
- 10 As to the relevant rules see PARA 641 ante.
- 11 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(1).
- 12 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(2).
- 13 For the meaning of 'inquiry' for these purposes see PARA 644 note 10 ante.
- 14 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(3).
- 15 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(4).
- 16 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(5); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(5).
- 17 Is the rules cited in notes 20-23 infra.
- 18 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(6); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(6).
- 19 As to the use of electronic communications see PARA 642 note 6 ante.

20 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(7); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(7).

21 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(8)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(8)(a).

22 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(8)(b), (c); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(8)(b), (c).

23 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(8); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(8).

24 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(10); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(10).

25 Is a hearing statement received under the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 5 (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 5 (as amended): see PARA 642 ante.

26 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(9); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(9).

27 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(11); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(11).

28 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 11(12); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 11(12).

29 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 12(1); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 12(1).

30 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 12(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 12(2).

31 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 12(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 12(3).

32 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 12(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 12(4).

33 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 12(5); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 12(5).

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646. Procedure after the hearing.

Where a hearing¹ has been held for the purposes of a non-transferred appeal², then after the close of the hearing, the inspector³ must make a report in writing⁴ to the Secretary of State⁵, if the hearing was held in England, or to the National Assembly for Wales⁶, if the hearing was held in Wales, which must include his conclusions and his recommendations or his reasons for not making any recommendations⁷. When making his or its determination the Secretary of State or the Assembly may disregard any written representations, evidence or other document⁸ received after the hearing has closed⁹. If, after the close of the hearing, the Secretary of State or the Assembly:

- 2526 (1) differs from the inspector on any matter of fact mentioned in, or appearing to him or to the Assembly to be material to, a conclusion reached by the inspector; or
- 2527 (2) takes into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy,

and is for that reason disposed to disagree with a recommendation made by the inspector, he or the Assembly may not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at or take part in the hearing¹⁰ who appeared at or took part in it of his or its disagreement and the reasons for it¹¹. Where persons so entitled who appeared at or took part in the hearing are so notified, the Secretary of State or the Assembly must give them an opportunity to make written representations to him or to it or, if he or the Assembly has taken into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy, to ask for the reopening of the hearing¹². Those making written representations or requesting the hearing to be reopened pursuant to the above provisions must send such representations or requests to the Secretary of State within three weeks of the date of his notification under those provisions or, if the hearing was held in Wales, must send them so as to be received by the Assembly within three weeks of the date of the Assembly's notification¹³. The Secretary of State or the Assembly may, as he or it thinks fit, cause a hearing to be reopened, and must do so if asked by the appellant or the local planning authority¹⁴ in the circumstances and within the period mentioned above¹⁵. Where a hearing is so reopened, whether by the same or a different inspector, the Secretary of State or the Assembly must send to the persons entitled to appear at or take part in the hearing who appeared at it or took part in it a written statement of the matters on which further evidence is invited¹⁶.

Where a hearing has been held for the purposes of a transferred appeal¹⁷, then when making his decision the inspector may disregard any written representations or evidence or any other document received after the hearing has closed¹⁸. If, after the close of the hearing, an inspector proposes to take into consideration any new evidence or any new matter of fact, not being a matter of government or Assembly policy, which was not raised at the hearing and which he considers to be material to his decision, he must not come to a decision without first:

- 2528 (a) notifying persons entitled to appear at or take part in the hearing who appeared at or took part in it of the matter in question; and
- 2529 (b) giving them an opportunity to make written representations to him or to ask for the reopening of the hearing;

and they must send such written representations or requests to reopen the hearing to the Secretary of State within three weeks of the date of the notification or, if the hearing was held in Wales, must send them so as to be received by the Assembly within three weeks of the date of the notification¹⁹. An inspector may, as he thinks fit, cause a hearing to be reopened and he

must do so if asked by the appellant or the local planning authority in the circumstances and within the period mentioned above²⁰. Where a hearing is so reopened the inspector must send to the persons entitled to appear at or take part in the hearing who appeared at or took part in it a written statement of the matters on which further evidence is invited²¹.

- 1 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.
- 2 For the meaning of 'non-transferred appeal' for these purposes see PARA 641 notes 3, 14 ante.
- 3 For the meaning of 'inspector' for these purposes see PARA 642 note 15 ante.
- 4 As to the use of electronic communications see PARA 642 note 6 ante.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the Assembly see PARA 20 ante.
- 7 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(1), (2).
- 8 For the meaning of 'document' see PARA 642 note 6 ante.
- 9 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(3).
- 10 As to the persons so entitled see PARA 645 ante.
- 11 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(4).
- 12 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(5); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(5).
- 13 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(6); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(6).
- 14 For the meaning of 'local planning authority' for these purposes see PARA 642 note 5 ante.
- 15 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(7); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(7).
- 16 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(8)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(8)(a). The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(2)-(6) (as amended) (see PARA 643 ante) apply as if the references to a hearing were references to a reopened hearing: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 13(8)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 13(8)(b).
- 17 For the meaning of 'transferred appeal' for these purposes see PARA 641 notes 3, 14 ante.
- 18 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 14(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 14(1), (2).
- 19 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 14(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 14(3).

20 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 14(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 14(4).

21 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 14(5)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 14(5)(a). The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(2)-(6) (as amended) (see PARA 643 ante) apply as if the references to a hearing were references to a reopened hearing: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 14(5)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 14(5)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(2) PROCEDURE ON DETERMINATION OF APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY/(iv) Hearing of Transferred and Non-transferred Appeals/B. ENFORCEMENT APPEALS/647. Notification of decision; procedure if decision is subsequently remitted for rehearing and redetermination.

647. Notification of decision; procedure if decision is subsequently remitted for rehearing and redetermination.

Where a hearing¹ has been held for the purposes of a non-transferred appeal², then the Secretary of State³, if the hearing was held in England, or the National Assembly for Wales⁴, if the hearing was held in Wales, must notify his or its decision on an appeal⁵, and his or its reasons for that decision, in writing⁶ to:

- 2530 (1) the appellant and the local planning authority⁷;
- 2531 (2) all persons entitled to appear at or take part in the hearing⁸ who did appear or take part; and
- 2532 (3) any other person who, having appeared at or taken part in the hearing, has asked to be notified of the decision⁹.

Where a copy of the inspector's¹⁰ report¹¹ is not sent with the notification of the decision or published on a website¹², the notification must be accompanied by a statement of his conclusions and of any recommendations made by him; and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application to the Secretary of State or the Assembly¹³.

Where a hearing has been held for the purposes of a transferred appeal¹⁴, then an inspector must notify his decision on an appeal¹⁵, and his reasons for it, in writing to:

- 2533 (a) the appellant and the local planning authority;
- 2534 (b) all persons entitled to appear at or take part in the hearing who did appear or take part; and
- 2535 (c) any other person who, having appeared at or taken part in the hearing, has asked to be notified of the decision¹⁶.

Any person so entitled to be notified of the inspector's decision may apply to the Secretary of State or the Assembly in writing¹⁷ for an opportunity¹⁸ to inspect any documents listed in the notification and the Secretary of State or the Assembly must give him that opportunity¹⁹.

Where an appeal for which a hearing has been held is remitted by any court to the Secretary of State or to the Assembly for rehearing and redetermination²⁰, he or the Assembly:

- 2536 (i) must send to the persons entitled to appear at or take part in the hearing who appeared at or took part in it a written statement of the matters on which further representations are invited in order for him or the Assembly to consider the appeal further;
- 2537 (ii) must give those persons the opportunity to make written representations to him or to it on those matters or to ask for the reopening of the hearing²¹; and
- 2538 (iii) may, as he or the Assembly thinks fit, cause the hearing to be reopened or an inquiry held instead, whether by the same or a different inspector²².

1 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.

2 For the meaning of 'non-transferred appeal' for these purposes see PARA 641 notes 3, 14 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 I.e. an appeal such as is described in PARA 641 ante.

6 Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State or the Assembly and the person have agreed that decisions, reasons, and copies of reports so required to be given in writing may instead be accessed by that person on a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(2A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(2A) (added by SI 2004/3172).

7 For the meaning of 'local planning authority' for these purposes see PARA 642 note 5 ante.

8 As to the persons so entitled see PARA 645 ante.

9 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(1), (2).

10 For the meaning of 'inspector' for these purposes see PARA 642 note 15 ante.

11 For these purposes, 'report' does not include any documents appended to the inspector's report; but any person who has received a copy of the report may apply to the Secretary of State or the Assembly in writing for an opportunity to inspect any such documents and the Secretary of State or the Assembly must give him that opportunity: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(4). The application must be sent to the Secretary of State within six weeks of the date of his decision, or so as to be received by the Assembly within six weeks of the date of its decision: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(5)(b); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(5)(b). For these purposes an opportunity is to be taken to have been given to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(4A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(4A) (added by SI 2004/3172). As to the use of electronic communications to make the application, and for the meaning of 'document' see PARA 642 note 6 ante.

12 I.e. in accordance with the rules cited in note 6 supra.

13 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 15(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(3). A person so applying to the Secretary of State must send his application to him within four weeks of the Secretary of State's decision, and a person so applying to the Assembly must send it so as to be received by the Assembly within four weeks of its decision: Town and Country Planning (Enforcement) (Hearings Procedure)

(England) Rules 2002, SI 2002/2684, r 15(5)(a); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 15(5)(a).

14 For the meaning of 'transferred appeal' for these purposes see PARA 641 notes 3, 14 ante.

15 See note 5 supra.

16 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 16(1), (2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 16(1), (2).

17 A person so applying to the Secretary of State must send his application to him within six weeks of the date of the inspector's decision; and a person so applying to the Assembly must send his application so as to be received by the Assembly within six weeks of that decision: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 16(4); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 16(4).

18 For these purposes, an opportunity is to be taken to have been given to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 16(3A) (added by SI 2003/956; Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 16(3A) (added by SI 2004/3172).

19 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 16(3); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 16(3).

20 As to appeals to the High Court, and other methods of challenging a decision, see PARA 43 et seq ante, PARAS 648-650 post.

21 Those persons making representations or asking for the hearing to be reopened under head (ii) in the text must send such representations or requests to the Secretary of State within three weeks of the date of the written statement sent under head (i) in the text, or to the Assembly so as to be received within three weeks of the date of that statement: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 17(2); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 17(2).

22 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 17(1)(a)-(c); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 17(1)(a)-(c). If the Secretary of State or the Assembly reopens the hearing, the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 6(2)-(6) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 6(2)-(6) (as amended) (see PARA 643 ante) apply as if the references to a hearing were to a reopened hearing: Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 17(1)(c); Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 17(1)(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(3) APPEALS TO THE HIGH COURT/648. Appeals relating to enforcement notices etc.

(3) APPEALS TO THE HIGH COURT

648. Appeals relating to enforcement notices etc.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² gives a decision³ in proceedings:

- 2539 (1) on an appeal⁴ against an enforcement notice⁵, the appellant or the local planning authority⁶ or any other person having an interest in the land⁷ to which the notice relates may, according as rules of court⁸ provide, either appeal to the High Court against the decision on a point of law⁹ or require the Secretary of State or the Assembly to state and sign a case for the opinion of the High Court¹⁰; and at any stage of the proceedings on any such appeal the Secretary of State or the Assembly may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court¹¹;
- 2540 (2) on an appeal¹² against an enforcement notice relating to the planting of trees¹³, the appellant or the local planning authority or any person, other than the appellant, on whom the notice was served may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State or the Assembly to state and sign a case for the opinion of the High Court¹⁴; and, where proceedings are so brought, the notice is of no effect pending the final determination of those proceedings and any rehearing and determination by the Secretary of State or the Assembly¹⁵.

In proceedings brought by virtue of the above provisions in respect of an enforcement notice, the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the court thinks fit, which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter, order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any rehearing and determination by the Secretary of State or the Assembly¹⁶.

No proceedings in the High Court may, however, be brought by virtue of the above provisions except with the leave of that court; and no appeal to the Court of Appeal may be so brought except with the leave of the Court of Appeal or the High Court¹⁷.

The procedure for challenging the validity of enforcement notices and of other decisions and orders has already been discussed¹⁸. Appeals to the High Court relating to listed building and conservation area enforcement notices¹⁹ are discussed in a later part of this title²⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 289 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, 'decision' includes a direction or order; and references to the giving of a decision are to be construed accordingly: Town and Country Planning Act 1990 s 289(7). A letter from the Secretary of State declining jurisdiction on an appeal is a decision for these purposes: *Wain v Secretary of State for the Environment* (1978) 39 P & CR 82; but cf *Co-operative Retail Services Ltd v Secretary of State for the Environment* [1980] 1 All ER 449, [1980] 1 WLR 271, CA (cited in PARA 43 note 17 ante).

4 Ie under the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) (as amended); see PARA 551 et seq ante.

5 For the meaning of 'enforcement notice' see PARA 561 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of the Town and Country Planning Act 1990 s 289 (as amended) the power to make rules of court includes power to make rules (1) prescribing the powers of the High Court or of the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for rehearing and determination by the Secretary of State or the Assembly; and (2) providing for the Secretary of State or the Assembly, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly: s 289(5). Rules of court may also provide for the High Court or,

as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of an enforcement notice are finally concluded and any rehearing and determination by the Secretary of State or the Assembly has taken place, of any other powers in respect of the matters to which such a notice relates: s 289(5A) (substituted by the Planning and Compensation Act 1991 s 6(5)). As to the procedure relating to appeals under the Town and Country Planning Act 1990 s 289(1), (2) see PARA 649 post.

9 If there is no evidence for a particular finding or if the tribunal does not take into account at all a relevant consideration, there could well be grounds of appeal raising a question of law. The contention that a tribunal has failed to give adequate weight to evidence or sufficient consideration to a particular circumstance does not afford such grounds; and the weight which a tribunal gives to a particular piece of evidence on a particular consideration is a matter for that tribunal: *ELS Wholesale (Wolverhampton) Ltd v Secretary of State for the Environment* (1987) 56 P & CR 69, [1987] JPL 844, DC.

10 Town and Country Planning Act 1990 s 289(1). Section 289 (as amended) applies to a correction notice issued under the Planning and Compulsory Purchase Act 2004 s 57 (see PARA 56 ante) as if it were a decision of the Secretary of State or the Assembly mentioned in (1) s 289(1), if the decision document in respect of which the correction notice is given records a decision mentioned in the Planning and Compulsory Purchase Act 2004 s 59(4)(b) (see PARA 56 note 4 head (2) ante), not being a decision mentioned in the Town and Country Planning Act 1990 s 177 (as amended) (see PARA 610 ante); or (2) s 289(2) (see the text and notes 12-14 infra), if the decision document in respect of which the correction notice is given records a decision mentioned in the Planning and Compulsory Purchase Act 2004 s 59(4)(c) (see PARA 56 note 4 head (3) ante): s 58(4).

On an appeal under the Town and Country Planning Act 1990 s 289 (as amended) the court should not itself receive evidence unless it is argued that the inspector at the planning inquiry has not properly summarised the evidence or has disregarded evidence: *Clarke v Secretary of State for the Environment* (1992) 65 P & CR 85, [1992] 3 PLR 146, CA. For examples of successful appeals under the Town and Country Planning Act 1990 s 289 (as amended) see eg *Doncaster Metropolitan Borough Council v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 808 (Admin), [2002] All ER (D) 17 (Apr) (appeal by local planning authority against inspector's decision to quash enforcement notices and grant planning permission for development on land in the Green Belt); *Fisher v Secretary of State for Local Government and the Regions* [2002] EWHC 2251 (Admin), [2003] 1 P & CR 257, [2002] All ER (D) 193 (Oct) (appeal against enforcement notice; inspector who dismissed the initial appeal had failed to take into account a material consideration); *R (on the application of Watts) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 993 (Admin), [2002] All ER (D) 160 (Apr) (appeal against enforcement notice; inspector who dismissed the initial appeal had applied wrong test in determining whether roof extension was permitted development); *Wedlake v First Secretary of State* [2005] All ER (D) 172 (Sep) (appeal against enforcement notice to which local planning authority had made major alteration with respect to alleged change of use; inspector in error in concluding that the amendment was not fundamental). For examples of unsuccessful appeals see eg *Ludlam v Secretary of State for Local Government and the Regions* [2002] EWHC 2626 (Admin), [2002] All ER (D) 281 (Jul); *Hildreths China & Glass Ltd v First Secretary of State* [2003] All ER (D) 152 (Mar); *ZZZ Incorporated v First Secretary of State* [2003] EWHC 1092 (Admin), [2003] All ER (D) 201 (Apr) (appeal against enforcement notice; appellant had not discharged burden of proof); *MDJ Light Brothers Ltd v First Secretary of State* [2003] All ER (D) 158 (May); *Crawford v First Secretary of State* [2004] EWHC 298 (Admin), [2004] All ER (D) 164 (Feb); *Markets South West (Holdings) Ltd v First Secretary of State* [2004] EWHC 1917 (Admin), [2004] All ER (D) 22 (Aug).

The Town and Country Planning Act 1990 s 289 (as amended) applies to appeals against special enforcement notices under s 295(3) (prospectively repealed) (see PARA 612 ante) as if the references therein to an enforcement notice were references to a special enforcement notice and with the substitution in s 289(1) for the words 'Part VII' of the words 'section 295(3)': Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule.

11 Town and Country Planning Act 1990 s 289(3). A decision on a case stated by virtue of s 289(3) is deemed to be a judgment of the court within the meaning of the Supreme Court Act 1981 s 16 (as amended) (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court: see COURTS vol 10 (Reissue) PARA 639): Town and Country Planning Act 1990 s 289(4). As from a day to be appointed, the Supreme Court Act 1981 s 16 (as amended) is to be cited as the Senior Courts Act 1981 s 16 (as amended): see the Constitutional Reform Act 2005 s 148(1), Sch 11 para 1.

12 Ie under the Town and Country Planning Act 1990 Pt VIII (ss 197-225) (as amended): see PARAS 769 et seq post.

13 Ie a notice under ibid s 207 (as amended): see PARA 874 post.

14 Ibid s 289(2). As to the application of s 289(2) to correction notices see note 10 supra.

15 Ibid s 289(4B) (added by the Planning and Compensation Act 1991 s 6(4)).

16 Town and Country Planning Act 1990 s 289(4A) (added by the Planning and Compensation Act 1991 s 6(4)).

17 Town and Country Planning Act 1990 s 289(6) (substituted by the Planning and Compensation Act 1991 s 6(5)). See also *PG Vallance Ltd v Secretary of State for the Environment and Mole Valley District Council* [1994] JPL 50 (leave refused where wording of decision letter was open to criticism but did not amount to misdirection in law). As to the procedure on applications for leave to appeal see PARA 649 post. As to whether a company requires legal representation or may be represented by a director see *RH Tomlinssons (Trowbridge) Ltd v Secretary of State for the Environment* [1999] 2 BCLC 760, [1999] All ER (D) 870, CA.

18 See PARA 43 et seq ante.

19 ie appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65 (as amended) (see PARA 1195 post), including appeals under s 65 (as amended) as applied by s 74(3) (see PARAS 1174, 1198 post).

20 See PARAS 1195, 1198 post.

UPDATE

648-649 Appeals to the High Court

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

648 Appeals relating to enforcement notices etc

NOTE 10--As to the approach to be applied by an inspector when considering green belt policy, see *West Lancashire DC v Secretary of State for Communities and Local Government* [2009] EWHC 3631 (Admin), [2010] All ER (D) 274 (Feb), DC.

NOTE 11--Appointed day is 1 October 2009: SI 2009/1604.

NOTE 16--Following a successful appeal against an enforcement notice, the court is entitled, on remitting a matter for rehearing and determination, to limit the rehearing and determination only to those questions which gave rise to the successful appeal: *R (on the application of Perrett) v Secretary of State for Communities and Local Government* [2009] EWHC 234 (Admin), [2009] JPL 1151, [2009] All ER (D) 120 (Apr) (affd: [2009] EWCA Civ 1365, [2010] 2 All ER 578).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(3) APPEALS TO THE HIGH COURT/649. Applications for permission to appeal and procedure on appeal to the High Court.

649. Applications for permission to appeal and procedure on appeal to the High Court.

An application for permission to appeal to the High Court under the specified provisions of the Town and Country Planning Act 1990¹ or the Planning (Listed Buildings and Conservation Areas) Act 1990² must be made within 28 days after the date on which notice of the decision was given to the applicant³. An application must:

2541 (1) include, where necessary, any application to extend the time for applying;

- 2542 (2) be in writing⁴ setting out the reasons why permission should be granted, and if the time for applying has expired, the reasons why the application was not made within that time;
- 2543 (3) be made by filing it⁵ together with the decision, a draft appellant's notice, and a witness statement or affidavit⁶ verifying any facts relied on;
- 2544 (4) before being filed under head (3) above, be served⁷ together with the draft appellant's notice and a copy of the witness statement or affidavit to be filed with the application, upon the specified persons⁸; and
- 2545 (5) be accompanied by a witness statement or affidavit giving the names and addresses of, and the places and dates of service on, all persons who have been served with the application and, if any person who ought to be served has not been served, the witness statement or affidavit must state that fact and the reason for it⁹.

An application must be heard by a single judge¹⁰ and, unless the court otherwise orders, be heard not less than 21 days after it was filed¹¹. Any person served with the application is entitled to appear and be heard¹². If on the hearing of an application the court is of opinion that any person who ought to have been served has not been served, the court may adjourn the hearing on such terms, if any, as it may direct in order that the application may be served on that person¹³. If the court grants permission:

- 2546 (a) it may impose such terms as to costs and as to giving security as it thinks fit;
- 2547 (b) it may give directions; and
- 2548 (c) the appellant's notice by which the appeal is to be brought must be served and filed within seven days of the grant¹⁴.

Any respondent who intends to use a witness statement or affidavit at the hearing must file it and serve a copy of it on the applicant as soon as is practicable and in any event, unless the court otherwise allows, at least two days before the hearing; and the court may allow the applicant to use a further witness statement or affidavit¹⁵.

An appeal lies to the High Court on a point of law against a decision of the Secretary of State¹⁶ or the National Assembly for Wales¹⁷ under the specified provisions of the Town and Country Planning Act 1990¹⁸ or the Planning (Listed Buildings and Conservation Areas) Act 1990¹⁹ at the instance of any person or authority entitled to appeal under any of those provisions respectively²⁰. Any such appeal, and any case stated²¹, must be heard and determined by a single judge unless the court directs that the matter is to be heard and determined by a Divisional Court²².

The persons to be served with the appellant's notice by which an appeal to the High Court is brought²³ are:

- 2549 (i) the Secretary of State or the Assembly;
- 2550 (ii) the local planning authority²⁴ which served the notice or gave the decision, as the case may be, or, where the appeal is brought by that authority, the appellant or applicant in the proceedings in which the decision appealed against was given;
- 2551 (iii) in the case of an appeal with regard to an enforcement notice²⁵, any other person having an interest in the land to which the notice relates; and
- 2552 (iv) in the case of an appeal against a decision in proceedings with regard to an enforcement notice relating to the planting of trees²⁶, any other person on whom the notice to which those proceedings related was served²⁷.

The court hearing any such appeal may remit the matter to the Secretary of State or the Assembly to the extent necessary to enable him or it to provide the court with such further information in connection with the matter as the court may direct²⁸.

Where the court is of opinion that the decision appealed against was erroneous in point of law, it may not set aside or vary that decision but must remit the matter to the Secretary of State or the Assembly with the opinion of the court for rehearing and determination by him or by the Assembly²⁹. The court may give directions as to the exercise, until an appeal such as is mentioned in head (iii) above is finally concluded and any rehearing and determination by the Secretary of State or the Assembly has taken place, of the power to serve, and institute proceedings (including criminal proceedings) concerning, a stop notice³⁰ and a breach of condition notice³¹.

1 Ie under the Town and Country Planning Act 1990 s 289 (as amended): see PARA 648 ante.

2 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65 (as amended): see PARA 1195 post.

3 CPR Sch 1 RSC Ord 94 r 12(1).

4 As to communication and filing of documents by email see CPR 5.5; and CIVIL PROCEDURE.

5 Ie in the Administrative Court. CPR Sch 1 RSC Ord 94 r 12 refers to the 'Crown Office'. As to the renaming of the Crown Office side of the Queen's Bench Division of the High Court as the 'Administrative Court' see COURTS vol 10 (Reissue) PARA 614. For the meaning of 'filing' see PARA 585 note 11 ante.

6 As to witness statements and affidavits see CIVIL PROCEDURE vol 11 (2009) PARA 979 et seq.

7 As to service generally see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

8 Ie the persons who are referred to in CPR Sch 1 RSC Ord 94 r 13(5): see the text and notes 23-27 infra.

9 CPR Sch 1 RSC Ord 94 r 12(2).

10 CPR Sch 1 RSC Ord 94 r 12(3)(a).

11 CPR Sch 1 RSC Ord 94 r 12(3)(b).

12 CPR Sch 1 RSC Ord 94 r 12(3).

13 CPR Sch 1 RSC Ord 94 r 12(4).

14 CPR Sch 1 RSC Ord 94 r 12(5).

15 CPR Sch 1 RSC Ord 94 r 12(6).

16 As to the Secretary of State see PARA 19 ante.

17 As to the Assembly see PARA 20 ante.

18 Ie under the Town and Country Planning Act 1990 s 289 (as amended): see PARA 648 ante.

19 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65 (as amended): see PARA 1195 post.

20 CPR Sch 1 RSC Ord 94 r 13(1), (2).

21 Ie under the Town and Country Planning Act 1990 s 289(2) (see PARA 648 ante at head (2) in the text) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(2) (see PARA 1195 post).

22 CPR Sch 1 RSC Ord 94 r 13(4).

23 Ie by virtue of the Town and Country Planning Act 1990 s 289(1) or (2) (see PARA 648 ante), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(1) (see PARA 1195 post) or the Town and Country Planning Act 1990 s 290 (repealed subject to transitional provisions).

24 As to local planning authorities see PARA 28 et seq ante.

25 Ie an appeal brought by virtue of the Town and Country Planning Act 1990 s 289(1) or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(1).

26 Ie an appeal brought by virtue of the Town and Country Planning Act 1990 s 289(2).

27 CPR Sch 1 RSC Ord 94 r 13(5).

28 CPR Sch 1 RSC Ord 94 r 13(6).

29 CPR Sch 1 RSC Ord 94 r 13(7).

30 Ie under the Town and Country Planning Act 1990 s 183 (as amended): see PARAS 577-579 ante.

31 CPR Sch 1 RSC Ord 94 r 13(9). The breach of condition notice mentioned in the text is a breach of condition notice under the Town and Country Planning Act 1990 s 187A (as added): see PARA 583 ante.

UPDATE

648-649 Appeals to the High Court

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/6. APPEALS ETC; IN GENERAL/(4) JUDICIAL REVIEW; MALADMINISTRATION/650. In general.

(4) JUDICIAL REVIEW; MALADMINISTRATION

650. In general.

Where there is no specific provision in the Town and Country Planning Act 1990 enabling the validity of an order or decision made thereunder to be challenged¹, an application may be made for judicial review².

Decisions made by local planning authorities, as, for example, to grant planning permission³, to issue enforcement notices and stop notices⁴, to refuse to accept as valid an application for planning permission⁵, or that a planning permission has lapsed⁶ may be judicially reviewed; and decisions made by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸, as, for example, whether or not to award costs⁹, not to call in a planning application¹⁰, to refuse to accept jurisdiction to determine an appeal¹¹, to order a fresh inquiry or to reopen an inquiry¹² may likewise be judicially reviewed. The Court of Appeal has, however, expressed a note of dissatisfaction at the way the availability of the remedy of judicial review can be exploited as a commercial weapon by rival potential developers to frustrate and delay their competitors' approved developments¹³.

An applicant for judicial review must have a sufficient interest in the matter to which the application relates¹⁴.

Decisions of local authorities, the Secretary of State or the Assembly in relation to such matters are also susceptible to review by the appropriate ombudsman¹⁵.

1 As to challenging the validity of certain orders and decisions under the Town and Country Planning Act 1990 Pt XII (ss 284-292) (as amended) see PARA 43 et seq ante; and as to appeals to the High Court relating to certain enforcement etc notices see PARAS 648-649 ante.

2 As to judicial review generally see JUDICIAL REVIEW. As to time limits for making applications in cases involving planning matters see eg *R (on the application of Young) v Oxford City Council* [2003] JPL 232, [2002] All ER (D) 226 (Jun), CA (a potential applicant for judicial review is entitled to seek information from a local planning authority as to the procedures it has followed; he cannot know if he has an arguable case unless he does so, and it is undesirable to set in motion the process of litigation before an effort has been made to resolve the issue through pre-trial correspondence. However, the obligation to apply promptly remains a feature of the law and should not be ignored by applicants in the expectation that the word 'promptly' is a dead letter). As to the consequences of delay see eg *R (on the application of Gavin) v Haringey London Borough Council* [2003] EWHC 2591 (Admin), [2003] All ER (D) 57 (Nov). A challenge to an earlier decision may become academic if it has been overtaken by decisions on later planning applications: see eg *R (on the application of Meritgold Ltd) v Barnet London Borough Council* [2004] EWHC 268 (Admin), [2004] All ER (D) 231 (Jan) (unsuccessful attempt to challenge local planning authority's exercise of power under the Town and Country Planning Act 1990 s 70A (as added) (see PARA 516 ante) to decline to determine earlier application). See also *R v Ceredigion County Council, ex p McKeown* [1998] 2 PLR 1, [1998] PLCR 90; *R v Newbury District Council, ex p Chieveley Parish Council* [1999] PLCR 51, [1998] All ER (D) 367, CA; *R v Camden London Borough Council, ex p Williams* [2000] 2 PLR 93, [2000] JPL 1147; *R (on the application of Malster) v Ipswich Borough Council* [2001] EWHC 711 (Admin), [2001] All ER (D) 107 (Aug), [2002] PLCR 251; *R (on the application of Friends Provident Life Office) v Secretary of State for Transport, Local Government and the Regions* [2001] EWHC Admin 820, [2002] 1 WLR 1450, [2001] All ER (D) 274 (Oct). As to the procedure on an application for judicial review see CPR Pt 54; *Practice Direction--Judicial Review* PD 54; and JUDICIAL REVIEW vol 61 (2010) PARA 660.

For an example of an unsuccessful application (1) where the appropriate claim was a claim in damages against the local planning authority, rather than judicial review of the inspector's decision to quash enforcement notices, see *R (on the application of Nunn) v First Secretary of State* [2005] EWCA Civ 101, (2005) Times, 8 February, [2005] All ER (D) 113 (Feb); (2) on the grounds that the local planning authority had misunderstood the legal advice it was given, see *R (on the application of Manning) v South Lakeland District Council* [2005] EWHC 242 (Admin), [2005] All ER (D) 100 (Feb). As to whether it is appropriate to award costs against an unsuccessful claimant when permission to apply for judicial review is refused see *R (on the application of Mount Cook Land Ltd) v Westminster City Council* [2003] EWCA Civ 1346, [2003] All ER (D) 222 (Oct).

Where there are no statutory or procedural rules governing a planning control committee meeting, the court is entitled to quash the decision where the facts disclose a procedural unfairness: see eg *R (on the application of Tromans) v Cannock Chase District Council* [2004] EWCA Civ 1036, [2004] LGR 735, [2004] All ER (D) 504 (Jul). Judicial review is not, however, an appropriate remedy merely because there has been some unfairness in the proceedings before the committee, in circumstances when there is a further right of appeal capable of dealing with the underlying dispute as to the planning merits of the decision: *R (on the application of Taylor) v Maidstone Borough Council* [2004] EWHC 257 (Admin), [2004] All ER (D) 57 (Feb).

3 See eg *R v Ogwr Borough Council, ex p Carter Commercial Developments Ltd* [1989] 2 PLR 54; *R v Wealden District Council, ex p Charles Church South East Ltd* [1989] 3 PLR 42; *R v Merton London Borough Council, ex p Burnett* [1990] 1 PLR 72; *R v South Hertfordshire District Council, ex p Felton* [1991] JPL 633, CA. See also *R v Peterborough City Council, ex p London Brick Property Ltd* [1988] 1 PLR 27 (developer sought to restrain a local planning authority from considering an application for planning permission made by competing developer); *R (on the application of Kilmartin Properties (TW) Ltd) v Tunbridge Wells Borough Council* [2003] EWHC 3137 (Admin), [2004] 02 LS Gaz R 31, [2003] All ER (D) 330 (Dec) (unsuccessful challenge to grant of planning permission for a new hospital on a site in the Green Belt that contained an existing hospital); *R (on the application of Hereford Waste Watchers Ltd) v Hereford Council* [2005] EWHC 191 (Admin), [2005] All ER (D) 277 (Feb) (flawed grant of planning permission by local planning authority not in possession of all relevant information); *R (on the application of Chelmsford Car and Commercials) v Chelmsford Borough Council* [2005] All ER (D) 73 (Jul), [2005] 28 EG 121 (CS) (two competing applications for planning permission for 12 residential dwellings outside the defined settlement boundary of a village within the defendant local planning authority's area in order to meet an identified local affordable housing need; authority in error in failing to carry out comparative site assessment before refusal of planning permission to applicant).

4 See eg *R v Secretary of State for the Environment, ex p Hillingdon London Borough Council* [1986] 2 All ER 273n, [1986] 1 WLR 807n, CA; *R v Runnymede Borough Council, ex p Seehra* [1987] JPL 283; *R v Rochester upon Medway City Council, ex p Hobday* [1989] 2 PLR 38; *R v Epping Forest District Council, ex p Strandmill Ltd* [1989] 3 PLR 94; *R v Basildon District Council, ex p Martin Grant Homes Ltd* [1987] JPL 863.

5 See eg *R v Elmbridge Borough Council, ex p Oakimber Ltd* [1991] 3 PLR 35, CA.

6 See eg *R v Elmbridge Borough Council, ex p Health Care Corpn Ltd* [1991] 3 PLR 63.

7 As to the Secretary of State see PARA 19 ante.

8 As to the Assembly see PARA 20 ante.

9 See eg *R v Secretary of State for the Environment, ex p Three Rivers District Council* [1983] JPL 730; *R v Secretary of State for the Environment and Bray, ex p Havering London Borough Council* [1987] JPL 840; *Manchester City Council v Secretary of State for the Environment* [1988] JPL 774; *R v Secretary of State for the Environment, ex p Westminster City Council* [1989] 1 PLR 23; *R v Secretary of State for the Environment, Transport and the Regions, ex p Panton* (1999) 79 P & CR 485, CA; *R v Secretary of State for the Environment, ex p Rochford District Council* [2000] 3 All ER 1018.

10 See eg *Rhys Williams v Secretary of State for Wales* [1985] JPL 29, CA; *R v Secretary of State for the Environment, ex p Middlesbrough Borough Council* [1988] 3 PLR 52.

As to judicial review of the Secretary of State's decision on a called-in application see eg *Westgate Partnership v First Secretary of State* [2003] All ER (D) 435 (Feb) (inadequate reasons for rejection of inspector's findings).

11 See eg *Lenlyn Ltd v Secretary of State for the Environment and the Royal Borough of Kensington and Chelsea* [1985] JPL 482; *R v Secretary of State for the Environment, ex p Davis* [1991] 1 PLR 78, CA. See also *Etheridge v Secretary of State for the Environment and Torbay Borough Council* [1984] JPL 340.

As to judicial review of the Secretary of State's decision on an appeal see eg *R (on the application of Simmons) v First Secretary of State* [2005] EWHC 287 (Admin), (2005) Times, 15 April, [2005] All ER (D) 38 (Mar).

12 See eg *R v Secretary of State for the Environment, ex p Fielder Estates (Canvey) Ltd* [1988] 3 PLR 62 (fresh inquiry).

13 See *R (on the application of the Noble Organisation Ltd) v Thanet District Council* [2005] EWCA Civ 782 at [68], (2005) Times, 26 August, [2005] All ER (D) 322 (Jun) per Auld LJ.

14 See generally JUDICIAL REVIEW. For examples of a sufficient interest to challenge the grant of planning permission see *R v Torfaen Borough Council, ex p Jones* [1986] JPL 686 (neighbour); *R v Exeter City District Council, ex p J.L. Thomas & Co Ltd* [1991] 1 QB 471, [1990] 1 All ER 413 (neighbouring user); *Covent Garden Community Association Ltd v Greater London Council* [1981] JPL 183; *R v Hammersmith and Fulham London Borough Council, ex p People Before Profit Ltd* [1981] JPL 869; *R v Stroud District Council, ex p Goodenough* [1982] JPL 246, DC; *R v Amber Valley District Council, ex p Jackson* [1984] 3 All ER 501, [1985] 1 WLR 298 (local amenity society); *R v Merton London Borough Council, ex p Burnett* [1990] 1 PLR 72 (local resident); *R v Gillingham Borough Council, ex p F Parham Ltd* [1988] 1 PLR 7; *R v Ogwr Borough Council, ex p Carter Commercial Developments Ltd* [1989] 2 PLR 54 (competing developer); *R v Sheffield City Council, ex p Russell* (1994) 68 P & CR 331, 159 LG Rev 281. The leader of a council has a sufficient interest to seek judicial review of the council's decisions: *R v Bassetlaw District Council, ex p Oxby* [1998] PLCR 283, CA. A somewhat more restrictive approach to standing was taken in *R v Secretary of State for the Environment, ex p Rose Theatre Trust Co* [1990] 1 QB 504 at 518, [1990] 1 All ER 754 at 765; distinguished in *R v Poole Borough Council, ex p Beebee* [1991] 2 PLR 27 at 30 ('the question of locus standi is something of a legal minefield'). See also *Steeple v Derbyshire County Council* [1984] 3 All ER 468, [1985] 1 WLR 256.

15 See PARAS 23, 41 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/651. Secretary of State's or Assembly's power to hold local inquiries.

7. PLANNING INQUIRIES; IN GENERAL

(1) LOCAL INQUIRIES

(i) In general

651. Secretary of State's or Assembly's power to hold local inquiries.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may cause a local inquiry³ to be held for the purposes of the exercise of any of his or its functions⁴ under any of the provisions of the Town and Country Planning Act 1990⁵. He or the Assembly is also authorised or required to hold a local inquiry for other statutory purposes relating to town and country planning⁶.

In certain cases the inquiry which the Secretary of State or the Assembly is authorised or required to hold is expressed to be a public local inquiry⁷.

The Planning Inspectorate, whose members preside at such local inquiries, has been discussed in an earlier part of this title⁸.

Independent examinations of development plan documents under the Planning and Compulsory Purchase Act 2004⁹, and examinations in public of proposals for unitary development plans¹⁰ in England and Wales or for structure plans¹¹ in England and local inquiries with regard to proposals for local plans¹² in England under the relevant provisions of the Town and Country Planning Act 1990, so far as still applying¹³, have also already been discussed¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 320, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Any inquiry held under the Town and Country Planning Act 1990 s 320 is designated for the purposes of the Tribunals and Inquiries Act 1992 s 16(2) (as amended): see PARA 653 post. The provisions of the Tribunals and Inquiries Act 1992 also apply for the purposes of inquiries etc held under certain other provisions of the Town and Country Planning Act 1990: see eg s 42(6) (as amended; repealed with savings); and PARA 202 ante.

4 For the meaning of 'functions' see PARA 2 note 1 ante.

5 Town and Country Planning Act 1990 s 320(1). The Local Government Act 1972 s 250(2)-(5) (as amended) (evidence and costs at local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held by virtue of the Town and Country Planning Act 1990 s 320: s 320(2). The Secretary of State's, Assembly's or inspector's decision as to costs may be challenged: see eg *Newport Borough Council v Secretary of State for Wales* (1997) 74 P & CR 147, [1998] 1 PLR 47, CA; *R v Secretary of State for the Environment, ex p North Norfolk District Council* [1994] 2 PLR 78; *Ealing London Borough Council v Secretary of State for the Environment* [1993] 2 PLR 12; *R v Secretary of State for the Environment, ex p Rochford District Council* [2000] 3 All ER 1018. In considering whether to make a costs order against a party to a planning appeal, an inspector is not precluded from taking into account conduct before the appeal proceedings: *R v Secretary of State for the Environment, ex p Rochford District Council* supra.

The procedure to be followed at local inquiries and hearings held in connection with certain applications under the Town and Country Planning Act 1990 is prescribed by regulations: see PARA 659 et seq post.

6 See eg the New Towns Act 1981 s 1(4), Sch 1 para 3; and PARA 1316 post.

7 See note 6 supra. The effect of the word 'public' appears to be that every member of the public would have standing to bring before the inquiry any relevant matters: *Local Government Board v Arlidge* [1915] AC 120 at 147-148, HL, per Lord Moulton. In any event it is customary for members of the public to be heard at local inquiries: see PARA 659 et seq post. As to public inquiries generally see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15.

8 See PARA 21 ante.

9 Ie under the Planning and Compulsory Purchase Act 2004 s 20 (England) or s 64 (Wales): see PARAS 108, 138 ante.

10 Ie under the Town and Country Planning Act 1990 s 20 (as amended; repealed with savings): see PARA 172 ante.

11 Ie under ibid s 35B (as substituted; repealed with savings): see PARA 188 ante.

12 Ie under ibid s 42 (as amended; repealed with savings): see PARA 202 ante.

13 See PARA 148 ante.

14 See PARAS 108, 138, 172, 188, 202 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/652. Planning inquiries generally to be held in public.

652. Planning inquiries generally to be held in public.

At any local inquiry held under specified provisions of the Town and Country Planning Act 1990¹ oral evidence must be heard in public and documentary evidence must be open to public inspection². If, however, the Secretary of State³ (acting concurrently with the National Assembly for Wales⁴ in relation to Wales)⁵ is satisfied in the case of any such inquiry:

- 2553 (1) that the giving of evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to national security or the measures taken or to be taken to ensure the security of any premises or property; and
- 2554 (2) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, be open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in the direction⁶.

In relation to England, if the Secretary of State is considering giving such a direction the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given⁷; and if before the Secretary of State gives such a direction no person is so appointed, the Attorney General may at any time so appoint a person for the purposes of the inquiry⁸. The Lord Chancellor may by rules make provision:

- 2555 (a) as to the procedure to be followed by the Secretary of State before he gives such a direction in a case where a person has been so appointed⁹;
- 2556 (b) as to the functions¹⁰ of a person appointed¹¹ as described above¹².

If the matter in respect of which a local inquiry to which the above provisions apply¹³ is to be held relates to Wales, the above references¹⁴ to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales¹⁵. The Assembly may by regulations¹⁶ make provision¹⁷ in connection with such a local inquiry¹⁸; and if it acts under this power, rules made by the Lord Chancellor under the provisions set out above¹⁹ do not have effect in relation to the inquiry²⁰.

If a person is appointed as described above²¹ ('the appointed representative') the Secretary of State or the Assembly may direct any person who he or it thinks is interested in the inquiry in relation to a matter mentioned in heads (1) and (2) above ('the responsible person') to pay the fees and expenses of the appointed representative²². If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State or the Assembly²³. He or it must cause the amount agreed between the appointed representative and the responsible person or determined by him or by the Assembly to be certified²⁴. An amount so certified is recoverable from the

responsible person as a civil debt²⁵. If, however, a person is so appointed, but no inquiry is held²⁶, then the above provisions²⁷ apply in respect of the fees and expenses of the person appointed as if the inquiry had been held²⁸.

1 Ie an inquiry held under the Town and Country Planning Act 1990 s 320(1) (see PARA 651 ante), Sch 6 para 6 (as amended) (determination of appeals by appointed person: see PARA 621 et seq ante) or s 101(4), Sch 8 para 5 (as amended) (see PARA 709 et seq post).

2 Ibid s 321(1), (2).

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

6 Town and Country Planning Act 1990 s 321(3), (4).

7 Ibid s 321(5) (s 321(5)-(12) added by the Planning and Compulsory Purchase Act 2004 s 80(1), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante).

8 Town and Country Planning Act 1990 s 321(6) (as added: see note 7 supra).

9 Ie where a person has been appointed under ibid s 321(5) (as added): see the text and note 7 supra).

10 For the meaning of 'functions' see PARA 2 note 1 ante.

11 Ie appointed under the Town and Country Planning Act 1990 s 321(5) or (6) (as added): see the text and notes 7-8 supra.

12 Ibid s 321(7) (as added: see note 7 supra). Rules made under s 321(7) (as so added) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 321(8) (as so added). As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 1990 Act see the Constitutional Reform Act 2005 s 19.

13 Ie a local inquiry to which the Town and Country Planning Act 1990 s 321 (as amended) applies: see the text and notes 1-12 supra, 21-25 infra.

14 Ie the references in ibid s 321(5), (6) (as added): see the text and notes 7-8 supra.

15 Ibid s 321B(1), (2) (s 321B added by the Planning and Compulsory Purchase Act 2004 s 81, partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante). The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title): Town and Country Planning Act 1990 s 321B(5) (as so added).

16 Ibid s 333(3) (see PARA 3 ante) does not apply to regulations so made: s 321B(6) (as added: see note 15 supra).

17 Ie provision as mentioned in ibid s 321(7) (as added): see the text and notes 9-12 supra.

18 Ibid s 321B(3) (as added: see note 15 supra).

19 Ie under ibid s 321(7) (as added): see the text and notes 9-12 supra.

20 Ibid s 321B(4) (as added: see note 15 supra). See also the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 8 (as added); and PARA 1204 post; the Planning (Hazardous Substances) Act 1990 Schedule para 8 (as added); and PARA 1301 post.

21 See note 11 supra.

22 Town and Country Planning Act 1990 s 321(9) (as added: see note 7 supra).

23 Ibid s 321(10) (as added: see note 7 supra).

24 Ibid s 321(11) (as added: see note 7 supra).

25 Ibid s 321(12) (as added: see note 7 supra).

26 Ie no inquiry is held as mentioned in ibid s 321(1): see the text and notes 1-2 supra.

27 Ie ibid s 321(9)-12) (as added): see the text and notes 21-25 supra.

28 Ibid s 321A(1), (2) (s 321A added by the Planning and Compulsory Purchase Act 2004 s 80(2), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante). For the purposes of the Town and Country Planning Act 1990 s 321A(2) (as so added), the responsible person is the person to whom the Secretary of State or the Assembly thinks he or it would have given a direction under s 321(9) (as added: see the text and notes 21-22 supra) if an inquiry had been held: s 321A(3) (as so added). Section 321A (as added) does not affect s 322A (as added) (see PARA 656 post): s 321A(4) (as so added).

See also the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6A (as added); and PARA 1204 post; the Planning (Hazardous Substances) Act 1990 Schedule para 6A (as added); and PARA 1301 post.

UPDATE

652 Planning inquiries generally to be held in public

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTES 7, 28--Day now appointed for remaining purposes: SI 2006/1281.

NOTES 12, 18--See the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006, SI 2006/1387.

NOTE 12--See the Planning (National Security Directions and Appointed Representatives) (England) Regulations 2006, SI 2006/1284.

TEXT AND NOTE 15--Reference to National Assembly for Wales now to Welsh Assembly Government: 1990 Act s 321B(2) (amended by the Government of Wales Act 2006 Sch 10 para 35(a)). 1990 Act s 321B(5) repealed: 2006 Act Sch 10 para 35(b), Sch 12.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/653. Discretionary inquiries; in general.

653. Discretionary inquiries; in general.

The Lord Chancellor and the Secretary of State¹ may by order designate any inquiry or hearing held or to be held in pursuance of a power conferred by any statutory provision² specified or described in the order, or any class of such inquiries or hearings³.

The following inquiries have been so designated:

- 2557 (1) any inquiry held under the Caravan Sites and Control of Development Act 1960⁴;
- 2558 (2) any inquiry held under the New Towns Act 1981⁵;

2559 (3) any inquiry caused to be held under specified provisions of the Town and Country Planning Act 1990⁶ by the Secretary of State in exercise of any of his functions under that Act⁷.

1 As to the Secretary of State see PARA 19 ante.

2 For these purposes, 'statutory provision' means a provision contained in, or having effect under, any enactment: Tribunals and Inquiries Act 1992 s 16(1).

3 Ibid s 16(2) (amended by virtue of the Transfer of Functions (Lord Advocate and Secretary of State) Order 1999, SI 1999/678, art 2(1), Schedule). The Lord Chancellor's function under the Tribunals and Inquiries Act 1992 s 16(2) (as so amended) is a protected function for the purposes of the Constitutional Reform Act 2005 s 19: see s 19(5), Sch 7 para 4.

4 Ie under the Caravan Sites and Control of Development Act 1960 s 23(7), Sch 2 para 4(3): see PARA 1051 post.

5 Ie under the New Towns Act 1981 s 11(1), Sch 4 para 4 (see PARA 1339 post) or ss 23(3), 31(2), Sch 8 para 6 (see PARA 1380 post).

6 Ie under the Town and Country Planning Act 1990 s 320: see PARA 651 ante.

7 Tribunals and Inquiries (Discretionary Inquiries) Order 1975, SI 1975/1379, arts 3, 4, Schedule Pt I paras 42, 53, 66; Interpretation Act 1978 s 17(2)(a), (b).

The following provisions of the Tribunals and Inquiries Act 1992 accordingly apply to any such inquiry: s 1(1)(c) (supervision by the Council on Tribunals); s 9 (as amended) (power to make rules regulating procedure); and s 10 (as amended) (reasons to be given for decisions of ministers after holding of inquiry or where inquiry could have been required to be held). See further ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 15; and JUDICIAL REVIEW vol 61 (2010) PARA 646.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/654. Procedure at local inquiries; in general.

654. Procedure at local inquiries; in general.

The procedure to be followed at local inquiries is in most cases prescribed by procedural rules¹. In the absence of such rules, however, the procedure to be followed at such an inquiry is a matter for the discretion of the Secretary of State or the National Assembly for Wales or for the inspector². The inspector is bound to observe the rules of natural justice³. He is not, however, bound by the rules of evidence applicable in the courts of law, but may take into account any material which has probative value⁴. Procedural rules now generally provide that copies of the inspector's or assessor's report and other documents are to be furnished to the parties and to other interested persons⁵; this may be done by making them available on an accessible website⁶.

It is an offence to obstruct or intimidate a witnesses at any inquiry held under statutory authority or to punish him for any evidence he has given, unless his evidence was given in bad faith⁷.

When considering an appeal against a decision of a local planning authority or deciding whether to confirm a scheme or order made by that authority, the Secretary of State or the Assembly must act fairly between the parties. After the inquiry has closed, he or the Assembly may not hear one side without letting the other know and may not accept from third parties fresh evidence which supports the case of one side without giving the other side an opportunity to answer it⁸. Subject to the rules of natural justice, and to any procedural rules, the Secretary

of State or the Assembly, in reaching his or its decision, is performing an administrative function; in addition to the inspector's report he or it may take into account any relevant information⁹ and may have regard to questions of policy¹⁰.

Where the subject matter is a scheme prepared by the department of the Secretary of State, objectors should be given sufficient information about the reasons relied upon by the department to enable them to challenge the accuracy of the facts and the validity of any arguments upon which the departmental reasons are based¹¹. After receiving the report of the local inquiry into a proposal originated by his own department, the Secretary of State is taking a policy decision and is not required to observe the principles of natural justice in that process¹². It is unusual for there to be a hearing or inquiry as part of the policy review process and in the absence of a statutory provision the court cannot force an inquiry to be held. Furthermore, there is no authority for the proposition that, having lawfully adopted a policy, fairness requires that the Secretary of State himself should have to make arrangements to research into whether there has been a change in circumstances to justify a change in policy¹³.

The validity of the final decision may be challenged on an application to the High Court¹⁴ but the court is generally reluctant to hear challenges during the course of a planning inquiry¹⁵. On any challenge before the court it is generally undesirable that the inspector should be subjected to cross-examination but this may be allowed in the interests of justice where the court has evidence from which it can be inferred that he may have acted improperly¹⁶.

1 See PARA 659 et seq post.

2 *Bushell v Secretary of State for the Environment* [1981] AC 75, [1980] 2 All ER 608, HL. As to the Planning Inspectorate see PARA 21 ante.

3 *Board of Education v Rice* [1911] AC 179, HL; *Hibernian Property Co Ltd v Secretary of State for the Environment* (1973) 72 LGR 350; *Furmston v Secretary of State for the Environment and Kent County Council* [1983] JPL 49; *Simmons v Secretary of State for the Environment* [1985] JPL 253; *Wimpey Homes Holdings Ltd v Secretary of State for the Environment* [1993] 2 PLR 54. He is under no duty to formulate questions for witnesses on behalf of parties appearing in person: *Snow v Secretary of State for the Environment* (1976) 33 P & CR 81, DC.

4 *R v Deputy Industrial Injuries Comr, ex p Moore* [1965] 1 QB 456, [1965] 1 All ER 81, CA; *TA Miller Ltd v Minister of Housing and Local Government* [1968] 2 All ER 633, [1968] 1 WLR 992, CA. There are, however, limits on what can be properly admitted; it is the inspector's responsibility to evaluate the evidence and he should ignore documents which he does not consider have evidential value: *French Kier Developments Ltd v Secretary of State for the Environment* [1977] 1 All ER 296. Hearsay evidence may be admitted as long as the other side has the opportunity to comment upon it: *TA Miller Ltd v Minister of Housing and Local Government* supra. The inspector may from his professional experience, or from what he sees on an inspection of the site, supply deficiencies in the case for one of the parties; but, where he proposes to take into account issues not raised at the inquiry, he should either reconvene the hearing or invite written representations from the parties: *Fairmount Investments Ltd v Secretary of State for the Environment* [1976] 2 All ER 865, [1976] 1 WLR 1255, HL.

Subject to the requirement of reasonableness, it is a matter for the inspector's judgment what steps to take to obtain further information; and it is not necessarily unreasonable for him to fail to have regard to the outcome of an inquiry into neighbouring premises: see *Club Airlock/Planet Studios v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 700, [2001] All ER (D) 108 (Sep), [2002] PLCR 16.

5 See eg paras 667, 676, 685, 694, 703 post.

6 See eg para 685 note 7 post.

7 See the Witnesses (Public Inquiries) Protection Act 1892 s 2 (as amended); and CRIMINAL LAW, EVIDENCE AND PROCEDURE vol 11 (2) (2006 Reissue) PARA 728. As to the application of this provision to proceedings before a planning inspector see eg *Fulham Football Club Ltd v Cabra Estates plc* [1993] 1 PLR 29, CA.

8 See eg para 684 post.

9 *Darlassis v Minister of Education* (1954) 52 LGR 304, 4 P & CR 281.

10 See eg *National Anti-Vivisection Society v First Secretary of State* [2004] EWHC 2074 (Admin), [2004] 34 LS Gaz R 33, [2004] All ER (D) 574 (Jul); and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15. Where the Secretary of State differs from the inspector on a question of fact, there should, however, be some evidential basis: *Coleen Properties Ltd v Minister of Housing and Local Government* [1971] 1 All ER 1049, [1971] 1 WLR 433, CA; *Pollock v Secretary of State for the Environment* (1979) 40 P & CR 94, DC; and see eg *Chant v Secretary of State for Local Government and the Regions* [2002] EWHC 1440 (Admin), [2002] All ER (D) 11 (Jul).

11 *Bushell v Secretary of State for the Environment* [1981] AC 75, [1980] 2 All ER 608, HL. The Secretary of State is not, however, obliged to call evidence of policy: *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL.

12 *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL; and see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 15.

13 See *R (on the application of Persimmon Homes (South East) Ltd) v Secretary of State for Transport* [2005] EWHC 96 (Admin), [2005] All ER (D) 190 (Jan), [2005] 04 EG 167 (CS).

14 See the Town and Country Planning Act 1990 s 288 (as amended); and PARA 47 ante. The court will not review the evidence at the inquiry to determine what were the principal material issues of fact on which a finding was required: *Continental Sprays Ltd v Minister of Housing and Local Government* (1968) 19 P & CR 774; *William Boyer & Sons Ltd v Minister of Housing and Local Government* (1968) 20 P & CR 176; *WJ Simms, Sons and Cooke Ltd v Minister of Housing and Local Government* (1969) 210 Estates Gazette 705.

15 For an example where such an application was allowed see *R (on the application of Belgrave Land Ltd) v Bedford Borough Council* [2001] EWHC Admin 1127, [2001] All ER (D) 386 (Dec).

16 See *Jones v Secretary of State for Wales* (1995) 70 P & CR 211, 159 LG Rev 689 (allegations of bias).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/655. Order as to costs of parties where no local inquiry held.

655. Order as to costs of parties where no local inquiry held.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is required in proceedings under the Town and Country Planning Act 1990, before reaching a decision, to give any person an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly, then he or the Assembly has power to make orders³ with respect to the parties' costs⁴. That power applies in relation to proceedings to which these provisions apply which do not give rise to a local inquiry as it does in relation to a local inquiry⁵, but only for the purposes of the awards of costs in relation to proceedings which give rise to a hearing⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 322, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under the Local Government Act 1972 s 250(5) (orders with respect to the costs of the parties): see LOCAL GOVERNMENT vol 69 (2009) PARA 105.

4 See the Town and Country Planning Act 1990 s 322(1), (2). The Town and Country Planning Act 1990 has effect with the omission of s 322 until a day to be appointed by the Secretary of State: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 6. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1); but see the text and note 6 infra.

5 See note 4 supra.

6 Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(2).

The Town and Country Planning Act 1990 s 322 applies to special enforcement notices (see PARA 572 ante) and to appeals against such notices under s 295(3) (prospectively repealed) (see PARA 612 ante): Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/656. Order as to costs where inquiry or hearing is arranged but does not take place.

656. Order as to costs where inquiry or hearing is arranged but does not take place.

Where:

2560 (1) for the purposes of any proceedings under the Town and Country Planning Act 1990, the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is required, before a decision is reached, to give any person an opportunity, or ask any person whether he wishes, to appear before, and be heard by, a person appointed by him or by the Assembly, and arrangements are made for a local inquiry or hearing to be held;

2561 (2) the inquiry or hearing does not take place; and

2562 (3) if it had taken place, the Secretary of State (or the Assembly) or a person appointed by him or by it would have had power to make an order under the Local Government Act 1972³ requiring any party to pay any costs of any other party,

the power to make such an order may be exercised, in relation to costs incurred for the purposes of the inquiry or hearing, as if it had taken place⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 322A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under the Local Government Act 1972 s 250(5) (orders with respect to the costs of the parties): see LOCAL GOVERNMENT vol 69 (2009) PARA 105.

4 Town and Country Planning Act 1990 s 322A(1), (2) (added by the Planning and Compensation Act 1991 s 30(1)). The Town and Country Planning Act 1990 s 322A (as so added) applies to special enforcement notices (see PARA 572 ante) and to appeals against such notices under s 295(3) (prospectively repealed) (see PARA 612 ante): Town and Country Planning (Special Enforcement Notices) Regulations 1992, SI 1992/1562, reg 2, Schedule.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/657. Costs in relation to certain local inquiries in London.

657. Costs in relation to certain local inquiries in London.

The following provisions apply where:

- 2563 (1) the local planning authority¹ for a London borough² refuses an application
for planning permission³;
2564 (2) that refusal is in compliance with a direction made by the Mayor of London⁴
in accordance with provision made in a development order⁵; and
2565 (3) an appeal against the refusal is made⁶ to the Secretary of State⁷.

If the Secretary of State causes a local inquiry to be held⁸ to determine the appeal, then:

- 2566 (a) the costs incurred by the Secretary of State in relation to the inquiry must
be paid:

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238. (i) by the Mayor of London, if he is not a party to the inquiry and if the
Secretary of State decides that the Mayor acted unreasonably in making the
direction in accordance with which the local planning authority refused the
planning permission; or

239. (ii) if the Mayor is a party or if the Secretary of State does not so
decide, by such local authority or party to the inquiry as he may direct;

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2567 and the Secretary of State may cause the amount of the costs so incurred to
be certified, and any amount so certified and directed to be paid by the Mayor or
by any authority or person is recoverable from the Mayor or from that authority or
person by the Secretary of State summarily as a civil debt⁹;

2568 (b) the Secretary of State may make orders as to the costs of the parties to
the inquiry and as to the parties by whom the costs are to be paid; and:

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240. (i) the parties by whom the costs are ordered to be paid may include
the Mayor of London if he is not a party to the inquiry and if the Secretary of
State decides that the Mayor acted unreasonably in making the direction in
accordance with which the local planning authority refused the planning
permission;

241. (ii) every such order may be made a rule of the High Court on the
application of any party named in the order¹⁰.

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If the appeal does not give rise to such a local inquiry but there is a hearing¹¹, or if
arrangements are made for a local inquiry in relation to the appeal and the inquiry does not
take place¹², head (b) above applies¹³.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'London borough' see PARA 28 note 7 ante.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

5 Ie by virtue of the Town and Country Planning Act 1990 s 74(1B)(a) (as added): see PARA 452 ante.

6 Ie under ibid s 78 (as amended): see PARA 598 ante.

7 Ibid s 322B(1) (s 322B(1)-(7) added by the Greater London Authority Act 1999 s 345). As to the Secretary of State see PARA 19 ante.

8 Ie under s 320(1): see PARA 651 ante.

- 9 See *ibid* s 322B(2)(a), (5), (7) (as added: see note 7 *supra*).
- 10 See *ibid* s 322B(2)(b), (6), (7) (as added: see note 7 *supra*).
- 11 *Ie* if *ibid* s 322(2) applies in relation to the appeal: see PARA 655 *ante*.
- 12 *Ie* if *ibid* s 322A (as added) applies in relation to the appeal: see PARA 656 *ante*.
- 13 See *ibid* s 322B(3), (4) (as added: see note 7 *supra*), applying s 322B(2)(b), (6), (7) (as so added).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(i) In general/658. Costs of qualifying procedures.

658. Costs of qualifying procedures.

The following provisions apply if the appropriate authority¹ appoints a person to carry out or hold a qualifying procedure, that is to say:

- 2569 (1) an independent examination under the relevant provisions of the Planning and Compulsory Purchase Act 2004²;
- 2570 (2) a local inquiry or other hearing to consider objections to a simplified planning zone scheme or to alterations to such a scheme³;
- 2571 (3) the consideration of such objections as are mentioned in head (2) above⁴ by a person appointed for the purpose⁵.

The appropriate authority may:

- 2572 (a) require the whole or any part of the costs borne by it⁶ in relation to the qualifying procedure to be paid by the local planning authority⁷ causing the qualifying procedure to be held⁸;
- 2573 (b) cause the amount of any such costs to be certified; and any amount so certified and required by it to be paid by a local planning authority is recoverable from that authority as a civil debt⁹.

What may be so recovered by the appropriate authority is the entire administrative cost of, or incidental to, the qualifying procedure, so far as borne by that authority, including, in particular, such reasonable amount or element as it may determine in respect of the general staff costs and overheads of its department¹⁰.

The cost of, or incidental to, a qualifying procedure which does not take place may be recovered by the appropriate authority from the local planning authority from which it would have been recoverable, had the qualifying procedure taken place, to the same extent, and in the same way, as the cost of, or incidental to, a qualifying procedure which does take place¹¹.

1 For these purposes, the appropriate authority is: (1) the Secretary of State if the local planning authority causing the procedure to be carried out or held is in England; (2) the National Assembly for Wales if the local planning authority causing the procedure to be carried out or held is in Wales: Town and Country Planning Act 1990 s 303A(1B) (s 303A added by the Town and Country Planning (Costs of Inquiries etc) Act 1995 s 1(1); the Town and Country Planning Act 1990 s 303A(1)-(1B) substituted, s 303A(2)-(6), (10) amended, and s 303A(9A) added, by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 11). As to local planning authorities see PARA 28 *et seq ante*.

2 le under the Planning and Compulsory Purchase Act 2004 s 20 (see PARA 108 ante) or s 64 (see PARA 138 ante).

3 le under the Town and Country Planning Act 1990 Sch 7 para 8(1)(a): see PARA 437 ante.

4 le the consideration of objections under *ibid* Sch 7 para 8(1)(b): see PARA 437 ante.

5 *Ibid* s 303A(1), (1A) (as substituted: see note 1 supra). For transitional purposes in relation to England, s 303A(as originally added) applies in any case where, at any time after its coming into force, the Secretary of State appoints any person to hold, or as one of the persons who are to hold, a qualifying inquiry, that is to say: (1) to hold a local inquiry or other hearing under s 16 (as amended; repealed with savings) (see PARA 165 ante) or s 42 (as amended; repealed with savings) (see PARA 202 ante) or under Sch 7 para 8(1)(a) (see PARA 437 ante); (2) to consider objections under Sch 7 para 8(1)(a) (see PARA 437 ante); or (3) to conduct an examination in public under s 35B(1) (as substituted; repealed with savings) (see PARA 188 ante): see s 303A(1) (as originally added); the Planning and Compulsory Purchase Act 2004 (Commencement No 2, Transitional Provisions and Savings) Order 2004, SI 2004/2202, art 4(a), Sch 2; and PARA 125 ante. The Town and Country Planning Act 1990 s 303A (as originally added) also continues to have effect in relation to Wales for certain transitional purposes: see PARA 148 note 11 ante, PARA 979 note 8 post.

6 For these purposes, any reference to costs borne by the appropriate authority includes a reference to costs which, apart from the Town and Country Planning Act 1990 s 303A (as added), would fall, or would have fallen, to be borne by it: s 303A(10)(a) (as added and amended: see note 1 supra).

7 For these purposes, references to a local planning authority causing a qualifying inquiry [sic] to be held include references to a requirement under the Planning and Compulsory Purchase Act 2004 on the authority to submit a plan to the appropriate authority for independent examination: Town and Country Planning Act 1990 s 303A(9A) (as added: see note 1 supra).

8 *Ibid* s 303A(2) (as added and amended: see note 1 supra).

9 *Ibid* s 303A(3) (as added and amended: see note 1 supra).

10 *Ibid* s 303A(4) (as added and amended: see note 1 supra). For the purposes of s 303A(4) (as so added and amended), the appropriate authority may by regulations prescribe a standard daily amount in relation to any description of qualifying procedure and any description of person appointed to hold it, or appointed as one of the persons who are to hold it; and where, in relation to a qualifying procedure of that description, a person of that description is or has been so appointed, what may be recovered in respect of that qualifying procedure by virtue of the appointment of that person (in addition to what may be recovered by virtue of the appointment of any other person) is: (1) the prescribed standard amount from time to time applicable in the case of that qualifying procedure and that person in respect of each day, or an appropriate proportion of that amount in respect of a part of a day, on which that person is engaged in the holding of, or is otherwise engaged on work connected with, the qualifying procedure; (2) any costs actually incurred on travelling or subsistence allowances payable to that person in connection with the qualifying procedure; (3) any costs attributable to the appointment of an assessor to assist that person (or, in a case where that person is appointed as one of the persons who are to hold the qualifying procedure, an appropriate proportion of any costs attributable to the appointment of an assessor to assist those persons); and (4) any other costs attributable to the appointment of that person: s 303A(5) (as so added and amended). As to the exercise of this power in relation to England see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (England) Regulations 2004, SI 2004/421. The standard daily amount prescribed under the Town and Country Planning Act 1990 s 303A(5) (as so added and amended) is: (a) in relation to inquiries opening on or after 31 March 2004 and before 31 March 2005, £622; and (b) in relation to inquiries opening on or after 31 March 2005, £679: reg 3. For similar provision in relation to Wales see the Town and Country Planning (Costs of Inquiries etc) (Standard Daily Amount) (Wales) Regulations 2005, SI 2005/371.

In the application of the Town and Country Planning Act 1990 s 303A(2)-(6) (as originally added) in relation to an examination in public under s 35B(1) (as substituted; repealed with savings: see PARA 188 ante), there must be left out of account any person who is appointed to conduct, or is appointed as one of the persons who are to conduct, the examination and whose remuneration, and travelling or subsistence allowances (if any), in respect of that appointment are (whether by agreement or arrangement or otherwise) to be paid to him by the local planning authority causing the examination to be held: s 303A(7) (as added (see note 1 supra); repealed with savings). The Secretary of State may by regulations prescribe a standard daily amount in relation to any description of person who is appointed to conduct, or is appointed as one of the persons who are to conduct, an examination in public under s 35B(1) (as so substituted and repealed) and whose remuneration, and travelling or subsistence allowances (if any), in respect of that appointment are to be paid as mentioned in s 303A(7)(b) (as so added and repealed); and where: (i) a standard daily amount is so prescribed in relation to any description of person; (ii) a person of that description is or has been appointed to conduct, or is or has been appointed as one of the persons who are to conduct, such an examination, and (iii) the remuneration, and travelling or subsistence allowances (if any), of that person in respect of that appointment are to be paid as

mentioned in s 303A(7)(b) (as so added and repealed), the amount of the remuneration so payable to that person by the local planning authority in question in respect of the appointment must be the prescribed standard amount from time to time applicable in the case of that person in respect of each day, or an appropriate proportion of that amount in respect of a part of a day, on which that person is engaged in the conduct of, or is otherwise engaged on work connected with, that examination (whether that examination does or does not take place): s 303A(8) (as so added and repealed). The Secretary of State may also by regulations under s 303A(8) (as so added and repealed) prescribe, in relation to any description of person, the rates or amounts of any travelling or subsistence allowances payable as mentioned in 303A(7)(b) (as so added and repealed) by a local planning authority causing an examination in public under s 35B(1) (as substituted and repealed) to be held to a person of that description appointed to conduct, or appointed as one of the persons who are to conduct, the examination: s 303A(9) (as so added and repealed). As to the exercise of this power see the Town and Country Planning (Costs of Inquiries etc) (Examination in Public) (England) Regulations 2004, SI 2004/1716, regs 2-5, Schedule; and PARA 188 note 7 ante.

For the purposes of the Town and Country Planning Act 1990 s 303A(as originally added or as added and amended: see note 1 supra), any reference to any remuneration or allowance being paid or payable to a person includes a reference to its being paid or payable for him: s 303A(10)(b) (as added: see note 1 supra).

11 Ibid s 303A(6) (as added and amended: see note 1 supra). See also note 10 supra.

UPDATE

658 Costs of qualifying procedures

NOTE 10--The standard daily amount prescribed under the Town and Country Planning Act 1990 s 303A(5) is, in relation to independent examinations opening (1) on or after 3 January 2007 and before 31 March 2007, £779; (2) on or after 31 March 2007 and before 31 March 2008, £879; and (3) on or after 31 March 2008, £993: Town and Country Planning (Costs of Independent Examinations) (Standard Daily Amount) (England) Regulations 2006, SI 2006/3227. SI 2005/371 replaced: Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2007, SI 2007/728.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/659. Application of rules.

(ii) Inquiries before Decisions by the Secretary of State or the Assembly

A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND

659. Application of rules.

The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005¹ apply in relation to any local inquiry caused by the Secretary of State² to be held in England before he determines an application relating to a development of national or regional importance referred to him under the relevant provision³ of the Town and Country Planning Act 1990⁴. Where the Mayor of London⁵ has directed the local planning authority⁶ to refuse the application, those 2005 Rules apply with prescribed modifications⁷.

The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002⁸ continue, however, to apply in relation to any application which has not been determined on 24 August 2005⁹; but where a decision of the Secretary of State on an

application in relation to a major infrastructure project¹⁰ to which the 2002 Rules applied is subsequently quashed in proceedings before any court, the application is to be redetermined in accordance with the 2005 Rules¹¹.

1 le the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115: see the text and notes 2-11 infra; and PARA 660 et seq post. The 2005 Rules came into force on 24 August 2005: r 1(1).

2 As to the Secretary of State see PARA 20 ante.

3 le under the Town and Country Planning Act 1990 s 76A(4)(a) (as added): see PARA 481 ante.

4 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 1(2).

5 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

6 As to local planning authorities see PARA 28 et seq ante.

7 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, rr 1(3), 27.

8 le the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223 (revoked with savings). Those rules applied in relation to any local inquiry relating to a major infrastructure project caused by the Secretary of State to be held in England before he determined an application for planning permission referred to him, or an appeal to him, under the Town and Country Planning Act 1990 s 77 (as amended) (see PARA 483 ante) or s 78 (as amended) (see PARA 598 ante); (2) an application for listed building consent referred to him, or for variation or discharge of conditions referred to him, or an appeal to him under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post), s 12 (as amended) as applied by s 19 (as amended) (see PARA 1131 post) or s 20 (as amended) (see PARA 1186 post); (3) an application for conservation area consent referred to him, or an appeal to him, under s 12 (as amended) (including an application to which s 12 (as amended) is applied by s 19 (as amended)), as those sections are applied by s 74(3) (see PARA 1176 post) or under s 20 (as amended) as s 20 (as amended) is applied by s 74(3) (see PARA 1190 post); but do not apply to any local inquiry by reason of the application of any provision mentioned in heads (1)-(3) supra by any other enactment: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 3(1) (as so revoked). Where a major infrastructure project inquiry was held into an application, or an appeal arising from such an application, in respect of which the Mayor of London had directed the local planning authority to refuse the application, the 2002 Rules applied subject to modifications: see r 25 (as so revoked).

9 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 28(2). Subject to that, the 2002 Rules are otherwise revoked to the extent that they apply to any local inquiry to which the 2005 rules apply: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 28(1).

10 The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 2, Schedule (revoked with savings) defined 'major infrastructure project' as development of a description listed infra:

37 (1) crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day;

38 (2) installations:

33. (a) for the reprocessing of irradiated nuclear fuel;

34. (b) designed (i) for the production or enrichment of nuclear fuel; (ii) for the processing of irradiated nuclear fuel or high-level radioactive waste; (iii) for the final disposal of irradiated nuclear fuel; (iv) solely for the final disposal of radioactive waste; or (v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site;

34

- 39 (3) integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are:
- 35. (a) for the production of base organic chemicals;
35
 - 36. (b) for the production of basic inorganic chemicals;
36
 - 37. (c) for the production of phosphorous-, nitrogen- or potassium-based fertilisers (simple or compound fertilisers);
37
 - 38. (d) for the production of basic plant health products and of biocides;
38
 - 39. (e) for the production of basic pharmaceutical products using a chemical or biological process; or
39
 - 40. (f) for the production of explosives;
40
- 40 (4) the following projects:
- 41. (a) construction of airports with a basic runway length of 2,100 metres or more;
41
 - 42. (b) construction of a new runway which allows an addition to the number of occasions on which aircraft may take off or land;
42
 - 43. (c) extension of any runway by more than 100 metres;
43
 - 44. (d) construction of a new airport terminal, or the expansion of an existing terminal, which provides additional capacity for more than 5 million passengers per annum;
44
 - 45. (e) construction of facilities which provide additional capacity for more than 100,000 tonnes of air cargo per annum;
45
 - 46. (f) construction of tramways, railways (including elevated and underground railways), suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport, where the area of the works exceeds 1 hectare;
46
- 41 (5) the following projects:
- 47. (a) inland waterways, canalisation and flood-relief works where the area of the works exceeds 1 hectare;
47
 - 48. (b) ports for inland-waterway traffic which permit the passage of vessels of over 1,350 tonnes;
48
 - 49. (c) trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes;
49
 - 50. (d) construction of other harbours and port installations including fishing harbours, where the area of the works exceeds 1 hectare;
50
- 42 (6) waste water treatment plants with a capacity exceeding 150,000 population equivalent;
- 43 (7) extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas;

- 44 (8) dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres;
- 45 (9) pipelines for the transport of gas, oil or chemicals where the area of the works exceeds 1 hectare or, in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge;
- 46 (10) quarries and open-cast mines and deep mines where the production level is greater than 2 million tonnes per annum;
- 47 (11) installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

The 2005 Rules, however, contain no such detailed definition.

11 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 28(3).

UPDATE

659-660 Application of rules, Pre-inquiry procedure

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/660. Pre-inquiry procedure.

660. Pre-inquiry procedure.

The Secretary of State¹ must notify the applicant and the local planning authority² in writing³ that an inquiry⁴ is to be held (the 'relevant notice')⁵. The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005⁶ set out the procedure with regard to:

- 2574 (1) the preliminary information to be supplied by the local planning authority⁷;
- 2575 (2) registration of persons interested in participating in the inquiry⁸;
- 2576 (3) the appointment of a technical adviser⁹;
- 2577 (4) mediation¹⁰;
- 2578 (5) the procedure for pre-inquiry and other meetings¹¹;
- 2579 (6) publicity for the inspector's notes of pre-inquiry meetings and recommendations¹²;
- 2580 (7) the receipt of statements of case etc¹³;
- 2581 (8) the inquiry timetable¹⁴; and
- 2582 (9) notification of the appointment of an assessor¹⁵.

The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the 2005 Rules¹⁶; and may at

any time before the close of an inquiry request from any person entitled to appear¹⁷ additional copies of certain specified documents¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 For these purposes, 'local planning authority' means, in relation to a referred application, the body which would otherwise have dealt with the application; and 'referred application' means an application which is referred to the Secretary of State for determination: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 2(1).

3 As to the use of electronic communications see *ibid* r 3. Where an electronic communication is used by a person for the purpose of fulfilling any requirement of the 2005 Rules to give or send any statement, notice or other document to any other person ('the recipient'), the requirement is to be taken to be fulfilled where the statement, notice or other document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 3(2)-(4). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 3(5). A requirement of the 2005 Rules that any document must be in writing is fulfilled where that document satisfies the criteria in heads (1)-(3) *supra*: r 3(6). A requirement in those 2005 Rules to send more than one copy of a statement, notice or other document may be complied with by sending one copy only of the statement, notice or other document in question: r 3(7). Where a person is no longer willing to accept the use of electronic communications for any purpose of those rules which is capable of being effected electronically, he must give notice in writing: (a) withdrawing any address notified to the Secretary of State or to a local planning authority for that purpose; or (b) revoking any agreement entered into with the Secretary of State or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and takes effect on a date specified by the person in the notice being not less than seven days after the date on which the notice is given: r 3(8).

In the 2005 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically: (i) the expression 'address' includes any number or address used for the purposes of such communications, except that where any provision of those Rules requires any person to provide a name and address to any other person, the requirement is not to be fulfilled unless the person subject to the requirement provides a postal address; (ii) references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: r 3(1). 'Electronic communication' has the same meaning as in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616); and 'document' includes a photograph, map or plan: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 2(1).

Notices or documents required or authorised to be sent under the 2005 Rules may be sent: (A) by post; or (B) by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: r 26(1). Where the local planning authority is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any document, an opportunity is to be taken to have been afforded to a person where the person is notified of publication of the relevant document on a website, the address of the website and the place on the website where the document may be accessed, and how it may be accessed: r 26(2).

4 For these purposes, 'inquiry' means an inquiry in relation to which the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, apply (see PARA 659 ante); and where an inquiry is conducted by means of concurrent sessions, it includes any such session: r 2(1).

5 *Ibid* r 4.

6 See *ibid* rr 5-13; and heads (1)-(9) in the text.

7 See *ibid* r 5. The local planning authority must on receipt of the relevant notice forthwith inform the Secretary of State and the applicant in writing of the name and address of any statutory party who has made representations to the authority; and the Secretary of State must, as soon as practicable thereafter, inform the applicant and the local planning authority in writing of the name and address of (1) any statutory party who has made representations to him; and (2) any other persons who are known to have a right to appear at the inquiry or to have an interest in the proposal: r 5(1). Where r 5(2) applies, the local planning authority must forthwith after receipt of the relevant notice inform the person concerned of the inquiry and, unless he has already done so, that person must thereupon give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representations, as the case may be: r 5(2). Rule 5(2) applies

where (a) the Secretary of State has given to the local planning authority a direction restricting the grant of planning permission for which application was made; (b) in a case relating to listed building consent, the Historic Buildings and Monuments Commission for England ('English Heritage') has given to the local planning authority a direction pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14(2) (see PARA 1117 post) as to how the application is to be determined; (c) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 15(1)(c) (see PARA 664 note 2 head (3) post), has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions; or (d) any person consulted in pursuance of a development order has made representations to the local planning authority about the application: r 5(3). For the meaning of 'development order' see PARA 252 ante and for the meaning of 'listed building consent' see PARA 1109 post (definitions applied by r 2(1)); and as to English Heritage see PARA 1058 post. 'Statutory party', in relation to a referred application to which the 2005 Rules apply, means (i) a person mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1)(b)(i) (see PARA 474 ante) whose representations the Secretary of State is required by art 19(3) to take into account in determining the application; and (ii) a person whose representations the Secretary of State is required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(3)(b), (5) (see PARA 1114 post) to take into account in determining the application: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 2(1).

For the information to be supplied under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 4 (revoked with savings).

8 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 6. On receipt of the relevant notice, the local planning authority must: (1) send to each person notified or known to the local planning authority to have a right to appear at the inquiry or to have an interest in the proposal a copy of the statement sent by the Secretary of State under r 9(2)(a)(ii) (see PARA 661 post) and a copy of the registration form; and (2) publish by local advertisement a notice stating (a) that the 2005 Rules apply to the local inquiry; (b) the matters contained in the statement sent by the Secretary of State under r 9(2)(a)(ii); (c) the arrangements for the first pre-inquiry meeting; and (d) that persons interested in participating in the inquiry should obtain from the local planning authority a copy of the registration form: r 6(1). The registration form must include the address to which completed forms must be returned, and the date by which that must be done. It must request the following information: (i) the name, address and telephone number of the person registering; (ii) the name, address and telephone number of any agent, or, in the case of an organisation, of the contact person; (iii) whether or not the person registering has an interest in any land which will be affected by the proposal; (iv) whether or not the person registering is likely to want to be represented formally and to play a major part in the inquiry; (v) if not, whether or not the person registering will wish to give oral evidence at the inquiry or will wish only to submit representations in writing: r 6(2). 'By local advertisement', in relation to a notice, means (A) by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application relates is situated; and (B) where the local planning authority maintains a website for the purpose of advertisement of applications, by publication of the notice on the website; 'registration form' means a form for completion by persons who wish to participate in the inquiry; and 'land' means the land or building to which an inquiry relates; r 2(1).

For the registration procedure under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 5 (revoked with savings).

9 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 7. If it appears to the Secretary of State that evidence to be given to the inquiry is, or is likely to be, of such technical or scientific nature that the inquiry would be conducted more efficiently and expeditiously if an expert and independent assessment of that evidence were to be made, he may at any time appoint a technical adviser for that purpose: r 7(1). A technical adviser must be a person appearing to the Secretary of State to have such qualifications and experience as enable him to conduct an expert assessment of scientific or technical evidence to be given to the inquiry: r 7(2). Where the Secretary of State appoints a technical adviser, he may in writing require the local planning authority to publish by local advertisement and within such period as he may specify a notice stating the name of the person so appointed and specifying the evidence to be assessed: r 7(3). The technical adviser must, in consultation with the persons entitled to appear at the inquiry either jointly or separately, assess the evidence so specified and must report his assessment in writing to the inspector: r 7(4). The technical adviser's report must include a description of any areas of disagreement between the parties and must state his view of the significance of each such disagreement: r 7(5). The inspector must within seven days of receipt of the technical adviser's report circulate it: r 7(6). The technical adviser must give evidence on his report at the inquiry and is to be subject to cross-examination to the same extent as any other witness: r 7(7). The inspector may allow the technical adviser to alter or add to his report so far as may be necessary for the purposes of the inquiry; but he must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition: r 7(8). For these purposes, 'inspector' includes a lead inspector and an additional inspector; 'additional inspector' means an inspector appointed by the Secretary of State under the Town and Country Planning Act 1990 s 76B(3)(a) (as added) and 'lead inspector' means a person appointed by the Secretary of State under s 76A(4)(b) (as added) (see PARA 482 ante): Town and Country Planning (Major

Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 2(1). A requirement imposed on the Secretary of State or the inspector to circulate a document is met by sending a copy of that document to (1) the local planning authority; (2) the applicant; and (3) each major participant; but nothing in this provision requires the Secretary of State or the inspector to send a copy of a document to the person from whom it was received: r 2(2), (4). 'Major participant' means a person who has indicated in accordance with r 6(2)(d) (see note 8 supra) that he is likely to want to be represented formally and to play a major part in the inquiry: r 2(1).

For the procedure for appointing a technical adviser under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 10 (revoked with savings).

10 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 8. If it appears to the Secretary of State that (1) there is an absence of agreement between persons entitled to appear at the inquiry on a matter which is relevant to the inquiry; (2) the inquiry would be conducted more efficiently and expeditiously if agreement could be reached in relation to that matter or any disagreement in relation to it could be defined and narrowed; and (3) such a result is capable of being achieved by mediation, then he may at any time appoint a mediator for that purpose: r 8(1). A mediator must be a person appearing to the Secretary of State to have been trained in mediation techniques by an independent mediation organisation: r 8(2). Where the Secretary of State appoints a mediator, he may in writing require the local planning authority to publish by local advertisement and within such period as he may specify a notice stating the name of the person so appointed and the matter in relation to which he is to mediate: r 8(3). The mediator must determine the procedure for the mediation: r 8(4). Within seven days from the conclusion of the mediation, the mediator must give to the inspector a report describing the mediation procedure and its outcome and the inspector must, as soon as practicable after receipt, circulate the report: r 8(5). The inspector must permit any person entitled to appear at the inquiry to address him on the report referred to in reg 8(5), but the mediator may not give evidence at the inquiry: r 8(6).

For the procedure for mediation under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 11 (revoked with savings).

11 See PARA 661 post.

12 See note 11 supra.

13 See PARA 662 post.

14 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 12. The inspector must at a pre-inquiry meeting held in accordance with r 9 (see PARA 661 post) propose a timetable for the proceedings at, or at part of, an inquiry, and specify the date by which any proof of evidence and summary sent in accordance with r 17(1) (see PARA 663 post), and any statement of common ground sent in accordance with r 18(1) (see PARA 663 post), must be received by the Secretary of State, and must give written notice of the date so specified to every person entitled to appear at the inquiry: r 12(1). The inspector must, as soon as practicable after the pre-inquiry meeting referred to in r 12(1), make recommendations to the Secretary of State on the proposed timetable: r 12(2). The inspector must no later than four weeks before the start of the inquiry send to every person entitled to appear at the inquiry a copy of the timetable for the proceedings approved by the Secretary of State: r 12(3). The inspector may subsequently vary the timetable mentioned in r 12(2) but he may not do so before the start of the inquiry without the approval of the Secretary of State: r 12(4).

As to the inquiry timetable under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 8 (revoked with savings).

15 Where the Secretary of State appoints an assessor, he must notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 13. 'Assessor' means a person appointed by the Secretary of State to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State may specify: r 2(1).

As to the appointment of an assessor under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 9 (revoked with savings).

16 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 24. References in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: r 24.

For the equivalent provision under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 22 (revoked with savings).

17 As to the persons entitled to appear see PARA 664 post.

18 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 25. The specified documents are (1) an outline statement sent in accordance with r 9 (see PARA 661 post); (2) a statement of case or comments sent in accordance with r 11 (see PARA 662 post); (3) a proof of evidence sent in accordance with r 17 (see PARA 664 post); or (4) any other document or information sent to the Secretary of State before or during an inquiry: r 25(1)(a)-(d). He may specify the time within which such documents should be received by him (r 25(1)) and any person so requested must ensure that the copies are received by the Secretary of State within the period specified (r 25(2)).

For the equivalent provision under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 23 (revoked with savings).

UPDATE

659-660 Application of rules, Pre-inquiry procedure

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/661. Pre-inquiry meeting.

661. Pre-inquiry meeting.

The Secretary of State¹ must hold a pre-inquiry meeting². The following provisions apply to the pre-inquiry meeting, or where there is more than one, to the first pre-inquiry meeting:

- 2583 (1) the Secretary of State must send, with the relevant notice³, notice of his intention to hold a pre-inquiry meeting and a statement of the matters which, in his view, are the matters to be considered at the inquiry⁴; and where another Minister of the Crown or a government department has expressed in writing to the Secretary of State a view that the application should not be granted either wholly or in part, or should be granted only subject to conditions⁵, the Secretary of State must set this out in his statement⁶;
- 2584 (2) the Secretary of State must send a copy of the statement described in head (1) above to the minister or government department concerned and to each major participant⁷; and
- 2585 (3) the local planning authority⁸ must publish by local advertisement⁹ a notice of the Secretary of State's intention to hold a pre-inquiry meeting and of the statements sent in accordance with head (1) above¹⁰.

The applicant, the local planning authority and each major participant must ensure that within eight weeks of the date of the relevant notice the prescribed number of copies of their outline statement¹¹ have been received by the Secretary of State¹². The local planning authority and each major participant must identify in their outline statement any part of an environmental statement prepared by the applicant with which they disagree and the grounds for any such disagreement¹³.

The Secretary of State may in writing require any other person who has notified him of an intention or a wish to appear at the inquiry to send an outline statement to him, and that

person must ensure that the statement is received by the Secretary of State within four weeks of the date of the Secretary of State's written requirement¹⁴.

The Secretary of State must, as soon as practicable after receipt, circulate¹⁵ each outline statement sent¹⁶ in accordance with the above provisions¹⁷.

The pre-inquiry meeting or, where there is more than one, the first pre-inquiry meeting, must be held within 16 weeks of the date of the relevant notice¹⁸. The Secretary of State must give not less than three weeks' written notice of the pre-inquiry meeting to:

- 2586 (a) the applicant;
- 2587 (b) the local planning authority;
- 2588 (c) each major participant;
- 2589 (d) any person known at the date of the notice to be entitled to appear at the inquiry; and
- 2590 (e) any other person whose presence at the pre-inquiry meeting appears to him to be desirable;

and he may require the local planning authority to take, in relation to notification of the pre-inquiry meeting, one or more of the steps which he may require the authority to take¹⁹ in relation to notification of the inquiry²⁰.

The inspector²¹ must preside at the pre-inquiry meeting²² and must determine the matters to be discussed and the procedure to be followed²³. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify²⁴.

The inspector may at any time and for any purpose connected with the inquiry²⁵ hold such other meetings, including pre-inquiry meetings, as he considers necessary and he must arrange for such notice to be given of such meetings as appears to him necessary²⁶.

If the Secretary of State requests any further information from the applicant, the local planning authority or any major participant at the pre-inquiry meeting, they must ensure that the prescribed number of copies of it²⁷ have been received by him within such period as he may specify; and the Secretary of State must, as soon as practicable after receipt, circulate all information so received by him²⁸.

As soon as practicable

- 2591 (i) after the end of each pre-inquiry meeting the inspector must prepare a note of the proceedings at that meeting and must send a copy of that note to the Secretary of State²⁹;
- 2592 (ii) after sending the copy of the note to the Secretary of State, the inspector must circulate it³⁰;
- 2593 (iii) after making recommendations to the Secretary of State on a timetable for the proceedings³¹ or the matters which he is directed to consider³², the inspector must circulate a copy of those recommendations³³.

1 As to the Secretary of State see PARA 19 ante.

2 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 9(1). 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held about the same inquiry, references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: r 2(1).

As to pre-inquiry meetings under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 6 (revoked with savings).

3 For the meaning of 'relevant notice' see PARA 660 ante.

4 For the meaning of 'inquiry' for these purposes see PARA 660 note 4 ante.

5 Ie a view which is mentioned in the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 5(3)(c): see PARA 660 note 7 ante.

6 The Secretary of State may at any time modify the statement referred to in head (1) in the text and if he does so must send the modified statement to the local planning authority who must publish by local advertisement a notice of the modification made: *ibid* r 9(3).

7 For the meaning of 'major participant' see PARA 660 note 9 ante.

8 For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 ante.

9 For the meaning of 'by local advertisement' see PARA 660 note 8 ante.

10 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 9(2)(a)-(c).

11 Ie two copies in the case of the applicant and the local planning authority or three copies in any other case: *ibid* r 9(4). 'Outline statement' means a written statement of the principal submissions which a person proposes to put forward at an inquiry: r 2(1). The Secretary of State may at any time before the close of an inquiry request from any person entitled to appear additional copies of the outline statement and may specify the time within which such copies should be received by him; and any person so requested must ensure that the copies are received by the Secretary of State within the period specified: r 25(1)(a), (2). Where r 5(2) applies (see PARA 660 note 7 ante), the local planning authority must (1) include in its outline statement the terms of any direction given together with a statement of the reasons for it, and any view expressed or representation made on which it intends to rely in its submissions at the inquiry; and (2) within eight weeks from the date of the relevant notice send a copy of its outline statement to the person concerned: r 9(6).

12 *Ibid* r 9(4).

13 *Ibid* r 9(5). For the meaning of 'environmental statement' see PARA 491 note 6 ante (definition applied by r 2(1)).

14 *Ibid* r 9(7).

15 For the meaning of 'circulate' see PARA 660 note 9 ante.

16 Ie sent in accordance with the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 9(4) or r 9(7).

17 *Ibid* r 9(8).

18 *Ibid* r 9(9). As to the extension of time limits see PARA 660 ante.

19 Ie under *ibid* r 14(6): see PARA 663 post.

20 *Ibid* r 9(10).

21 For the meaning of 'inspector' see PARA 660 note 9 ante.

22 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 9(11)(a).

23 *Ibid* r 9(11)(b).

24 *Ibid* r 9(11)(c), (d).

25 Ie the inquiry to which the 2005 Rules apply: see PARA 659 ante.

26 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 9(12). Rule 9(11) applies to such meetings: r 9(12).

27 le two copies in the case of the applicant or the local planning authority or three copies in the case of any major participant: *ibid* r 9(13).

28 *Ibid* r 9(13).

29 *Ibid* r 10(1).

30 *Ibid* r 10(2).

31 le in accordance with *ibid* r 12(2): see PARA 660 note 14 ante.

32 le under the Town and Country Planning Act 1990 s 76B(2)(a) (as added): see PARA 482 ante.

33 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 10(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/662. Statements of case.

662. Statements of case.

The applicant must:

- 2594 (1) ensure that within four weeks from the conclusion of the pre-inquiry meeting¹ or within such other period as the Secretary of State² may specify in writing³, two copies of his statement of case⁴ have been received by the Secretary of State; and
- 2595 (2) as soon as reasonably practicable after sending the statement to the Secretary of State, send a copy of it to every other person entitled to appear⁵ at the inquiry⁶.

The local planning authority⁷, each major participant⁸ and any other person who is required to send a statement of case⁹ must:

- 2596 (a) ensure that within six weeks from the conclusion of the pre-inquiry meeting or within such other period as the Secretary of State may specify in writing, two copies of their statement of case have been received by the Secretary of State; and
- 2597 (b) as soon as reasonably practicable after sending the statement to the Secretary of State, send a copy of it to every other person entitled to appear¹⁰ at the inquiry¹¹.

The local planning authority must include the prescribed details¹² in its statement of case and, where applicable, within the specified period¹³ send a copy of its statement of case to the person concerned¹⁴. The local planning authority and each major participant must in their statements of case identify each part of the applicant's statement of case with which they agree and each part with which they do not agree, and must state the reasons for each disagreement¹⁵.

The Secretary of State must, as soon as practicable after receipt of each statement of case received by him, deposit it¹⁶.

The applicant, the local planning authority and any major participant may in writing request from any other person who is required to provide a statement of case a copy of any document¹⁷, or of the relevant part of any document, referred to in the list of documents comprised in that person's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the person who requested it¹⁸. The Secretary of State may in writing require any other person, who has notified him of an intention or wish to appear at the inquiry, to send to him two copies of that person's statement of case¹⁹; and must as soon as practicable inform that person of the name and address of every person to whom his statement of case is required to be sent²⁰.

The Secretary of State or the inspector²¹ may in writing require any person, who has sent to him a statement of case in accordance with the above provisions, to provide a specified number of additional copies of the statement or such further information about the matters contained in the statement as he may specify; and may specify the time within which the copies or information are to be received by him²². Any person required to provide additional copies or further information must:

- 2598 (i) ensure that the additional copies have been received by the Secretary of State or the inspector, as the case may be, within the specified time;
- 2599 (ii) ensure that two copies of the further information have been received by the Secretary of State or the inspector, within the specified time; and the Secretary of State or the inspector must, as soon as practicable after receipt, deposit that further information; and
- 2600 (iii) as soon as reasonably practicable after sending the further information to the Secretary of State or the inspector, send a copy of it to every other person entitled to appear²³ at the inquiry²⁴.

Any person other than the applicant who sends a statement of case to the Secretary of State must send with it a copy of any document or the relevant part of any document referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available²⁵ for inspection²⁶. The Secretary of State must send a written statement of the specified matters²⁷ to any person from whom he has required a statement of case²⁸.

The local planning authority must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of:

- 2601 (A) any statement of case, written comments, information or other document a copy of which has been sent to the local planning authority in accordance with these provisions; and
- 2602 (B) the local planning authority's statement of case together with a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement, and any written comments, information or other documents sent by the local planning authority pursuant to these provisions,

subject to the payment by that person of a reasonable charge²⁹.

If the local planning authority, the applicant, major participant or any other person who sends a statement of case under these provisions wishes to comment on another person's statement of case they must ensure that within four weeks of its receipt, two copies of their written comments have been received by the Secretary of State; and the Secretary of State must, as soon as practicable after receipt, deposit such comments³⁰. They must also, as soon as practicable after sending their comments to the Secretary of State, send a copy of them to every other person entitled to appear³¹ at the inquiry³².

The Secretary of State must, as soon as practicable after receipt, send to the inspector any statement of case, document or further information or written comments sent to him in accordance with the above provisions and received by him within the relevant period, if any, specified therein³³.

- 1 For the meaning of 'pre-inquiry meeting' see PARA 661 note 2 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the use of electronic communications see PARA 660 note 3 ante.
- 4 'Statement of case' means, and comprises, a written statement which contains (1) full particulars of the case which a person proposes to put forward at an inquiry; (2) a list of any documents which that person intends to refer to or put in evidence; (3) a list of the individuals whom that person proposes to call as witnesses; and (4) the subject-matter of the evidence of each such witness: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 2(1). For the meaning of 'inquiry' see PARA 660 note 4 ante.
- 5 le every person specified or referred to in *ibid* r 15(1): see PARA 664 note 2 post.
- 6 *Ibid* r 11(1). As to statements of case under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 7 (revoked with savings).
- 7 For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 ante.
- 8 For the meaning of 'major participant' see PARA 660 note 9 ante.
- 9 le in accordance with the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(7): see the text and note 19 *infra*.
- 10 See note 5 *supra*.
- 11 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(2).
- 12 le (1) details of the time and place where the opportunity to inspect and take copies described in *ibid* r 11(13) (see the text and note 29 *infra*) is to be afforded; and (2) where r 5(2) applies (see PARA 660 note 7 ante), the matters mentioned in r 9(2)(a)(ii), unless they have already included these in an outline statement: r 11(3)(a)(i), (ii).
- 13 le the period specified in *ibid* r 11(2).
- 14 *Ibid* r 11(3)(b). Rule 11(3)(b) applies where r 5(2) applies (see PARA 660 note 7 ante): r 11(3)(b).
- 15 *Ibid* r 11(4).
- 16 *Ibid* r 11(5). A requirement imposed on the Secretary of State or the inspector to deposit a document is met by sending a copy of it to the local planning authority; but nothing in this rule requires the Secretary of State or the inspector to send a copy of a document to the person from whom it was received: r 2(3), (4).
- 17 For the meaning of 'document' see PARA 660 note 3 ante.
- 18 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(6).
- 19 *Ibid* r 11(7).
- 20 *Ibid* r 11(8).
- 21 For the meaning of 'inspector' see PARA 660 note 9 ante.
- 22 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(9).
- 23 See note 5 *supra*.

24 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(10).

25 le pursuant to *ibid* r 11(13): see the text and note 29 *infra*.

26 *Ibid* r 11(11).

27 le the matters referred to in *ibid* r 9(2)(a)(ii): see PARA 661 *ante*.

28 *Ibid* r 11(12).

29 *Ibid* r 11(13).

30 *Ibid* r 11(14)(a).

31 See note 5 *supra*.

32 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(14)(b).

33 *Ibid* r 11(15).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/663. Date and notification of the inquiry.

663. Date and notification of the inquiry.

The date fixed by the Secretary of State¹ for the holding of the inquiry² must be, unless he considers such a date impracticable, not later than ten weeks after the conclusion of the pre-inquiry meeting³. Where the Secretary of State considers it impracticable to fix a date in accordance with this requirement, however, the date fixed must be the earliest date after the end of the period mentioned above which he considers to be practicable⁴.

Unless the Secretary of State agrees a lesser period of notice with the applicant and the local planning authority⁵, he must give not less than four weeks' written notice⁶ of the date, time and place fixed by him for the holding of an inquiry to every person entitled to appear at the inquiry⁷.

The Secretary of State may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period mentioned above⁸; and the notice requirements⁹ apply to a variation of a date as they applied to the date originally fixed¹⁰. The Secretary of State may also vary the time or place for the holding of an inquiry and must give such notice of any variation as appears to him to be reasonable¹¹.

The Secretary of State may in writing require the local planning authority to take one or more of the following steps:

- 2603 (1) not less than two weeks before the date fixed for the holding of an inquiry, to publish by local advertisement¹² and in the London Gazette a notice of the inquiry;
- 2604 (2) to send a notice of the inquiry to such persons or classes of persons as he may specify, within such period as he may specify; or
- 2605 (3) to post a notice of the inquiry in such places near to the land¹³, and within such period, as he may specify¹⁴.

Where the land is under the control of the applicant he must:

- 2606 (a) if so required in writing by the Secretary of State, affix a notice of the inquiry firmly to the land or to some object on or near the land, in such manner as to be readily visible to and legible by members of the public; and
- 2607 (b) not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State may specify¹⁵.

Every notice of inquiry so published, sent or posted or so affixed¹⁶ must contain:

- 2608 (i) a clear statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State to determine the application in question;
- 2609 (ii) a written description of the land sufficient to identify approximately its location;
- 2610 (iii) a brief description of the subject matter of the application; and
- 2611 (iv) details of where and when copies of any documents sent by and copied to the local planning authority¹⁷ may be inspected¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 I.e. an inquiry to which the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, apply: see PARA 659 ante. For the meaning of 'inquiry' see PARA 660 note 4 ante. As to the date and notification of an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 12 (revoked with savings).

3 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 14(1). For the meaning of 'pre-inquiry meeting' see PARA 661 note 2 ante.

4 Ibid r 14(2).

5 For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 ante.

6 A written notice is to be taken to have been given by the Secretary of State for these purposes where he and any person entitled to appear at the inquiry have agreed that notice of the matters mentioned in the text may instead be accessed by that person via a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State has published that notice on the website; and (3) not less than four weeks before the date fixed by the Secretary of State for the holding of the inquiry, the person is notified of (a) the publication of the notice on the website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 14(9). As to the use of electronic communications see further PARA 660 note 3 ante.

7 Ibid r 14(3).

8 I.e. the period mentioned in ibid r 14(1): see the text and notes 1-3 supra.

9 I.e. ibid r 14(3): see the text and notes 5-7 supra.

10 Ibid r 14(4).

11 Ibid r 14(5).

12 For the meaning of 'by local advertisement' see PARA 660 note 8 ante.

13 For the meaning of 'land' for these purposes see PARA 660 note 8 ante.

14 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 14(6).

15 Ibid r 14(7).

16 le published, sent or posted pursuant to *ibid* r 14(6) (see the text and notes 12-14 *supra*), or affixed pursuant to r 14(7) (see the text and note 15 *supra*).

17 le pursuant to *ibid* r 11: see PARA 662 *ante*.

18 *Ibid* r 14(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/664. Appearances at the inquiry; evidence.

664. Appearances at the inquiry; evidence.

The Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005¹ set out the procedure with regard to:

- 2612 (1) the persons entitled to appear at such an inquiry²;
- 2613 (2) the availability of representatives of government departments and other authorities at the inquiry³;
- 2614 (3) proofs of evidence⁴;
- 2615 (4) preparation of a statement of common ground⁵.

¹ See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, rr 15-18; and heads (1)-(4) in the text.

² See *ibid* r 15. The persons entitled to appear at an inquiry are (1) the applicant; (2) the local planning authority; (3) any of the following bodies if the land is situated in their area and they are not the local planning authority: (a) a county or district council; (b) a National Park authority; (c) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended) (see PARA 1491 *et seq post*); (d) the Broads Authority, within the meaning of the Norfolk and Suffolk Broads Act 1988; (e) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 332); (f) an urban development corporation established by order of the Secretary of State under the Local Government, Planning and Land Act 1980 s 135(1) (see PARA 1429 *post*); (4) where the land is in an area previously designated as a new town, the Commission for the New Towns; (5) any statutory party; (6) any major participant; (7) the council of the parish in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order; (8) where the application was required to be notified to the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14 (see PARA 1117 *post*), the Commission; (9) any other person who has sent a statement of case in accordance with the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11(2) (see PARA 662 *ante*): r 15(1). Nothing in r 15(1) prevents the inspector from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld: r 15(2). Any person entitled or permitted to appear may do so on his own behalf or be represented by any other person: r 15(3).

For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 *ante*; for the meaning of 'statutory party' see PARA 660 note 7 *ante*; for the meaning of 'major participant' see PARA 660 note 9 *ante*; for the meaning of 'inspector' see PARA 660 note 9 *ante*; and for the meaning of 'the land' see PARA 660 note 8 *ante*. As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to the Commission for the New Towns see PARA 1383 *et seq post*; and as to English Heritage see PARA 1058 *post*.

As to the persons entitled to appear at an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 13 (revoked with savings).

³ See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 16. Where: (1) the Secretary of State or the Commission has given a direction described in r 5(3)(a) or (b) (see PARA 660 note 7 *ante*); or (2) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within r 15(1)(c) (see note 2 *supra*), has expressed a view

described in r 5(3)(c) (see PARA 660 note 7 ante) and the local planning authority has included the terms of the expression of view in a statement sent in accordance with r 9(2) (see PARA 661 ante); or (3) another Minister of the Crown or any government department has expressed a view described in r 5(3)(c) and the Secretary of State has included its terms in a statement sent in accordance with r 9(2) (see PARA 661 ante), the applicant, the local planning authority or a person entitled to appear may, not later than four weeks before the date of an inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or of the other minister, department or body concerned to be made available at the inquiry: r 16(1). Where an application is made in accordance with r 16(1), the Secretary of State must make a representative available to attend the inquiry or, as the case may be, send the application to the other minister, department or body concerned, who must make a representative available to attend the inquiry: r 16(2). Any person attending an inquiry as a representative in pursuance of r 16 must state the reasons for the direction or expressed view and must give evidence and be subject to cross-examination to the same extent as any other witness: r 16(3). Nothing in r 16(3), however, requires a representative of a minister or a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy: r 16(4).

As to representatives of government departments etc at an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 14 (revoked with savings).

4 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 17. Any person entitled to appear at an inquiry, who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must send two copies, in the case of the local planning authority and the applicant, or three copies in any other case, to the Secretary of State; and the Secretary of State must, as soon as practicable after receipt, deposit each such proof of evidence: r 17(1). Where a proof of evidence so sent contains more than 1,500 words, it must be accompanied by a written summary, and the Secretary of State must deposit the summary: r 17(2). Where a person sends copies of a proof of evidence and summary (if any), that person must at the same time send a copy to every other person specified or referred to in r 15(1) unless the person so specified or referred to has indicated in writing that he does not require to be sent a copy: r 17(3). The proof of evidence and any summary must be received by the Secretary of State no later than the date specified by the inspector pursuant to r 12(1)(b) (see PARA 660 note 14 ante): r 17(4). The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with r 17 and received by him within the relevant period, if any, specified therein: r 17(5). Where a written summary is provided in accordance with r 17(2), only that summary is to be read at the inquiry, unless the inspector permits or requires otherwise: r 17(6). Any person required by r 17 to send copies of a proof of evidence to the Secretary of State must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to r 11(13) (see PARA 662 ante): r 17(7). The Secretary of State or the inspector may in writing require any person who has sent a copy of a proof of evidence or summary in accordance with r 17 to provide such additional copies of the proof or summary as he may specify and may specify the time within which the copy of the proof or summary is to be received by him: r 17(8). Any person required to provide additional copies must ensure that the copies have been received by the Secretary of State or inspector within the specified time: r 17(9). For the meaning of 'deposit' see PARA 662 note 16 ante.

As to proofs of evidence at an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 15 (revoked with savings).

5 See the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 18. 'Statement of common ground' means a written statement prepared jointly by the local planning authority and the applicant, which contains agreed factual information about the proposal which is the subject of the application: r 2(1). The local planning authority and the applicant must together prepare an agreed statement of common ground: r 18(1). Where an agreed statement of common ground is prepared in accordance with r 18(1), the applicant must: (1) ensure that, by the date specified by the inspector under r 12(1)(b) (see PARA 660 note 14 ante), two copies of the statement have been received by the Secretary of State; and the Secretary of State must, as soon as practicable after receipt, deposit that statement; (2) at the same time as he sends the statement to the Secretary of State, send a copy of it to every other person specified or referred to in r 15(1)(c)-(i) (see note 2 heads (3)-(9) supra); and (3) afford to any other person who so requests a reasonable opportunity to inspect and, where practicable and on payment of a reasonable charge, take copies of the statement: r 18(2).

As to statements of common ground at an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 16 (revoked with savings).

UPDATE

664 Appearances at the inquiry; evidence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 2--SI 2005/2115 r 15(1) amended: SI 2008/2831.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/A. MAJOR INFRASTRUCTURE PROJECTS IN ENGLAND/665. Procedure at the inquiry; site inspections.

665. Procedure at the inquiry; site inspections.

Except as otherwise provided in the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005,¹ the inspector² must determine the procedure at an inquiry³. At the start of the inquiry the inspector must identify the matters to be considered at the inquiry, and any matters on which he requires further explanation from the persons entitled or permitted to appear⁴; but nothing in that requirement precludes any person entitled or permitted to appear from referring to matters which they consider relevant to the consideration of the application or appeal but which were not matters so identified by the inspector⁵.

Unless in any particular case the inspector otherwise determines, the applicant is to begin and to have the right of final reply; and the other persons entitled or permitted to appear are to be heard in such order as the inspector may determine⁶. A person entitled to appear at an inquiry is entitled to call evidence and the applicant, the local planning authority and any major participant⁷ are entitled to cross-examine persons giving evidence, but, subject to this and to the exceptions set out below⁸, the calling of evidence and the cross-examination of persons giving evidence is otherwise at the discretion of the inspector⁹.

The inspector may refuse to permit the:

- 2616 (1) giving or production of evidence;
- 2617 (2) cross-examination of persons giving evidence; or
- 2618 (3) presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry¹⁰. The inspector may refuse to permit the cross-examination of persons giving evidence, or may require such cross-examination to cease, if it appears to him that permitting such cross-examination or allowing it to continue, as the case may be, would have the effect that the inquiry timetable¹¹ could not be met¹².

Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹³:

- 2619 (a) the proof of evidence¹⁴ is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone; and
- 2620 (b) the person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁵.

The inspector may direct that facilities are to be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection¹⁶. He may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave and either refuse to permit that person to return or permit him to return only on such conditions as he may specify, but any such person may submit to him any evidence or other matter in writing before the close of the inquiry¹⁷.

The inspector may also:

- 2621 (i) allow any person to alter or add to a statement of case¹⁸ received by the Secretary of State or by him¹⁹ or a proof of evidence received by the Secretary of State²⁰ so far as may be necessary for the purposes of the inquiry; but he must (if necessary by adjourning the inquiry) give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any such alteration or addition²¹;
- 2622 (ii) proceed with an inquiry in the absence of any person entitled to appear at it²²;
- 2623 (iii) take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²³;
- 2624 (iv) from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is required²⁴.

Any person who appears at an inquiry and makes closing submissions must by the close of the inquiry provide the inspector with a copy of his closing submission in writing²⁵.

The inspector may make an unaccompanied inspection of the land²⁶ before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry²⁷. During an inquiry or after its close, the inspector:

- 2625 (A) may inspect the land in the company of the applicant and the local planning authority; and
- 2626 (B) must make such an inspection if so requested by the applicant or the local planning authority before or during an inquiry²⁸.

In all cases where the inspector intends to make an accompanied site inspection he must announce during the inquiry the date and time at which he proposes to make it²⁹; but he is not bound to defer an inspection of the kind referred to heads (A) and (B) above where any person mentioned in those heads is not present at the time appointed³⁰.

1 Ie except as otherwise provided in the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115: see PARA 659 et seq ante, the text and notes 2-30 infra, and PARA 666 post.

2 For the meaning of 'inspector' see PARA 660 note 9 ante.

3 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 19(1). For the meaning of 'inquiry' for these purposes see PARA 660 note 4 ante. As to the procedure at an inquiry to which the 2002 Rules apply see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 17 (revoked with savings).

4 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 19(2). As to the persons entitled or permitted to appear see PARA 664 ante.

5 Ibid r 19(3).

6 Ibid r 19(4).

7 For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 ante; and for the meaning of 'major participant' see PARA 660 note 9 ante.

8 Ie subject to Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 19(5), (6), (10).

9 Ibid r 19(5).

10 Ibid r 19(6).

11 Ie the timetable referred to in ibid r 12(2): see PARA 660 note 14 ante.

12 Ibid r 19(7).

13 Ie in accordance with ibid r 17(6): see PARA 664 note 4 ante.

14 Ie referred to in ibid r 17(1): see PARA 664 note 4 ante.

15 Ibid r 19(8).

16 Ibid r 19(9).

17 Ibid r 19(10).

18 For the meaning of 'statement of case' see PARA 662 ante.

19 Ie under the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 11: see PARA 662 ante. As to the Secretary of State see PARA 19 ante.

20 Ie under ibid r 17: see PARA 664 note 4 ante.

21 Ibid r 19(11).

22 Ibid r 19(12).

23 Ibid r 19(13).

24 Ibid r 19(14).

25 Ibid r 19(15).

26 For the meaning of 'the land' see PARA 660 note 8 ante.

27 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 20(1). As to site inspections under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 18 (revoked with savings).

28 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 20(2).

29 Ibid r 20(3).

30 Ibid r 20(4).

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666. Procedure after inquiry.

After the close of an inquiry¹, the lead inspector² must by such date as the Secretary of State³ may determine make a report in writing to the Secretary of State which must include:

- 2627 (1) his consideration of the application;
- 2628 (2) the consideration by any additional inspector⁴ of the matters relating to the application which that additional inspector has been directed to consider;
- 2629 (3) his conclusions; and
- 2630 (4) his recommendations or his reasons for not making any recommendations⁵.

Where the Secretary of State determines a date by which the lead inspector is to report to him, he must give notice in writing⁶ of that determination to the inspector and to all parties entitled to appear at the inquiry⁷.

Where an assessor⁸ has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise⁹. Where an assessor makes a report in accordance with this provision, the inspector must append it to his own report and must state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement¹⁰.

When making his decision the Secretary of State may disregard any written representations, evidence or any other document received after the close of the inquiry¹¹. If, after the close of an inquiry, the Secretary of State:

- 2631 (a) differs from an inspector on any matter of fact mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
- 2632 (b) takes into consideration any new evidence or new matter of fact (not being a matter of government policy),

and is for that reason disposed to disagree with a recommendation made by the lead inspector, he may not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the inquiry who appeared at it of his disagreement and the reasons for it and affording them an opportunity of making written representations to him or (if the Secretary of State has taken into consideration any new evidence or new matter of fact, not being a matter of government policy) of asking for the reopening of the inquiry¹². Those persons so making written representations or requesting the inquiry to be reopened must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the Secretary of State's notification¹³.

The Secretary of State may, as he thinks fit, cause an inquiry to be reopened¹⁴. He must do so if asked by the applicant or the local planning authority¹⁵ in the circumstances¹⁶ and within the period¹⁷ mentioned above¹⁸. Where an inquiry is reopened, whether by the same or a different lead inspector, the Secretary of State must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited¹⁹.

1 For the meaning of 'inquiry' for these purposes see PARA 660 note 4 ante.

2 For the meaning of 'lead inspector' see PARA 660 note 9 ante.

3 As to the Secretary of State see PARA 19 ante.

4 For the meaning of 'additional inspector' see PARA 660 note 9 ante.

5 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 21(1). As to the procedure after an inquiry to which the 2002 Rules apply, see the Town and

Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 19 (revoked with savings).

6 As to the use of electronic communications see PARA 660 note 3 ante.

7 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 21(2). As to the persons entitled or permitted to appear see PARA 664 ante.

8 For the meaning of 'assessor' see PARA 660 note 15 ante.

9 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 21(3).

10 Ibid r 21(4).

11 Ibid r 21(5).

12 Ibid r 21(6).

13 Ibid r 21(7).

14 Ibid r 21(8).

15 For the meaning of 'local planning authority' for these purposes see PARA 660 note 2 ante.

16 Ie in the circumstances mentioned in the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 21(6): see the text to note 12 supra.

17 Ie within the period mentioned in ibid r 21(7): see the text to note 13 supra.

18 Ibid r 21(8).

19 Ibid r 21(8)(a). Rule 14(3)-(9) (date and notification of inquiry: see PARA 663 ante) applies as if the references to an inquiry were references to a reopened inquiry: r 21(8)(b).

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667. Notification of Secretary of State's decision; procedure if that decision is later quashed.

The Secretary of State¹ must, as soon as practicable, notify his decision on an application, and his reasons for it, in writing² to:

- 2633 (1) all persons entitled to appear³ at the inquiry⁴ who did appear; and
- 2634 (2) any other person who, having appeared at the inquiry, has asked to be notified of the decision⁵.

Where a copy of the lead inspector's report⁶ is not sent with the notification of the decision, the notification must be accompanied by a statement of his conclusions and of any recommendations made by him, and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application⁷ to the Secretary of State⁸.

Where a decision of the Secretary of State on an application in respect of which an inquiry has been held is quashed in proceedings before any court⁹, the Secretary of State:

- 2635 (a) must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purposes of his further consideration of the application;
- 2636 (b) must afford to those persons the opportunity of making written representations to him in respect of those matters or of asking for the reopening of the inquiry¹⁰; and
- 2637 (c) may, as he thinks fit, cause the inquiry to be reopened, whether by the same or a different lead inspector¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State and the person have agreed that decisions and reasons required under this rule to be given in writing may instead be accessed by that person via a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State has published the decision and reasons on a website; and (4) the person is notified, in manner for the time being agreed between him and the Secretary of State, of (a) the publication of the decision and reasons on a website; (b) the address of the website; and (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 22(2).

3 As to the persons entitled or permitted to appear see PARA 664 ante.

4 For the meaning of 'inquiry' for these purposes see PARA 660 note 4 ante.

5 Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 22(1). As to the procedure after an inquiry under the 2002 Rules see the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 20 (revoked with savings).

6 For these purposes 'report' includes any assessor's report appended to an inspector's report and an additional inspector's report appended to the lead inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State in writing, within six weeks of the date of the Secretary of State's decision, for an opportunity of inspecting any such documents and the Secretary of State must afford him that opportunity: Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 22(4). For the meanings of 'lead inspector' and 'additional inspector' see PARA 660 note 9 ante; and for the meaning of 'assessor' see PARA 660 note 15 ante.

7 Any person so applying to the Secretary of State must ensure that his application is received by the Secretary of State within four weeks of the Secretary of State's determination: *ibid* r 22(5).

8 *Ibid* r 22(3).

9 As to challenging the validity of a decision see PARAS 43 et seq, 650 ante.

10 Those persons making representations or asking for the inquiry to be reopened under the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, r 23(1) (b) (see head (b) in the text) must ensure that such representations or requests are received by the Secretary of State within three weeks of the date of the written statement sent under r 23(1)(a) (see head (a) in the text): r 23(3).

11 *Ibid* r 23(1). If he does so, r 14(3)-(9) (see PARA 663 ante) applies as if the references to an inquiry were references to a reopened inquiry: r 23(2).

Where a decision under the 2002 Rules is quashed, the application must be redetermined in accordance with the 2005 Rules: see PARA 659 ante.

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B. ENFORCEMENT ETC APPEALS

668. Application of rules.

Rules have been made¹ which apply in relation to any local inquiry caused by the Secretary of State² to be held in England before he determines an appeal made on or after 23 December 2002:

- 2638 (1) under the Town and Country Planning Act 1990 against an enforcement notice³;
- 2639 (2) under that Act against the refusal or non-determination of an application for a certificate of lawful use or development⁴;
- 2640 (3) under the Planning (Listed Buildings and Conservation Areas) Act 1990 against a listed building enforcement notice⁵ or under that Act⁶ against a conservation area enforcement notice⁷.

Those rules do not, however, apply to any local inquiry by reason of the application of any provision mentioned in heads (1) to (3) above by or under any other enactment⁸.

Rules have also been made⁹ which apply in relation to any local inquiry caused by the National Assembly for Wales¹⁰ to be held in Wales before it determines an appeal made on or after 1 June 2003 such as is described in heads (1) to (3) above¹¹.

1 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended); and PARA 669 et seq post.

2 As to the Secretary of State see PARA 19 ante.

3 Ie an appeal under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante. For these purposes, 'enforcement notice' means a notice under s 172 (as substituted) (see PARA 561 ante): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (renumbered as such by SI 2003/956).

4 Ie an appeal under the Town and Country Planning Act 1990 s 195 (as amended): see PARA 613 ante. 'Certificate of lawful use or development' means a certificate under s 191 or s 192 (each as substituted) (see PARAS 586-587 ante): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered: see note 3 supra).

5 Ie an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARA 1191 post. For these purposes, 'enforcement notice' means a notice under s 38 (as amended) (see PARA 1146 post): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered: see note 3 supra).

6 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) as applied by s 74(3): see PARA 1197 post.

7 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 3(1).

8 Ibid r 3(1). For transitional provisions see rr 3(2), 26(1), (2).

9 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended); and PARA 669 et seq post.

10 As to the Assembly see PARA 20 ante.

11 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 3(1). The 2003 Rules do not apply to any local inquiry by reason of the application of any provision mentioned in r 3 by or under any other enactment: r 3(1). For transitional provisions see rr 3(2), 26(1), (2).

UPDATE

668-669 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/669. Pre-inquiry procedure; use of electronic communications.

669. Pre-inquiry procedure; use of electronic communications.

Rules have been made¹ in relation to the pre-inquiry procedure for local inquiries² caused by the Secretary of State³ to be held in England, or by the National Assembly for Wales⁴ to be held in Wales, before the determination of certain enforcement and other appeals⁵. Those rules set out the procedure with regard to:

- 2641 (1) preliminary information to be supplied by the local planning authority⁶;
- 2642 (2) notification of the name of the inspector⁷;
- 2643 (3) the procedure where a pre-inquiry meeting is to be held⁸;
- 2644 (4) service of a statement of matters by the Secretary of State or the Assembly⁹;
- 2645 (5) service of statements of case etc¹⁰;
- 2646 (6) the inspector's further powers to hold pre-inquiry meetings¹¹;
- 2647 (7) the inquiry timetable¹²;
- 2648 (8) the appointment of an assessor¹³.

Provision is also made for the service of documents¹⁴, for any purposes of the relevant rules which are capable of being carried out electronically, by the use of electronic communications¹⁵.

1 See PARA 668 ante.

2 I.e. local inquiries to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended), or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended), apply: see PARA 668 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, rr 4-10, 12 (as amended); the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, rr 4-10, 12 (as amended); and the text and notes 6-13 *infra*.

6 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 4. The Secretary of State must, as soon as practicable after it is determined to hold an inquiry under the 2002 Rules, inform the appellant and the local planning authority in writing that an inquiry is to be held: r 4(1). The local planning authority must within two weeks of the starting date: (1) send to the Secretary of State and the appellant a completed questionnaire and a copy of each of the documents referred to in it (r 4(2)(a)); (2) in the case of an enforcement appeal, notify any: (a) person on whom a copy of the enforcement notice has been served; (b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and (c) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice, that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State (r 4(2)(b)).

'Questionnaire' means a document in the form supplied by the Secretary of State to local planning authorities for the purpose of proceedings under the 2002 Rules, and for this purpose a form is taken to be supplied where the Secretary of State has published it on a website and has notified the local planning authority of publication of the form on the website, the address of the website and the place on the website where the form may be accessed, and how it may be accessed: r 2(1) (renumbered and amended by SI 2003/956). 'Local planning authority' means in relation to an enforcement appeal, the body which issued the relevant enforcement notice and in relation to an appeal against the refusal or non-determination of an application for a certificate of lawful use or development, the body to which the application was made: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as so renumbered). 'Enforcement appeal' means an appeal against an enforcement notice; and 'enforcement notice' means a notice under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 *ante*) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) (see PARA 1146 *post*): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as so renumbered). 'Starting date' means the date of the (i) Secretary of State's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal pursuant to the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, 2002/2682, reg 10 (see PARA 607 *ante*); or (ii) relevant notice, whichever is the later; and 'relevant notice' means the Secretary of State's written notice under the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 4(1) informing the appellant and the local planning authority that an inquiry is to be held: r 2(1) (as so renumbered).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 4(1), (2), which refers to the Assembly rather than to the Secretary of State. For the relevant definitions see r 2(1) (renumbered and amended by SI 2004/3172).

The Secretary of State or, as the case may be, the Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the applicable 2002 or 2003 Rules, and references in those rules to a day by which, or period within which, any step is required or enabled to be taken are to be construed accordingly: see the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 23; the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 23.

Notices or documents required or authorised to be served, sent or supplied under the 2002 or 2003 Rules may be served, sent or supplied by post or by using electronic communications to serve, send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 25 (substituted by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 25 (added by SI 2004/3172). See further notes 14-15 *infra*.

7 In relation to England, the Secretary of State, and in relation to Wales, the Assembly, must notify the name of the inspector to every person entitled to appear at the inquiry; and where he or it appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the inquiry is held, the inspector holding the inquiry must, at its commencement, announce his name and the fact of his appointment: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 5(1), (2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 5(1), (2). 'Inspector' means a person appointed by the Secretary of State or the Assembly to hold the relevant inquiry or reopened inquiry: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered: see note 6 *supra*); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (as renumbered: see note 6 *supra*).

8 See PARA 670 *post*.

9 The Secretary of State in relation to England or the Assembly in relation to Wales may, before an inquiry is held, serve on the local planning authority, the appellant, any person required to serve a statement of case pursuant to the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(6) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(6) (see PARA 671 post) and, in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served, a written statement of the matters about which he or the Assembly particularly wishes to be informed for the purposes of his or its consideration of the appeal: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 7; Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 7.

10 See PARA 671 post.

11 See PARA 670 post.

12 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 10. The inspector must prepare a timetable for the proceedings at, or at part of, an inquiry where (1) a pre-inquiry meeting is held; or (2) it appears to the Secretary of State likely that an inquiry will last for four days or more: r 10(1). In respect of shorter inquiries or those where no pre-inquiry meeting is held the inspector may at any time prepare a timetable for the proceedings at, or at part of, an inquiry: r 10(2). The inspector may, at any time, vary the timetable so prepared: r 10(3). The inspector may specify in a timetable so prepared a date by which any proof of evidence and summary sent in accordance with r 16(1) (see PARA 673 post) must be sent to the Secretary of State: r 10(4).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 10(1)-(4).

13 In relation to England, where the Secretary of State appoints an assessor he must notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 12. 'Assessor' means a person appointed by the Secretary of State to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State may specify: r 2(1) (as renumbered: see note 6 supra).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 12; and for the meaning of 'assessor' see r 2(1) (as renumbered: see note 6 supra).

14 'Document' includes a photograph, map or plan: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (both as renumbered: see note 6 supra).

15 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(2)-(8) (added by SI 2003/956). In the 2002 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically: (1) the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address; (2) references to statements, notices, summaries, applications, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(2) (as so added). Rule 2(4)-(8) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules that an application, notice, or other document should be made, sent or given to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the application, notice, or other document or (in the case of an agreement) the text concluding the agreement which is transmitted by means of the electronic communication is (a) capable of being accessed by the recipient; (b) legible in all material respects; and (c) sufficiently permanent to be used for subsequent reference (r 2(4) (as so added)); and 'legible in all material respects' means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a notice or document in printed form (r 2(5) (as so added)). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 2(6) (as so added). A requirement in the 2002 Rules that any notice or other document should be in writing is fulfilled where the document transmitted meets the criteria in r 2(4) (as so added), and 'written' and cognate expressions are to be construed accordingly: r 2(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or document in question: r 2(8) (as so added). For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered and amended: see note 6 supra).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(2)-(8) (added by SI 2004/3172).

Where a person is no longer willing to accept the use of electronic communications for any purpose of the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended), or as the case may be, any purpose of the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended), which is capable of being effected electronically, he must give notice in writing: (1) withdrawing any address notified to the Secretary of State (or the Assembly) or to a local planning authority for that purpose; or (2) revoking any agreement entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 25A (added by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 25A (added by SI 2004/3172).

UPDATE

668-669 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/670. Pre-inquiry meetings.

670. Pre-inquiry meetings.

If the Secretary of State¹ expects a local inquiry² to be held in England before the determination of certain enforcement and other appeals to last for four days or more, or if the National Assembly for Wales³ expects such a local inquiry⁴ to be held in Wales to last for eight days or more, he or the Assembly must hold a pre-inquiry meeting⁵ unless he or it considers it unnecessary⁶. He or the Assembly may hold a pre-inquiry meeting for shorter inquiries if it appears to him or to the Assembly to be necessary⁷.

Where the Secretary of State or the Assembly decides to hold a pre-inquiry meeting the following provisions apply:

- 2649 (1) he or the Assembly must send to the appellant and the local planning authority⁸ notice of his or its intention to hold a pre-inquiry meeting and a statement of the matters about which he or it particularly wishes to be informed for the purposes of his or its consideration of the appeal in question;
- 2650 (2) the local planning authority must publish in a newspaper circulating in the locality in which the land⁹ is situated a notice of the Secretary of State's or the Assembly's intention to hold a pre-inquiry meeting and of the statement sent in accordance with head (1) above; and
- 2651 (3) the appellant and the local planning authority must send two copies of their outline statement¹⁰ to the Secretary of State within eight weeks of the starting date¹¹.

The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the local planning authority's outline statement to the appellant and a copy of the appellant's outline statement to the local planning authority¹². He or the Assembly may in writing require any other person who has notified him or it of an intention or a wish to appear at the inquiry to send an outline statement to him or to the Assembly, to the appellant and to the local planning authority¹³; and a person so required to send an outline statement must send it to the Secretary of State or the Assembly, the appellant and the local planning authority within four weeks of the date on which the Secretary of State or the Assembly so requires¹⁴.

The pre-inquiry meeting, or where there is more than one, the first pre-inquiry meeting, must be held within 16 weeks of the starting date¹⁵. The Secretary of State or the Assembly must give not less than three weeks' written notice¹⁶ of the pre-inquiry meeting to:

- 2652 (a) the appellant;
- 2653 (b) the local planning authority;
- 2654 (c) any person known at the date of the notice to be entitled to appear at the inquiry¹⁷; and
- 2655 (d) any other person whose presence at the pre-inquiry meeting appears to him or to the Assembly to be desirable¹⁸.

The inspector¹⁹ must preside at the pre-inquiry meeting²⁰. He must determine the matters to be discussed and the procedure to be followed²¹. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return to or attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify²².

Where a pre-inquiry meeting has been so held, the inspector may hold a further pre-inquiry meeting and he must arrange for such notice to be given of a further pre-inquiry meeting as appears to him necessary²³.

If the Secretary of State or the Assembly requests any further information from the appellant or the local planning authority at the pre-inquiry meeting, they must send two copies of it to him or to the Assembly and, in the case of an enforcement appeal²⁴, a copy to any person on whom a copy of the enforcement notice²⁵ has been served, within four weeks of the conclusion of the pre-inquiry meeting²⁶. Where the Secretary of State or the Assembly so receives further information he or it must, as soon as practicable after receipt, send a copy of such further information received from the appellant to the local planning authority and send a copy of such further information received from the local planning authority to the appellant²⁷.

Where no pre-inquiry meeting is held pursuant to the above provisions, an inspector may hold one if he thinks it necessary²⁸. An inspector must give not less than two weeks' written notice of a pre-inquiry meeting he proposes to hold under this power to:

- 2656 (i) the appellant;
- 2657 (ii) the local planning authority;
- 2658 (iii) any person known at the date of the notice to be entitled to appear at the inquiry; and
- 2659 (iv) any other person whose presence at the pre-inquiry meeting appears to him to be desirable²⁹.

1 As to the Secretary of State see PARA 19 ante.

2 In an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) apply: see PARA 668 ante.

3 As to the Assembly see PARA 20 ante.

4 le an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

5 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (renumbered by SI 2004/3172).

6 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(1) (a); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(1) (a).

7 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(1) (b); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(1) (b).

8 For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante.

9 For these purposes, 'land' means the land or building to which an inquiry relates: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (as renumbered: see note 5 supra).

10 'Outline statement' means a written statement of the principal submissions which a person proposes to put forward at an inquiry: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (as renumbered: see note 5 supra).

11 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(2).

12 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(3).

13 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(4).

14 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(5); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(5).

15 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(6); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(6). For the meaning of 'starting date' see PARA 669 note 6 ante.

16 As to the use of electronic communications see PARA 669 note 15 ante.

17 As to the persons entitled to appear see PARA 673 post.

18 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(7); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(7). The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(6) or, as the case may be, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(6) (see PARA 672 post) applies to a pre-inquiry meeting as it does to the holding of an inquiry: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(8); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(8).

19 For the meaning of 'inspector' see PARA 669 note 7 ante.

20 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(9)(a); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(9)(a).

21 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(9)(b); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(9)(b).

22 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(9)(c), (d); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(9)(c), (d).

23 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(10); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(10). The provisions set out in the text to notes 19-22 apply to such a pre-inquiry meeting: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(10); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(10).

24 For the meaning of 'enforcement appeal' see PARA 669 note 6 ante.

25 For the meaning of 'enforcement notice' see PARA 669 note 6 ante.

26 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(11); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(11).

27 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(12); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(12).

28 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 9(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 9(1). The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(6) or, as the case may be, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(6) (see PARA 672 post) applies to a pre-inquiry meeting so held: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 9(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 9(3).

29 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 9(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 9(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/671. Statements of case.

671. Statements of case.

The local planning authority¹ must, within six weeks of the starting date² of a local inquiry to be held before the determination of certain enforcement and other appeals³ or, where a pre-inquiry meeting⁴ is held⁵, within four weeks of the conclusion of that pre-inquiry meeting, serve two copies of its statement of case⁶ on the Secretary of State⁷ or, if the inquiry is held in Wales, on the National Assembly for Wales⁸. The authority must also, in the case of an enforcement appeal⁹, so serve a copy on any person on whom a copy of the enforcement notice¹⁰ has been served¹¹.

The appellant must:

2660 (1) in the case of an appeal where no pre-inquiry meeting is held, within six weeks of the starting date; or

2661 (2) in any case where a pre-inquiry meeting is held, within four weeks of the conclusion of that pre-inquiry meeting,

serve two copies of his statement of case on the Secretary of State or the Assembly and, in the case of an enforcement appeal, a copy on any person on whom a copy of the enforcement notice has been served¹². The Secretary of State or the Assembly must, as soon as practicable

after receipt, send a copy of the local planning authority's statement of case to the appellant and a copy of the appellant's statement of case to the local planning authority¹³. The appellant and the local planning authority may in writing¹⁴ each require the other to send them a copy of any document¹⁵, or the relevant part of any document, referred to in the list of documents comprised in that party's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the party who required it¹⁶.

The Secretary of State or the Assembly may in writing require any other person, who has notified him or it of an intention or a wish to appear at the inquiry, to serve:

- 2662 (a) copies of their statement of case on him or on the Assembly within four weeks of being so required; and
- 2663 (b) in the case of an enforcement appeal, simultaneously, a copy of their statement of case on any person specified by the Secretary of State or the Assembly;

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of each such statement of case to the local planning authority and to the appellant¹⁷. He or it must also, as soon as practicable, send to any person from whom he or it so requires a statement of case a copy of the statements of case of the appellant and the local planning authority and inform that person of the name and address of every person to whom his statement of case is required to be sent¹⁸.

The Secretary of State (or the Assembly) or the inspector¹⁹ may in writing require any person who has served on him or on it a statement of case in accordance with the provisions set out above to provide such further information about the matters contained in the statement of case as he or it may specify and may specify the time within which the information is to be sent to him or to it²⁰. A local planning authority or appellant required to provide further information must send within the time specified two copies of that information in writing to the Secretary of State (or the Assembly) or, as the case may be, the inspector and, in the case of an enforcement appeal, a copy to any person on whom a copy of the enforcement notice has been served²¹. The Secretary of State (or the Assembly) or, as the case may be, the inspector, must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the appellant and a copy of the further information received from the appellant to the local planning authority²². Any other person required to provide further information must send within the time specified three copies of that information in writing to the Secretary of State (or the Assembly) or, as the case may be, to the inspector and, in the case of an enforcement appeal, a copy to any person on whom a copy of the enforcement notice has been served; and the Secretary of State (or the Assembly) or, as the case may be, the inspector, must, as soon as practicable after receipt, send a copy of the further information to the local planning authority and the appellant²³. Any person other than the appellant who serves a statement of case on the Secretary of State or the Assembly must send with it a copy of any document or the relevant part of any document referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available²⁴ for inspection²⁵.

Unless he or it has already done so, the Secretary of State or the Assembly must, within 12 weeks of the starting date, send a written statement of the specified matters²⁶ to:

- 2664 (i) the appellant;
- 2665 (ii) the local planning authority;
- 2666 (iii) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; and
- 2667 (iv) any person from whom he or the Assembly has required a statement of case²⁷.

The local planning authority must give any person who so requests a reasonable opportunity²⁸ to inspect and, where practicable, take copies of:

- 2668 (A) any statement of case, written comments, further information or other document a copy of which has been sent to the local planning authority in accordance with the provisions set out above; and
- 2669 (B) the local planning authority's completed questionnaire²⁹ and statement of case together with a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement, and any written comments, information or other documents sent by the local planning authority pursuant to those provisions³⁰.

If the local planning authority or the appellant wishes to comment on another person's statement of case, they must send within nine weeks of the starting date two copies of their written comments to the Secretary of State or the Assembly and, in the case of an enforcement appeal, a copy of their written comments to any person on whom a copy of the enforcement notice has been served; and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments received from the appellant to the local planning authority and a copy of the written comments received from the local planning authority to the appellant³¹. Any person, other than the local planning authority or the appellant, who serves a statement of case on the Secretary of State or the Assembly under the provisions set out above and who wishes to comment on another person's statement of case, must send, not less than four weeks before the date fixed for the holding of the inquiry, three copies of their written comments to the Secretary of State or the Assembly and, in the case of an enforcement appeal, a copy of their written comments to any person on whom a copy of the enforcement notice has been served; and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments to the local planning authority and to the appellant³². The Secretary of State or the Assembly must also, as soon as practicable after receipt, send to the inspector any statement of case, document or further information or written comments sent to him or to it in accordance with the relevant provisions³³ and within the relevant period, if any, specified therein³⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante.

2 For the meaning of 'starting date' see PARA 669 note 6 ante.

3 I.e. an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

4 For the meaning of 'pre-inquiry meeting' see PARA 670 note 5 ante.

5 I.e. pursuant to the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6 or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6: see PARA 670 ante.

6 'Statement of case' means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (renumbered by SI 2004/3172). The local planning authority must include in its statement of case details of the time and place where the opportunity will be given to inspect and take copies described in the text to notes 28-30 *infra* (and including, in any case in which the local planning authority relies on the provisions set out in note 28 *infra*, the details mentioned in that note): Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(2) (amended by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(2) (amended by SI 2004/3172).

7 As to the Secretary of State see PARA 19 ante.

8 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(1). As to the Assembly see PARA 20 ante.

9 For the meaning of 'enforcement appeal' see PARA 669 note 6 ante.

10 For the meaning of 'enforcement notice' see PARA 669 note 6 ante.

11 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(1).

12 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(3).

13 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(4).

14 As to the use of electronic communications see PARA 669 note 15 ante.

15 For the meaning of 'document' see PARA 669 note 14 ante.

16 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(5); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(5).

17 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(6); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(6).

18 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(7); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(7).

19 For the meaning of 'inspector' see PARA 669 note 7 ante.

20 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(8); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(8).

21 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(9)(a), (b); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(9)(a), (b).

22 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(9); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(9).

23 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(10); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(10).

24 I.e. pursuant to the provisions set out in the text to notes 28-30 *infra*.

25 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(11); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(11).

26 I.e. the matters referred to in the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 6(2)(a)(ii) or, as the case may be, in the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 6(2)(a)(ii): see PARA 670 ante.

27 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(12); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(12).

28 For these purposes, an opportunity is to be taken to have been given to a person where the person is notified of publication on a website of the documents mentioned in the text, of the address of the website, of the place on the website where the documents may be accessed, and of how they may be accessed: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(13A) (added by

SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(13A) (added by SI 2004/3172).

29 For the meaning of 'questionnaire' see PARA 669 note 6 ante.

30 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(13); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(13). See also note 6 supra.

31 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(14); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(14).

32 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(15); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(15).

33 le in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8 (as amended) or, as the case may be, with the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8 (as amended): see the text and notes 1-32 supra.

34 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(16); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(16).

UPDATE

671 Statements of case

TEXT AND NOTE 31--After 'starting date' add 'or, where a pre-inquiry meeting has been held, within seven weeks of the conclusion of that meeting,': SI 2003/1269 r 8(14) (amended by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/672. Date and notification of the inquiry.

672. Date and notification of the inquiry.

The date fixed by the Secretary of State¹ for the holding of a local inquiry in England, or by the National Assembly² for Wales for the holding of such an inquiry in Wales, before the determination of certain enforcement and other appeals³ must be, unless he or the Assembly considers such a date impracticable, not later than 22 weeks after the starting date⁴ or, in a case where a pre-inquiry meeting⁵ is held, eight weeks after the conclusion of that meeting⁶. Where the Secretary of State or the Assembly considers it impracticable to fix a date in accordance with the above requirements, the date fixed must be the earliest date after the end of the relevant period mentioned above which he or it considers to be practicable⁷.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the appellant and the local planning authority⁸, he or the Assembly must give not less than four weeks' written notice⁹ of the date, time and place fixed by him or by it for the holding of an inquiry to every person entitled to appear at the inquiry¹⁰.

The Secretary of State or the Assembly may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the relevant period¹¹ mentioned above¹². He or the

Assembly may also vary the time or place for the holding of an inquiry and must give such notice as appears to him or to the Assembly to be reasonable¹³.

The Secretary of State or the Assembly may in writing¹⁴ require the local planning authority to take one or more of the following steps:

- 2670 (1) not less than two weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating in the locality in which the land¹⁵ is situated;
- 2671 (2) to send a notice of the inquiry to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify; or
- 2672 (3) to post a notice of the inquiry in a conspicuous place near to the land, within such period as he or the Assembly may specify¹⁶.

Where the land is under the control of the appellant, he must:

- 2673 (a) if so required in writing by the Secretary of State or the Assembly, affix a notice of the inquiry firmly to the land or to some object on or near the land, in such manner as to be readily visible to and legible by members of the public; and
- 2674 (b) not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State or the Assembly may specify¹⁷.

Every notice of inquiry so published, sent or posted¹⁸ or so affixed¹⁹ must contain:

- 2675 (i) a clear statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State or the Assembly to determine the appeal in question;
- 2676 (ii) a written description of the land sufficient to identify approximately its location;
- 2677 (iii) a brief description of the subject matter of the appeal; and
- 2678 (iv) details of where and when copies of the local planning authority's completed questionnaire²⁰ and any document²¹ sent by and copied to the authority²² may be inspected²³.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 I.e. an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

4 For the meaning of 'starting date' see PARA 669 note 6 ante.

5 For the meaning of 'pre-inquiry meeting' see PARA 670 note 5 ante.

6 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(1).

7 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(2).

8 For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante.

9 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he or the Assembly and any person entitled to appear at the inquiry have agreed that notice of

the matters mentioned in the text to note 10 *infra* may instead be accessed by that person via a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published that notice on the website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry, the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(3A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(3A) (added by SI 2004/3172).

10 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(3).

11 *le* the period mentioned in the text to notes 4-6 *supra*.

12 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(4). The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(3), (3A) (as added: see note 9 *supra*), or, as the case may be, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(3), (3A) (as added: see note 9 *supra*) applies to a variation of the date as it applied to the date originally fixed: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(4) (amended by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(4) (amended by SI 2004/3172).

13 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(5); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(5).

14 As to the use of electronic communications see PARA 669 note 15 *ante*.

15 For the meaning of 'the land' for these purposes see PARA 670 note 9 *ante*.

16 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(6); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(6).

17 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(7); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(7).

18 *le* pursuant to the provisions set out in heads (1)-(3) in the text.

19 *le* pursuant to the provisions set out in heads (a)-(b) in the text.

20 For the meaning of 'questionnaire' see PARA 669 note 6 *ante*.

21 For the meaning of 'document' see PARA 669 note 14 *ante*.

22 *le* pursuant to the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8 (as amended): see PARA 671 *ante*.

23 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(8); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/673. Appearances at the inquiry; evidence.

673. Appearances at the inquiry; evidence.

Rules have been made¹ in relation to appearances at, and evidence before, local inquiries² caused by the Secretary of State³ to be held in England, or caused by the National Assembly for Wales⁴ to be held in Wales, before the determination of certain enforcement and other appeals⁵. Those rules make provision with regard to:

- 2679 (1) the persons entitled to appear at such an inquiry⁶;
- 2680 (2) the information to be provided by all parties⁷;
- 2681 (3) the availability of representatives of government departments and other authorities at the inquiry⁸;
- 2682 (4) proofs of evidence⁹;
- 2683 (5) preparation of a statement of common ground¹⁰;
- 2684 (6) the provision of additional copies of documents and information¹¹.

1 See PARA 668 ante.

2 The inquiries to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, rr 13-17 (as amended); the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, rr 13-17 (as amended); and the text and notes 6-10 infra.

6 In relation to England, the persons entitled to appear at the inquiry are (1) the appellant; (2) the local planning authority; (3) any of the following bodies if the land is situated in their area and they are not the local planning authority: (a) a county or a district council; (b) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended) (see PARA 1491 et seq post); (c) the Broads Authority, within the meaning of the Norfolk and Suffolk Broads Act 1988; (d) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 332); (4) where the land is in an area previously designated as a new town, the Commission for the New Towns; (5) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; (6) in the case of an appeal under the Town and Country Planning Act 1990 s 195 (as amended) (see PARA 613 ante), any person having an interest in the land; (7) the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') where (a) the inquiry relates to an enforcement notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended); (b) the listed building is in Greater London; and (c) if an application for listed building consent had been made for the works set out in the enforcement notice, the Commission would have been notified of the application under a direction given under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(5) (see PARAS 1118-1119 post); (8) any other person who has served a statement of case in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8(6) (see PARA 671 ante) or who has sent an outline statement in accordance with r 6(4) (see PARA 670 ante): r 13(1). Nothing in r 13(1) prevents the inspector from permitting any other person to appear at an inquiry and such permission must not be unreasonably withheld: r 13(2).

In relation to Wales, the persons entitled to appear at the inquiry are: (i) those listed in heads (1)-(6) supra; (ii) where the inquiry relates to an enforcement notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) and, where an application for listed building consent had been made for the works set out in the enforcement notice, the National Assembly would have been notified of the application pursuant to a direction given under s 15(5), Cadw; and (iii) any other person who has served a statement of case in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8(6) see PARA 671 ante) or who has sent an outline statement in accordance with 6(4) see PARA 670 ante): r 13(1). Nothing in r 13(1) prevents the inspector from permitting any other person to appear at an inquiry and such permission must not be unreasonably withheld: r 13(2).

Any person entitled or permitted to appear may do so on his own behalf or be represented by any other person: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 13(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 13(3).

For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante; for the meaning of 'inspector' see PARA 669 note 7 ante; and for the meaning of 'the land' see PARA 670 note 9 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; as to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to the Commission for the New Towns see PARA 1383 et seq post; as to English Heritage see PARA 1058 post; and as to Cadw see PARA 70 note 9 ante.

7 Any person entitled or permitted to appear at the inquiry, who proposes to give, or call another person to give, evidence at the inquiry, must send in writing to the Secretary of State or, as the case may be, to the Assembly no later than four weeks before the inquiry (1) an estimate of the time required to present all their evidence; and (2) the number of witnesses that they intend to call to give evidence: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 14; Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 14. As to the use of electronic communications see PARA 669 note 15 ante.

8 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 15. Where the Secretary of State or any other Minister of the Crown or any government department has expressed in writing to the local planning authority a view on an appeal and the authority refers to that view in a statement prepared pursuant to r 8(1) (see PARA 671 ante), the appellant may, not later than four weeks before the date of an inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or of the other minister or department concerned to be made available at the inquiry: r 15(1). Where an application is made in accordance with r 15(1), the Secretary of State must make a representative available to attend the inquiry or, as the case may be, send the application to the other minister or department concerned, who must make a representative available to attend the inquiry: r 15(2). A person attending an inquiry as a representative pursuant to r 15 must state the reasons for the expressed view and must give evidence and be subject to cross-examination to the same extent as any other witness: r 15(3). Nothing in r 15(3), however, requires a representative of a minister or government department to answer any question which, in the opinion of the inspector, is directed to the merits of government policy: r 15(4).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 15(1)-(3), which refers to the Assembly rather than to the Secretary of State. Nothing in r 15(3) requires a representative of the Assembly to answer any question which, in the opinion of the inspector, is directed to the merits of Assembly policy or requires a representative of a minister or government department to answer any question which, in the opinion of the inspector, is directed to the merits of government policy: r 15(4).

9 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 16 (as amended). Any person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must (1) subject to r 16(2), send two copies, in the case of the local planning authority and the appellant, or three copies in the case of any other person, of the proof of evidence together with a written summary, to the Secretary of State; and (2) in the case of an enforcement appeal, simultaneously send copies of these to any person on whom a copy of the enforcement notice has been served; and the Secretary of State must, as soon as practicable after receipt, send a copy of each proof of evidence together with any summary to the local planning authority and the appellant: r 16(1). No written summary is, however, to be required where the proof of evidence proposed to be read contains no more than 1,500 words: r 16(2). The proof of evidence and any summary must be sent to the Secretary of State no later than four weeks before the date fixed for the holding of the inquiry, or, where a timetable has been prepared pursuant to r 10 (see PARA 669 note 12 ante) which specifies a date by which the proof of evidence and any summary is to be sent to the Secretary of State, that date: r 16(3). The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him pursuant to r 16 (as amended) within the relevant period specified in that rule: r 16(4). Where a written summary is provided in accordance with r 16(1), only that summary is to be read at the inquiry, unless the inspector permits or requires otherwise: r 16(5).

Any person required by r 16 (as amended) to send copies of a proof of evidence to the Secretary of State, or any other person, must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to r 8(13) (see PARA 671 ante): r 16(7). The local planning authority must give any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by the authority in accordance with r 16 (as amended): r 16(7). For these purposes, an opportunity is to be taken to have been given to a person where the person is notified of publication of the relevant document on a website, the address of the website, the place on the website where the document may be accessed, and how it may be accessed: r 16(8) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 16(1)-(8) (amended by SI 2004/3172), which refers to the Assembly rather than to the Secretary of State.

10 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 17 (as amended). The local planning authority and the appellant must together

prepare an agreed statement of common ground and must send it to the Secretary of State and, in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served, not less than four weeks before the date fixed for the holding of the inquiry: r 17(1). The local planning authority must give any person who asks a reasonable opportunity to inspect, and where practicable, take copies of the statement of common ground sent to the Secretary of State: r 17(2). For these purposes an opportunity is to be taken to have been given to a person where the person is notified of publication of the statement of common ground on a website, the address of the website, the place on the website where the document may be accessed, and how it may be accessed: r 17(3) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 17(1)-(3) (amended by SI 2004/3172), which refers to the Assembly rather than to the Secretary of State.

'Statement of common ground' means a written statement prepared jointly by the local planning authority and the appellant, which contains agreed factual information about the development, breach of conditions or works which are the subject of the appeal: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 2(1) (renumbered by SI 2004/3172).

11 See, in relation to England, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 24. The Secretary of State may at any time before the close of the inquiry request from any person entitled to appear additional copies of the following: (1) an outline statement sent in accordance with r 6 (see PARA 670 ante); (2) a statement of case or comments sent in accordance with r 8 (as amended) (see PARA 671 ante); (3) a proof of evidence sent in accordance with 16 (as amended) (see note 9 supra); (4) any other document or information sent to the Secretary of State before or during an inquiry, and may specify the time within which such copies should be sent to him: r 24(1). Any person so requested must send the copies to the Secretary of State within the period specified: r 24(2).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 24(1), (2), which refers to the Assembly rather than to the Secretary of State and to the relevant provisions of those rules.

UPDATE

673 Appearances at the inquiry; evidence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 6--SI 2002/2686 r 13(1) amended: SI 2008/2831.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/674. Procedure at the inquiry; site inspections.

674. Procedure at the inquiry; site inspections.

Except as otherwise provided in the relevant rules¹, the inspector² is to determine the procedure at a local inquiry³ caused by the Secretary of State⁴ to be held in England, or caused by the National Assembly for Wales⁵ to be held in Wales, before the determination of certain enforcement and other appeals⁶.

At the start of the inquiry the inspector must identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear⁷; but nothing in this requirement precludes any person entitled or permitted to appear from referring to issues which that person considers

relevant to the consideration of the appeal but which were not issues so identified by the inspector⁸.

Unless the inspector otherwise determines, the appellant is to begin and to have the right of final reply; and the other persons entitled or permitted to appear are to be heard in such order as the inspector may determine⁹. A person entitled to appear at an inquiry is to be entitled to call evidence and the appellant, the local planning authority¹⁰ and, in the case of an enforcement appeal¹¹, any person on whom a copy of the enforcement notice¹² has been served is to be entitled to cross-examine persons giving evidence, but, subject to that and to the exceptions set out below¹³, the calling of evidence and the cross-examination of persons giving evidence is otherwise to be at the discretion of the inspector¹⁴. The inspector may refuse to permit the:

- 2685 (1) giving or production of evidence;
- 2686 (2) cross-examination of persons giving evidence; or
- 2687 (3) presentation of any matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing¹⁵ before the close of the inquiry¹⁶. Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹⁷, the proof of evidence¹⁸ is then to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone, and the person whose evidence the proof contains is to be subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁹.

The inspector may direct that facilities must be made available to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection²⁰.

The inspector may:

- 2688 (a) require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave; and
- 2689 (b) refuse to permit that person to return; or
- 2690 (c) permit him to return only on such conditions as he may specify,

but any such person may submit to him any evidence or other matter in writing before the close of the inquiry²¹. The inspector may proceed with an inquiry in the absence of any person entitled to appear at it²².

The inspector may allow any person to alter or add to a statement of case served²³, so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document²⁴. The inspector may take into account any written representation or evidence or other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²⁵.

The inspector may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is to be required²⁶.

Where the Secretary of State expects the inquiry to last for four days or more, or the Assembly expects the inquiry to last for eight days or more, any person who appears at the inquiry and makes closing submissions must, before the close of the inquiry, provide the inspector with a copy of that person's closing submissions in writing²⁷.

The inspector may make an unaccompanied inspection of the land²⁸ before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry²⁹. During an inquiry or after its close, the inspector:

- 2691 (i) may inspect the land in the company of the appellant, the local planning authority, any person with an interest in the land and, in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; and
- 2692 (ii) must make such an inspection if so requested by the appellant or the local planning authority before or during an inquiry³⁰.

In all cases where the inspector intends to make an accompanied site inspection he must announce during the inquiry the date and time at which he proposes to make it³¹; but he is not bound to defer an inspection of the kind referred to in heads (i) and (ii) above where any person mentioned in those heads is not present at the time appointed³².

1 As to the relevant rules see note 3 *infra*; and PARA 668 *ante*.

2 For the meaning of 'inspector' see PARA 669 note 7 *ante*.

3 In an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 *ante*.

4 As to the Secretary of State see PARA 19 *ante*.

5 As to the Assembly see PARA 20 *ante*.

6 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(1).

7 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(2). As to the parties entitled or permitted to appear see PARA 673 *ante*.

8 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(3).

9 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(4).

10 For the meaning of 'local planning authority' see PARA 669 note 6 *ante*.

11 For the meaning of 'enforcement appeal' see PARA 669 note 6 *ante*.

12 For the meaning of 'enforcement notice' see PARA 669 note 6 *ante*.

13 See the text and notes 15-19 *infra*.

14 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(5); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(5). As to the exercise of this discretion see eg *West Lancashire District Council v Secretary of State for the Environment* [1998] JPL 1086, [1998] 09 LS Gaz R 30 (inability of expert witness to attend inquiry; whether inspector should have adjourned inquiry to allow his attendance) (decided under previous rules).

15 As to the use of electronic communications see PARA 669 note 15 *ante*.

16 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(6); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(6).

17 le in accordance with the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 16(5) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 16(5): see PARA 673 note 9 ante.

18 le the proof of evidence referred to in the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 16(1) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 16(1): see PARA 673 note 9 ante.

19 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(7); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(7).

20 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(8); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(8).

21 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(9); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(9).

22 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(11); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(11).

23 le under the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 8 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 8 (as amended): see PARA 671 ante. For the meaning of 'statement of case' see PARA 671 note 6 ante.

24 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(10); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(10).

25 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(12); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(12).

26 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(13); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(13).

27 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 18(14); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 18(14).

28 For the meaning of 'the land' see PARA 670 note 9 ante.

29 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 19(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 19(1).

30 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 19(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 19(2).

31 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 19(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 19(3).

32 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 19(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 19(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC APPEALS/675. Procedure after inquiry.

675. Procedure after inquiry.

After the close of a local inquiry¹ caused by the Secretary of State² to be held in England, or caused by the National Assembly for Wales³ to be held in Wales, before the determination of certain enforcement and other appeals, the inspector⁴ must make a report in writing to the Secretary of State or the Assembly which must include his conclusions and his recommendations or his reasons for not making any recommendations⁵. Where an assessor⁶ has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise⁷. In such a case the inspector must append the assessor's report to his own report and must state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement⁸.

When making his decision the Secretary of State or the Assembly may disregard any written representations, evidence or any other document⁹ received after the close of the inquiry¹⁰. If, after the close of an inquiry, the Secretary of State or the Assembly:

- 2693 (1) differs from the inspector on any matter of fact mentioned in, or appearing to him or to the Assembly to be material to, a conclusion reached by the inspector¹¹; or
- 2694 (2) takes into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy,

and is for that reason disposed to disagree with a recommendation made by the inspector, he or the Assembly may not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the inquiry who appeared at it of that disagreement and the reasons for it¹². Any person so notified must be given the opportunity to make written representations¹³ to the Secretary of State or the Assembly or, if the Secretary of State or the Assembly has taken into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy, to ask for the reopening of the inquiry¹⁴.

The Secretary of State or the Assembly may, as he or it thinks fit, cause an inquiry to be reopened, and must do so if asked by the appellant or the local planning authority¹⁵ in the circumstances¹⁶ and within the period¹⁷ mentioned above¹⁸. Where an inquiry is reopened under these provisions, whether by the same or a different inspector, the Secretary of State or the Assembly must send to the persons entitled to appear¹⁹ at the inquiry who appeared at it a written statement of the matters on which further evidence is invited²⁰.

1 le an inquiry to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the Assembly see PARA 20 ante.

4 For the meaning of 'inspector' see PARA 669 note 7 ante.

5 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(1).

6 For the meaning of 'assessor' see PARA 669 note 13 ante.

7 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(2).

8 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(3).

9 For the meaning of 'document' see PARA 669 note 14 ante.

10 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(4).

11 As to the distinction between the inspector's findings of fact and his conclusions see eg *Lord Luke of Pavenham v Minister of Housing and Local Government* [1968] 1 QB 172, [1967] 2 All ER 1066, CA; *Pyrford Properties Ltd v Secretary of State for the Environment* (1977) 36 P & CR 28, DC; *Pollock v Secretary of State for the Environment* (1979) 40 P & CR 94, DC (decided under previous rules).

12 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(5); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(5).

13 Those persons so making written representations or requesting the inquiry to be reopened must send such representations or requests to the Secretary of State or the Assembly within three weeks of the date of the Secretary of State's notification, or so as to be received within three weeks of the date of the Assembly's notification: see the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(7); the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(7). As to the use of electronic communications see PARA 669 note 15 ante.

14 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(6); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(6); and see note 13 supra.

15 For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante.

16 Ie in the circumstances mentioned in the text to notes 13-14 supra.

17 Ie within the period mentioned in note 13 supra.

18 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(8); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(8).

19 As to the persons entitled to appear see PARA 673 ante.

20 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(9); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(9). The Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(3)-(8) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(3)-(8) (as amended) (see PARA 672 ante) applies as if references to an inquiry were references to a reopened inquiry: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 20(9); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 20(9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/B. ENFORCEMENT ETC

APPEALS/676. Notification of Secretary of State's or Assembly's decision; procedure following remitting of appeal.

676. Notification of Secretary of State's or Assembly's decision; procedure following remitting of appeal.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² must, as soon as practicable after reaching his or its decision, notify his or its decision on a relevant enforcement or other appeal³, and his or its reasons for it in writing⁴ to:

- 2695 (1) the appellant and the local planning authority⁵;
- 2696 (2) all other persons entitled to appear at the inquiry⁶ who did appear; and
- 2697 (3) any other person who, having appeared at the inquiry, has asked to be notified of the decision⁷.

Where a copy of the inspector's report⁸ is not sent with the notification of the decision or published on a website⁹, the notification must be accompanied by a statement of his conclusions and of any recommendations made by him, and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application¹⁰ to the Secretary of State or the Assembly¹¹.

Where an appeal in respect of which a relevant local inquiry¹² has been held is remitted by any court to the Secretary of State or, in relation to Wales, to the Assembly for rehearing and redetermination, the Secretary of State or the Assembly:

- 2698 (a) must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters on which further representations are invited in order for him or it to consider the appeal further;
- 2699 (b) must give those persons the opportunity of making written representations to him or to the Assembly about those matters or asking for the reopening of the inquiry¹³; and
- 2700 (c) may, as he or the Assembly thinks fit, cause the inquiry to be reopened, whether by the same or a different inspector¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 I.e. an appeal before the determination of which a local inquiry has been held to which the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended) or the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended) apply: see PARA 668 ante.

4 Notification of a decision and reasons is to be taken to have been given to a person for these purposes where: (1) the Secretary of State or the Assembly and the person have agreed that decisions and reasons so required to be given in writing may instead be accessed by that person on a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified, in a manner for the time being agreed between him and the Secretary of State or the Assembly, of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(1A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(1A) (added by SI 2004/3172).

As to the standard of reasons which is required see *Re Poyser and Mills' Arbitration* [1964] 2 QB 467, [1963] 1 All ER 612; *Save Britain's Heritage v Secretary of State for the Environment* [1991] 2 All ER 10; sub nom *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL (decided under previous rules).

5 For the meaning of 'local planning authority' for these purposes see PARA 669 note 6 ante.

6 As to the persons entitled to appear see PARA 673 ante.

7 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(1).

8 For these purposes, 'report' includes any assessor's report appended to the inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State or the Assembly in writing, within six weeks of the date of the Secretary of State's or the Assembly's decision, for an opportunity of inspecting any such documents and the Secretary of State or the Assembly must give him that opportunity: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(3); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(3). An opportunity is to be taken to have been afforded to a person for these purposes where that person is notified of: (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(3A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(3A) (added by SI 2004/3172).

9 Ie in accordance with the provisions set out in note 4 supra.

10 Any person so applying to the Secretary of State or the Assembly must send his application to the Secretary of State or Assembly within four weeks of his or its determination: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(4); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(4). As to the use of electronic communications see PARA 669 note 15 ante.

11 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 21(2) (amended by SI 2003/956); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 21(2) (amended by SI 2004/3172).

12 Ie such an inquiry as is described in note 3 supra.

13 Those persons making representations or asking for the inquiry to be reopened under head (b) in the text must send such representations or requests to the Secretary of State or the Assembly within three weeks of the date of the written statement sent under head (a) in the text: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 22(2); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 22(2).

14 Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 22(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 22(1). If he or the Assembly does so, the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 11(3)-(8) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 11(3)-(8) (as amended) (see PARA 672 ante) applies as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 22(1); Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 22(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/677. Application of rules.

C. OTHER REFERRED APPLICATIONS AND APPEALS

677. Application of rules.

Rules have been made¹ which apply in relation to any local inquiry which is not a major infrastructure project inquiry² and which is caused by the Secretary of State³ to be held in England before he determines:

- 2701 (1) an application for planning permission⁴ referred to him⁵, or an appeal to him⁶, under specified provisions of the Town and Country Planning Act 1990⁷;
- 2702 (2) an application for listed building consent⁸ referred to him⁹, or for variation or discharge of conditions referred to him¹⁰, or an appeal to him¹¹ under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990¹²;
- 2703 (3) an application for conservation area consent¹³ referred to him¹⁴, or an appeal to him¹⁵ under the relevant provisions¹⁶ of the Planning (Listed Buildings and Conservation Areas) Act 1990¹⁷.

Those rules do not, however, apply to any local inquiry by reason of the application of any provision mentioned in heads (1) to (3) above by any other enactment¹⁸. Where such a local inquiry is held into an application, or an appeal arising from such an application, in respect of which the Mayor of London¹⁹ has directed the local planning authority to refuse the application, the relevant rules apply subject to modifications²⁰.

Rules have also been made²¹ which apply in relation to any local inquiry which is caused by the National Assembly for Wales²² to be held in Wales before it determines:

- 2704 (a) an application under the statutory provisions mentioned in heads (1) to (3) above referred to it, or an appeal to it under the statutory provisions mentioned in those heads;
- 2705 (b) an appeal made under specified provisions of the Town and Country Planning Act 1990 as they are applied to tree preservation orders²³;
- 2706 (c) an appeal against the service of a tree preservation enforcement notice²⁴ under specified provisions of the Town and Country Planning Act 1990²⁵;

but those rules do not apply to any local inquiry by reason of the application of any provision mentioned in heads (a) to (c) above by any other enactment²⁶. The rules applying in Wales apply whether or not the inquiry relates to a major infrastructure project²⁷.

1 See the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended) (revoked in so far as applying to major infrastructure project inquiries by virtue of SI 2002/1223).

2 I.e. which is not an inquiry to which the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223 (revoked with savings) or the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, apply: see PARA 659 ante.

3 As to the Secretary of State see PARA 19 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 I.e. under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante. Applications described in heads (1)-(3) in the text are known as 'referred applications': see the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (renumbered by 2003/956).

6 I.e. an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

7 See notes 6-7 supra.

8 'Listed building consent' has the meaning given in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(7) (see PARA 1109 post): Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered: see note 5 supra).

- 9 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended): see PARA 1115 post.
- 10 le under ibid s 12 (as amended) as applied by s 19 (as amended): see PARA 1131 post.
- 11 le under ibid s 20 (as amended): see PARA 1186 post.
- 12 See notes 9-11 supra.
- 13 For the meaning of 'conservation area consent' see PARA 1174 post.
- 14 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (including an application to which s 12 (as amended) is applied by s 19 (as amended)), as those sections are applied by s 74(3): see PARAS 1174-1176 post.
- 15 le under ibid s 20 (as amended) as s 20 (as amended) is applied by s 74(3): see PARA 1190 post.
- 16 See notes 14-15 supra.
- 17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 3(1).
- 18 Ibid r 3(1). For transitional provisions see r 3(2); and see also the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223, r 26 (revoked with savings).
- 19 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.
- 20 For the relevant modifications see the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 23.
- 21 See the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), which came into force on 1 August 2000: r 1(2).
- 22 As to the Assembly see PARA 20 ante.
- 23 le under the Town and Country Planning Act 1990 s 78 (as amended) as it applies to tree preservation orders: see PARA 883 post.
- 24 le under ibid s 208 (as amended): see PARA 885 post.
- 25 Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 3(1).
- 26 Ibid r 3(1). For transitional provisions see r 3(2).
- 27 No rules equivalent to the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223 (revoked with savings) or the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115, apply in relation to Wales.

UPDATE

677-678 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

677 Application of rules

TEXT AND NOTES--See also the Town and Country Planning Act 1990 s 319A, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88D, and the Planning (Hazardous Substances) Act 1990 s 21A (all added by the Planning Act 2008 s 196);

and the Town and Country Planning (Determination of Appeal Procedure) (Prescribed Period) (England) Regulations 2009, SI 2009/454.

NOTE 17--See also SI 2000/1624 r 3A (added by SI 2009/455).

NOTE 20--SI 2000/1624 r 23 amended: SI 2009/455.

NOTE 25--See also SI 2003/1266 r 3A (added by SI 2007/2285).

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678. Pre-inquiry procedure; use of electronic communications.

Rules have been made¹ in relation to the pre-inquiry procedure for local inquiries² caused by the Secretary of State³ to be held in England, or by the National Assembly for Wales⁴ to be held in Wales, before the determination of certain referred applications and appeals⁵. Those rules set out the procedure with regard to:

- 2707 (1) preliminary information to be supplied by the local planning authority⁶;
- 2708 (2) the procedure where a pre-inquiry meeting is to be held⁷;
- 2709 (3) service of statements of case etc⁸;
- 2710 (4) the inspector's further powers to hold pre-inquiry meetings⁹;
- 2711 (5) the inquiry timetable¹⁰;
- 2712 (6) the appointment of an assessor¹¹.

Provision is also made for the service of documents¹², for any purposes of the relevant rules which are capable of being carried out electronically, by the use of electronic communications¹³.

1 See PARA 677 ante.

2 I.e. local inquiries to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended) (revoked in so far as applying to major infrastructure project inquiries by virtue of SI 2002/1223) or the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 See the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, rr 4-9 (as amended); the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, rr 4-9 (as amended); and the text and notes 6-12 infra.

6 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 4. The local planning authority must, on receipt of the relevant notice, forthwith inform the Secretary of State and the applicant in writing of the name and address of any statutory party who has made representations to the authority; and the Secretary of State must, as soon as practicable thereafter, inform the applicant and the local planning authority in writing of the name and address of any statutory party who has made representations to him: r 4(1). 'Relevant notice' means the Secretary of State's written notice informing the applicant and the local planning authority that an inquiry is to be held: r 2(1) (renumbered by SI 2003/956).

Where: (1) the Secretary of State has given to the local planning authority a direction restricting the grant of planning permission for which application was made; or (2) in a case relating to listed building consent, the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage': see PARA

1058 post) has given a direction to the local planning authority pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14(2) (see PARA 1117 post) as to how the application is to be determined; or (3) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 11(1)(c) (see PARA 682 note 3 post), has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions; or (4) any person consulted in pursuance of a development order has made representations to the local planning authority about the application, then the local planning authority must forthwith after the starting date inform the person concerned of the inquiry and, unless he has already done so, that person must thereupon give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representations, as the case may be: r 4(2), (3). Subject to r 4(5), the local planning authority must ensure that within two weeks of the starting date: (a) the Secretary of State and the applicant have received a completed questionnaire and a copy of each of the documents referred to in it; (b) any statutory party, and other person who made representations to the local planning authority about the application occasioning the appeal, has been notified that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State: r 4(4). The requirements of r 4(4) do not, however, apply in respect of referred applications: r 4(5). For the meaning of 'referred application' see PARA 677 note 5 ante.

The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the 2000 Rules, and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: r 20.

For these purposes, 'local planning authority' means, in relation to a referred application, the body which would otherwise have dealt with the application; and in relation to an appeal, the body which was responsible for dealing with the application occasioning the appeal: r 2(1) (as so renumbered). 'Applicant' in the case of an appeal, means the appellant; 'statutory party' means: (i) a person mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1)(b)(i) (see PARA 474 ante at head (2)(a) in the text) whose representations the Secretary of State is required by art 19(3) to take into account in determining the referred application or appeal to which an inquiry relates (see PARA 474 ante); and, in the case of an appeal, such a person whose representations the local planning authority was required by art 19(1) to take into account in determining the application occasioning the appeal (see PARA 474 ante); and (ii) a person whose representations the Secretary of State is required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(3)(b), (5) to take into account in determining the referred application or appeal to which an inquiry relates (see PARA 1114 post); and in the case of an appeal, a person whose representations the local planning authority was required by reg 6(3)(b) to take into account in determining the application occasioning the appeal (see PARA 1114 post); and 'starting date' means the date of the Secretary of State's written notice to the applicant and the local planning authority that he has received all the documents required to enable him to entertain the application or appeal, or the date of the relevant notice, whichever is the later: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as so renumbered).

In relation to Wales, the local planning authority must, on receipt of the relevant notice, forthwith inform the Assembly and the applicant in writing of the name and address of any statutory party who has made representations to the local planning authority; and the Assembly must, as soon as practicable thereafter, inform the applicant and the local planning authority in writing of the name and address of any statutory party who has made representations to the Assembly: Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 4(1). Where (A) the Assembly has given to the local planning authority a direction restricting the grant of planning permission for which application was made; or (B) the Assembly, any Minister of the Crown or government department, or any body falling within r 11(1)(c) (see PARA 682 post), has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions; or (C) any person consulted in pursuance of a development order has made representations to the local planning authority about the application, then the local planning authority must forthwith after the starting date inform the person concerned of the inquiry and, unless the person concerned has already done so, that person must thereupon give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representations, as the case may be: r 4(2), (3). Subject to r 4(5), the local planning authority must ensure that within two weeks of the starting date the National Assembly and the applicant have received a completed questionnaire and a copy of each of the documents referred to in it: r 4(4)(a). It must also ensure that any statutory party and any other person who made representations to the local planning authority about the application occasioning the appeal has been notified that an appeal has been made and of the address to which, and of the period within which, that person may make representations to the Assembly: r 4(4)(b). The requirements of r 4(4) do not, however, apply in respect of referred applications: r 4(5). As to the extension of time limits see r 20; and for the relevant definitions see r 2(1) (renumbered by SI 2004/3172).

7 See PARA 679 post.

8 See PARA 680 post.

9 See PARA 679 post.

10 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 8. The inspector must arrange a timetable for the proceedings at, or at part of, an inquiry where (1) a pre-inquiry meeting is held pursuant to r 5 (see PARA 679 post); or (2) it appears to the Secretary of State likely that an inquiry will last for eight days or more: r 8(1). The inspector may arrange a timetable for the proceedings at, or at part of, any other inquiry (r 8(2)); and may, at any time, vary the timetable so arranged (r 8(3)). The inspector may specify in a timetable arranged pursuant to r 8 a date by which any proof of evidence and summary sent in accordance with r 13(1) (see PARA 682 note 5 post) is to be received by the Secretary of State: r 8(4).

See further, in relation to Wales, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 8(1)-(4), which refers to the Assembly rather than to the Secretary of State.

'Inspector' means a person appointed by the Secretary of State or, as the case may be, by the Assembly to hold an inquiry or a reopened inquiry: see the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered: see note 6 supra); the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered: see note 6 supra).

11 Where the Secretary of State or, as the case may be, the Assembly appoints an assessor, he or the Assembly must notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 9; Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 9. 'Assessor' means a person appointed by the Secretary of State or the Assembly to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State or, as the case may be, the Assembly may specify: see the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered: see note 6 supra); the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered: see note 6 supra).

12 'Document' includes a photograph, map or plan: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered: see note 6 supra); the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered: see note 6 supra).

13 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(2)-(8) (added by SI 2003/956). In the 2000 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address (r 2(2)(a) (as so added)); and references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form (r 2(2)(b) (as so added)). Rule 2(4)-(8) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules to give or send any statement, notice or other document to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 4(6) (as so added). A requirement in the 2000 Rules that any document should be in writing is fulfilled where that document meets the criteria in r 4(4) (as so added), and 'written' and cognate expressions are to be construed accordingly: r 4(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or other document in question: r 4(8) (as so added).

See further, in relation to Wales, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(2)-(8) (added by SI 2004/3172).

For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616); Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered and amended: see note 6 supra); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered and amended: see note 6 supra).

Notices or documents required or authorised to be sent or supplied under the 2000 or, as the case may be, the 2003 Rules may be sent or supplied by post or by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the

person for that purpose: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 22 (substituted by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 22 (substituted by SI 2004/3172).

Where a person is no longer willing to accept the use of electronic communications for any purpose of the 2000 or 2003 Rules which is capable of being effected electronically, he must give notice in writing: (a) withdrawing any address notified to the Secretary of State (or the Assembly) or to a local planning authority for that purpose; or (b) revoking any agreement entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 22A (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 22A (added by SI 2004/3172).

UPDATE

677-678 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

678 Pre-inquiry procedure; use of electronic communications

NOTE 6--For 'relevant notice' read 'notice under SI 2000/1624 r 3A' (see PARA 677): SI 2000/1624 r 4(1) (amended by SI 2009/455). Definition of 'relevant notice' omitted in consequence: SI 2000/1625 r 2(1) (amended by SI 2009/455). 'Starting date' now means the date of the notice given by the Secretary of State under r 3A above: SI 2000/1624 r 2(1) (definition substituted by SI 2009/455). See also SI 2003/1266 r 4(A) (added by SI 2007/2285). Local planning authority's notification must be in writing: SI 2000/1624 r 4(4) (amended by SI 2009/455).

NOTE 11--Secretary of State's notification must be in writing: SI 2000/1624 r 9 (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/679. Pre-inquiry meetings.

679. Pre-inquiry meetings.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² must hold a pre-inquiry meeting³ if he or it expects a relevant inquiry⁴ to last for eight days or more, unless he or the Assembly considers it is unnecessary⁵. He or the Assembly must also hold a pre-inquiry meeting in respect of shorter inquiries, if it appears to him or it to be necessary⁶.

Where the Secretary of State or the Assembly decides to hold a pre-inquiry meeting the following provisions apply:

- 2713 (1) the Secretary of State or the Assembly must send with the relevant notice⁷:
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- 242. (a) notice of his or its intention to hold a pre-inquiry meeting; and
- 243. (b) a statement of the matters about which he or it particularly wishes to be informed for the purposes of his or its consideration of the application or appeal in question⁸;

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- 2714 (2) the Secretary of State or the Assembly must send a copy of the statement described in head (1) above to the minister or government department concerned;
- 2715 (3) the local planning authority⁹ must publish in a newspaper circulating in the locality in which the land is situated a notice of the Secretary of State's or the Assembly's intention to hold a pre-inquiry meeting and of the statement sent in accordance with head (1)(a) above; and
- 2716 (4) the applicant¹⁰ and the local planning authority must ensure that within eight weeks of the starting date¹¹ two copies of their outline statement¹² have been received by the Secretary of State or the Assembly¹³.

The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the local planning authority's outline statement to the applicant and a copy of the applicant's outline statement to the local planning authority¹⁴.

The Secretary of State or the Assembly may in writing¹⁵ require any other person who has notified him or it of an intention or a wish to appear at the inquiry to send an outline statement to him (or to the Assembly), to the applicant and to the local planning authority and the person must ensure that they are received by the Secretary of State (or the Assembly), the applicant and the local planning authority within four weeks of the date of the Secretary of State's or the Assembly's written requirement¹⁶.

The pre-inquiry meeting or, where there is more than one, the first pre-inquiry meeting, must be held within 16 weeks of the starting date¹⁷. The Secretary of State or the Assembly must give not less than three weeks' written notice of the pre-inquiry meeting to:

- 2717 (i) the applicant;
- 2718 (ii) the local planning authority;
- 2719 (iii) any person known at the date of the notice to be entitled to appear at the inquiry¹⁸; and
- 2720 (iv) any other person whose presence at the pre-inquiry meeting appears to him or to the Assembly to be desirable;

and he or the Assembly may require the local planning authority to take, in relation to notification of the pre-inquiry meeting, one or more of the steps which he or it may require¹⁹ the authority to take in relation to notification of the inquiry²⁰.

The inspector²¹ must preside at the pre-inquiry meeting²² and must determine the matters to be discussed and the procedure to be followed²³. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave²⁴ and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify²⁵. Where a pre-inquiry meeting has been held²⁶ the inspector may hold a further pre-inquiry meeting and he must arrange for such notice to be given of a further pre-inquiry meeting as appears to him necessary²⁷.

If the Secretary of State or the Assembly requests any further information from the applicant or the local planning authority at the pre-inquiry meeting, they must ensure that two copies of it have been received by him or by it and a copy has been received by any statutory party²⁸ within four weeks of the conclusion of the pre-inquiry meeting²⁹. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the further information

received from the applicant to the local planning authority and a copy of the further information received from the local planning authority to the applicant³⁰.

Where no pre-inquiry meeting is held pursuant to the above provisions, an inspector who thinks it necessary may hold one³¹. An inspector must give not less than two weeks' written notice of a pre-inquiry meeting which he proposes to hold under this power to:

- 2721 (A) the applicant;
- 2722 (B) the local planning authority;
- 2723 (C) any statutory party; and
- 2724 (D) any other person whose presence at the pre-inquiry meeting appears to the inspector to be desirable³².

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (renumbered by SI 2004/3172).

4 I.e. a local inquiry to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

5 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(1)(a); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(1)(a).

6 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(1)(b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(1)(b).

7 For the meaning of 'relevant notice' see PARA 678 note 6 ante.

8 Where another Minister of the Crown or a government department has expressed in writing to the Secretary of State or the Assembly a view which is mentioned in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 4(2)(c) or, as the case may be, in the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 4(1)(c) (see PARA 678 note 6 ante), the Secretary of State or the Assembly must set this out in his or its statement: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(2)(a)(ii); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(2)(a)(ii).

9 For the meaning of 'local planning authority' for these purposes see PARA 678 note 6 ante.

10 For the meaning of 'applicant' for these purposes see PARA 678 note 6 ante.

11 As to the extension of time limits see PARA 678 note 6 ante; and for the meaning of 'starting date' see PARA 678 note 6 ante.

12 'Outline statement' means a written statement of the principal submissions which a person proposes to put forward at an inquiry: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered: see note 3 supra); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered: see note 3 supra). Where the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 4(2) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 4(2) (see PARA 678 note 6 ante) applies, the local planning authority must: (1) include in its outline statement (a) the terms of any direction given together with a statement of the reasons for it; and (b) any view expressed or representation made on which the authority intends to rely in its submissions at the inquiry; and (2) within the period mentioned in head (4) in the text, send a copy of its outline statement to the person concerned: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(4).

- 13 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(2).
- 14 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(3).
- 15 As to the use of electronic communications see PARA 678 note 13 ante.
- 16 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(5); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(5).
- 17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(6); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(6).
- 18 As to the persons entitled to appear see PARA 682 post.
- 19 le under the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(6) or the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(6): see PARA 681 post.
- 20 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(7); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(7).
- 21 For the meaning of 'inspector' see PARA 678 note 10 ante.
- 22 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(8)(a); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(8)(a).
- 23 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(8)(b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(8)(b).
- 24 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(8)(c); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(8)(c).
- 25 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(8)(d); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(8)(d).
- 26 le pursuant to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(1) or, as the case may be, to the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(1): see the text and notes 1-6 supra.
- 27 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(9); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(9). The provisions set out in the text and notes 21-25 supra apply to such a pre-inquiry meeting: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(9); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(9).
- 28 For the meaning of 'statutory party' see PARA 678 note 6 ante.
- 29 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(10); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(10).
- 30 See note 29 supra.
- 31 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 7(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 7(1).
- 32 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 7(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 7(2). The provisions set out in the text and notes 21-25 supra apply to a pre-inquiry meeting so held: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 7(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 7(3).

PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/680. Statements of case.

680. Statements of case.

The local planning authority¹ must ensure that within:

- 2725 (1) six weeks of the starting date²; or
- 2726 (2) where a pre-inquiry meeting is held pursuant to the statutory requirements³, four weeks of the conclusion of that pre-inquiry meeting,

two copies of its statement of case⁴ have been received by the Secretary of State⁵ in relation to a relevant inquiry⁶ held in England or by the National Assembly for Wales⁷ in relation to a relevant inquiry⁸ held in Wales⁹. The authority must also ensure that a copy of its statement of case has been received by any statutory party¹⁰.

The applicant¹¹ must ensure that within:

- 2727 (a) six weeks of the starting date, in the case of an appeal or a referred application¹² where no pre-inquiry meeting is held pursuant to the statutory requirements¹³; or
- 2728 (b) in any case where a pre-inquiry meeting is so held, four weeks of the conclusion of that pre-inquiry meeting,

two copies of his statement of case have been received by the Secretary of State and a copy of his statement of case has been received by any statutory party¹⁴.

The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the local planning authority's statement of case to the applicant and a copy of the applicant's statement of case to the local planning authority¹⁵. The applicant and the local planning authority may in writing¹⁶ each require the other to send them a copy of any document, or of the relevant part of any document, referred to in the list of documents comprised in the party's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the party who required it¹⁷.

The Secretary of State or the Assembly may in writing require any other person, who has notified him or it of an intention or wish to appear at an inquiry, to send:

- 2729 (i) three copies of that person's statement of case to him (or to the Assembly) within four weeks of being so required; and
- 2730 (ii) a copy of that statement of case to any statutory party;

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of each such statement of case to the local planning authority and to the applicant¹⁸. The Secretary of State or the Assembly must also, as soon as practicable, send to a person from whom he or it so requires a statement of case a copy of the statements of case of the applicant and the local planning authority and must inform that person of the name and address of every person to whom his statement of case is required to be sent¹⁹.

The Secretary of State (or the Assembly) or the inspector²⁰ may in writing require any person who has sent to him or to the Assembly a statement of case in accordance with the above provisions to provide such further information about the matters contained in the statement of case as he or the Assembly may specify and may specify the time within which the information

is to be received²¹. A local planning authority or applicant required to provide further information must ensure that two copies of that information in writing have been received by the Secretary of State (or the Assembly), or as the case may be, by the inspector, within the specified time and that a copy has been received by any statutory party within the specified time²². The Secretary of State (or the Assembly), or as the case may be, the inspector must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the applicant and a copy of the further information received from the applicant to the local planning authority²³. Any other person required to provide further information must ensure that three copies of that information in writing have been received by the Secretary of State (or the Assembly), or as the case may be, by the inspector within the specified time and that a copy has been received by any statutory party within the specified time²⁴. The Secretary of State (or the Assembly), or as the case may be, the inspector must, as soon as practicable after receipt, send a copy of the further information to the local planning authority and the applicant²⁵.

Any person other than the applicant who sends a statement of case to the Secretary of State or to the Assembly must send with it a copy of any document or of the relevant part of any document referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available²⁶ for inspection²⁷. Unless he or it has already done so, the Secretary of State or the Assembly must within 12 weeks of the starting date send a written statement of the specified matters²⁸ to:

- 2731 (A) the applicant;
- 2732 (B) the local planning authority;
- 2733 (C) any statutory party; and
- 2734 (D) any person from whom he has required a statement of case²⁹.

The local planning authority must afford to any person who so requests a reasonable opportunity³⁰ to inspect and, where practicable, take copies of any statement of case, written comments, information or other document a copy of which has been sent to the local planning authority in accordance with the above provisions, and of the local planning authority's completed questionnaire³¹ and statement of case together with a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement, and any written comments, information or other documents sent by the local planning authority pursuant to those provisions³².

If the local planning authority or the applicant wishes to comment on another person's statement of case they must ensure that within nine weeks of the starting date two copies of their written comments have been received by the Secretary of State or the Assembly and that a copy of their written comments has been received by any statutory party³³. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments received from the applicant to the local planning authority and a copy of the written comments received from the local planning authority to the applicant³⁴. Any person who sends a statement of case to the Secretary of State or to the Assembly under the above provisions and who wishes to comment on another person's statement of case must ensure that not less than four weeks before the date fixed for the holding of the inquiry three copies of his written comments have been received by the Secretary of State and a copy of his written comments has been received by any statutory party³⁵. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments to the local planning authority and the applicant³⁶. The Secretary of State or the Assembly must, as soon as practicable after receipt, send to the inspector any statement of case, document or further information or written comments sent to him or to it in accordance with the above provisions and received by him or by it within the relevant period, if any, specified therein³⁷.

- 1 For the meaning of 'local planning authority' for these purposes see PARA 678 note 6 ante.
- 2 For the meaning of 'starting date' see PARA 678 note 6 ante.
- 3 Ie pursuant to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5 or, as the case may be, to the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5: see PARA 679 ante. For the meaning of 'pre-inquiry meeting' see PARA 679 note 3 ante.
- 4 'Statement of case' means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry and a list of any documents which that person intends to refer to or put in evidence: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (renumbered by SI 2004/3172). For the meaning of 'document' see PARA 678 note 12 ante.

The local planning authority must include in its statement of case details of the time and place where the opportunity to inspect and take copies described in the text to notes 30-32 infra is to be afforded (including, in any case in which the local planning authority relies on the provision set out in note 30 infra, the details mentioned in that provision): Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, 6(2)(a)(i) (amended by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(2)(a)(i) (amended by SI 2004/3172). Where the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 4(2) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 4(2) (see PARA 678 note 6 ante) applies, the local planning authority must also: (1) include in its statement of case the matters mentioned in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(4)(a)(ii) or in the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(4)(a)(ii) (see PARA 679 ante), unless the authority has included these in an outline statement; and (2) within the period specified in heads (1)-(2) in the text, send a copy of its statement of case to the person concerned: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, 6(2)(a)(ii), (b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(2)(a)(ii), (b).
- 5 As to the Secretary of State see PARA 19 ante.
- 6 Ie a local inquiry to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), apply: see PARA 677 ante.
- 7 As to the Assembly see PARA 20 ante.
- 8 Ie a local inquiry to which the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.
- 9 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(1). When electronic communications are used, only one copy need be sent: see PARA 678 note 13 ante.
- 10 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(1). For the meaning of 'statutory party' see PARA 678 note 6 ante.
- 11 For the meaning of 'applicant' see PARA 678 note 6 ante.
- 12 For the meaning of 'referred application' see PARA 677 note 5 ante.
- 13 See note 3 supra.
- 14 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(3).
- 15 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(4).
- 16 As to the use of electronic communications see PARA 678 note 13 ante.
- 17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(5); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(5).
- 18 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(6); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(6).

- 19 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(7); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(7).
- 20 For the meaning of 'inspector' see PARA 678 note 10 ante.
- 21 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(8); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(8).
- 22 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(9)(a), (b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(9)(a), (b).
- 23 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(9); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(9).
- 24 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(10)(a), (b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(10)(a), (b).
- 25 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(10); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(10).
- 26 Ie pursuant to the provisions set out in the text to notes 30-32 infra.
- 27 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(11); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(11).
- 28 Ie the matters referred to in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5(2)(a)(ii) or in the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5(2)(a)(ii): see PARA 679 ante.
- 29 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(12); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(12).
- 30 For these purposes an opportunity is to be taken to have been afforded to a person where the person is notified of (1) publication on a website of the documents mentioned in the text; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(13A) (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(13A) (added by SI 2004/3172).
- 31 'Questionnaire' means a document in the form supplied by the Secretary of State or the Assembly to local planning authorities for the purpose of proceedings under the 2000 or, as the case may be, the 2003 Rules; and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified the local planning authority of (1) publication of the form on the website; (2) the address of the website; and (3) the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (as renumbered and amended: see note 4 supra); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (as renumbered and amended: see note 4 supra).
- 32 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(13); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(13).
- 33 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(14)(a), (b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(14)(a), (b).
- 34 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(14); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(14).
- 35 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(15)(a), (b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(15)(a), (b).
- 36 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(15); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(15).
- 37 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(16); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(16).

UPDATE

680 Statements of case

TEXT AND NOTE 18--For 'Assembly' read 'Welsh Ministers' (in each place); the Welsh Ministers must send the copies mentioned in heads (i), (ii) so as to be received within four weeks of being so required: SI 2003/1266 r 6(6) (amended by SI 2007/2285). The Secretary of State must send the copies mentioned in heads (1), (2) within four weeks of being so required: SI 2000/1624 r 6(6) (amended by SI 2009/455).

TEXT AND NOTES 22, 24--Words 'in writing' omitted: SI 2000/1924 r 6(9), (10) (amended by SI 2009/455).

TEXT AND NOTES 30-32--Words 'written comments' and 'any written comments' omitted: SI 2000/1924 r 6(13) (amended by SI 2009/455).

TEXT AND NOTES 33-36--SI 2000/1924 r 6(14), (15) revoked: SI 2009/455.

TEXT AND NOTE 33--After 'starting date' add 'or, where a pre-inquiry meeting has been held, within seven weeks of the conclusion of that meeting,': SI 2003/1266 r 6(14) (amended by SI 2007/2285).

TEXT AND NOTE 37--Words 'or written comments' omitted: SI 2000/1924 r 6(16) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/681. Date and notification of the inquiry.

681. Date and notification of the inquiry.

The date fixed by the Secretary of State¹ or by the National Assembly for Wales² for the holding of a relevant inquiry³ must, unless he or it considers such a date impracticable, be not later than 22 weeks⁴ after the starting date⁵ or, in a case where a pre-inquiry meeting⁶ is held pursuant to the statutory requirements⁷, eight weeks after the conclusion of that meeting⁸. Where, however, the Secretary of State or the Assembly considers it impracticable to fix a date in accordance with the above provisions, the date fixed must be the earliest date after the end of the relevant period mentioned above which he or the Assembly considers to be practicable⁹.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the applicant¹⁰ and the local planning authority¹¹, he or the Assembly must give not less than four weeks' written notice¹² of the date, time and place fixed by him or by it for the holding of an inquiry to every person entitled to appear¹³ at the inquiry¹⁴.

The Secretary of State or the Assembly may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the relevant period¹⁵ mentioned above¹⁶. He or the Assembly may also vary the time or place for the holding of an inquiry and must give such notice of any variation as appears to him or to it to be reasonable¹⁷.

The Secretary of State or the Assembly may in writing¹⁸ require the local planning authority to take one or more of the following steps:

- 2735 (1) not less than two weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating in the locality in which the land¹⁹ is situated;

- 2736 (2) to send a notice of the inquiry to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify; or
 2737 (3) to post a notice of the inquiry in a conspicuous place near to the land, within such period as he or it may specify²⁰.

Where the land is under the control of the applicant he must:

- 2738 (a) if so required in writing by the Secretary of State or the Assembly, affix a notice of the inquiry firmly to the land or to some object on or near the land, in such manner as to be readily visible to and legible by members of the public; and
 2739 (b) not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State or the Assembly may specify²¹.

Every notice of inquiry so published, sent or posted²² or so affixed²³ must contain:

- 2740 (i) a clear statement of the date, time and place of the inquiry and of the powers enabling the Secretary of State or the Assembly to determine the application or appeal in question;
 2741 (ii) a written description of the land sufficient to identify approximately its location;
 2742 (iii) a brief description of the subject matter of the application or appeal; and
 2743 (iv) details of where and when copies of the local planning authority's completed questionnaire²⁴ and any documents²⁵ sent by and copied to the authority²⁶ may be inspected²⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 I.e. a local inquiry to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

4 As to the extension of time limits see PARA 678 note 6 ante.

5 For the meaning of 'starting date' see PARA 678 note 6 ante.

6 For the meaning of 'pre-inquiry meeting' see PARA 679 note 3 ante.

7 I.e. pursuant to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 5 or the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 5: see PARA 679 ante.

8 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(1).

9 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(2).

10 For the meaning of 'applicant' see PARA 678 note 6 ante.

11 For the meaning of 'local planning authority' for these purposes see PARA 678 note 6 ante.

12 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he or it and any person entitled to appear at the inquiry have agreed that notice of the matters mentioned in the text may instead be accessed by that person via a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published that notice on the website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry, the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed:

Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(3A) (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(3A) (added by SI 2004/1372).

13 As to the persons entitled to appear see PARA 682 post.

14 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(3).

15 Ie the period mentioned in the text to notes 1-8 supra.

16 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(4). The provisions set out in the text and notes 10-14 supra apply to a variation of a date as they applied to the date originally fixed: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(4) (amended by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(4) (amended by SI 2004/3172).

17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(5); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(5).

18 As to the use of electronic communications see PARA 678 note 13 ante.

19 For these purposes, 'land' means the land or building to which an inquiry relates: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (renumbered by SI 2004/3172).

20 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(6); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(6).

21 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(7); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(7).

22 Ie pursuant to the provisions set out in the text to notes 18-20 supra.

23 Ie pursuant to the provisions set out in the text to note 21 supra.

24 For the meaning of 'questionnaire' see PARA 680 note 31 ante.

25 For the meaning of 'document' see PARA 678 note 12 ante.

26 Ie pursuant to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6 (as amended) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6 (as amended): see PARA 680 ante.

27 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(8); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/682. Appearances at the inquiry; evidence.

682. Appearances at the inquiry; evidence.

Rules have been made¹ in relation to appearances at or participation in, and evidence in relation to, relevant local inquiries². Those rules make provision with regard to:

2744 (1) the persons entitled to appear at or participate in such an inquiry³;

- 2745 (2) the availability of representatives of government departments and other authorities at the inquiry⁴;
- 2746 (3) proofs of evidence⁵;
- 2747 (4) preparation of a statement of common ground⁶;
- 2748 (5) the provision of additional copies of documents and information⁷.

1 See PARA 677 ante.

2 See the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, rr 11-15, 21 (as amended); the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, rr 11-15, 21 (as amended); and the text and notes 3-7 *infra*. As to the local inquiries to which those rules apply see PARA 677 ante.

3 The persons entitled to appear at a relevant local inquiry held in England are: (1) the applicant; (2) the local planning authority; (3) any of the following bodies if the land is situated in their area and they are not the local planning authority: (a) a county or district council; (b) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended) (see PARA 1491 *et seq post*); (c) the Broads Authority, within the meaning of the Norfolk and Suffolk Broads Act 1988; (d) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 332); (4) where the land is in an area previously designated as a new town, the Commission for the New Towns; (5) any statutory party; (6) the council of the parish in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order; (7) where the application was required to be notified to the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14, the Commission; (8) any other person who has sent a statement of case in accordance with the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6(6) (see PARA 680 ante) or who has sent an outline statement in accordance with r 5(5) (see PARA 679 ante): r 11(1). Nothing in r 11(1), however, prevents the inspector from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld: r 11(2).

The persons entitled to take part in a relevant local inquiry held in Wales are: (i) the applicant; (ii) the local planning authority; (iii) any of the following bodies if the land is situated in their area and the body is not the local planning authority: (A) a county or county borough council; (B) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 2 (as amended); (C) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended); (iv) where the land is in an area previously designated as a new town, the Commission for the New Towns; (v) any statutory party; (vi) the council of the community in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order; (vii) any other person who has sent a statement of case in accordance with the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6(6) or who has sent an outline statement in accordance with r 5(5): r 11(1). Nothing in r 11(1), however, precludes the inspector from permitting any other person to take part in an inquiry; and such permission is not to be unreasonably withheld: r 11(2).

Any person entitled or permitted to appear or take part may do so on his own behalf or be represented by any other person: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 11(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 11(3).

For the meanings of 'local planning authority', 'applicant' and 'statutory party' for these purposes see PARA 678 note 6 ante; for the meaning of 'the land' see PARA 681 note 19 ante; and for the meaning of 'inspector' see PARA 678 note 10 ante. As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to the Commission for the New Towns see PARA 1383 *et seq post*; and as to English Heritage see PARA 1058 *post*.

4 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 12. Where (1) the Secretary of State or the Commission has given a direction described in r 4(2)(a) or (b) (see PARA 678 note 6 ante); or (2) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within r 11(1)(c) (see note 3 head (3) *supra*), has expressed a view described in r 4(2)(c) (see PARA 678 note 6 ante) and the local planning authority has included the terms of the expression of view in a statement sent in accordance with r 5(2) (see PARA 679 ante) or r 6(1) (see PARA 680 ante); or (3) another Minister of the Crown or any government department has expressed a view described in r 4(2)(c) and the Secretary of State has included its terms in a statement sent in accordance with r 5(2) (see PARA 679 ante) or r 6(12) (see PARA 680 ante), the applicant, the local planning authority or a person entitled to appear may, not later than four weeks before the date of an inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or of the other minister, department or body concerned to be made available at the inquiry: r 12(1). Where an application is made in accordance with r 12(1), the Secretary of State must make a representative available to attend the inquiry or, as the case may be, send the application to the other minister, department or body concerned, who must make a representative available to attend the inquiry: r 12(2). Any person attending an inquiry as a representative in pursuance of r 12 must state the

reasons for the direction or expressed view and must give evidence and be subject to cross-examination to the same extent as any other witness (r 12(3)); but nothing in r 12(3) requires a representative of a minister or a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy (r 12(4)). As to the Secretary of State see PARA 19 ante.

See further, in relation to Wales, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 12. Where (a) the National Assembly for Wales has given a direction described in r 4(2)(a); or (b) the Assembly, any Minister of the Crown or government department, or any body falling within r 11(1)(c) (see note 3 head (iii) supra) has expressed a view described in r 4(2)(b) and the local planning authority has included the terms of the expression of view in a statement sent in accordance with r 5(2) or 6(1); or (c) a Minister of the Crown or government department has expressed a view described in r 4(2)(b) and the National Assembly has included its terms in a statement sent in accordance with r 5(2) or r 6(12), the applicant, the local planning authority or a person entitled to take part in an inquiry may, not later than four weeks before the date of an inquiry, apply in writing to the Assembly for a representative of the Assembly or of the minister, department or body concerned to be made available at the inquiry: r 12(1). Where an application is made in accordance with r 12(1), the Assembly must make a representative available to attend the inquiry or, as the case may be, send the application to the minister, department or body concerned, who must make a representative available to attend the inquiry: r 12(2). Any person attending an inquiry as a representative in pursuance of r 12 must state the reasons for the direction or expressed view and give evidence and is to be subject to cross-examination to the same extent as any other witness (r 12(3)); but nothing in r 12(3) requires a representative of the Assembly to answer any question which, in the opinion of the inspector, is directed to the merits of Assembly policy or requires any minister or government department to answer any question which, in the opinion of the inspector, is directed to the merits of government policy (r 12(4)). As to the Assembly see PARA 20 ante.

5 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 13 (as amended). Any person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence, must (1) send two copies, in the case of the local planning authority and the applicant, or three copies in the case of any other person, of the proof of evidence together with any written summary, to the Secretary of State; and (2) simultaneously send copies of these to any statutory party; and the Secretary of State must, as soon as practicable after receipt, send a copy of each proof of evidence together with any summary to the local planning authority and the applicant: r 13(1). No written summary is, however, to be required where the proof of evidence proposed to be read contains no more than 1,500 words: r 13(2). The proof of evidence and any summary must be received by the Secretary of State no later than four weeks before the date fixed for the holding of the inquiry, or, where a timetable has been arranged pursuant to r 8 (see PARA 678 note 10 ante) which specifies a date by which the proof of evidence and any summary is to be received by the Secretary of State, that date: r 13(3). The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with r 13 (as amended) and received by him within the relevant period, if any, specified in that rule: r 13(4). Where a written summary is provided in accordance with r 13(1), only that summary is to be read at the inquiry, unless the inspector permits or requires otherwise: r 13(5). Any person required by r 13 (as amended) to send copies of a proof of evidence to the Secretary of State must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document is already available for inspection pursuant to r 6(13) (as amended) (see PARA 680 ante): r 13(6). The local planning authority must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by them in accordance with r 13 (as amended): r 13(7). For these purposes an opportunity is to be taken to have been afforded to a person where the person is notified of publication of the relevant document on a website, the address of the website, the place on the website where the document may be accessed, and how it may be accessed: r 13(8) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 13(1)-(8) (r 13(8) added by SI 2004/3172), which refers to written statements of evidence rather than proofs of evidence, and to the Assembly rather than the Secretary of State.

6 The local planning authority and the applicant must: (1) together prepare an agreed statement of common ground; and (2) ensure that the Secretary of State or, as the case may be, the Assembly receives it and that any statutory party receives a copy of it not less than four weeks before the date fixed for the holding of the inquiry: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 14(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 14(1). 'Statement of common ground' means a written statement prepared jointly by the local planning authority and the applicant, which contains agreed factual information about the proposal which is the subject of the application or appeal: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 2(1) (renumbered by SI 2004/3172).

The local planning authority must afford to any person who so requests a reasonable opportunity to inspect, and where practicable, take copies of the statement of common ground sent to the Secretary of State or the Assembly: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 14(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 14(2). For these purposes an

opportunity is to be taken to have been afforded to a person where the person is notified of publication of the statement of common ground on a website, the address of the website, the place on the website where the document may be accessed, and how it may be accessed: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 14(3) (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 14(3) (added by SI 2003/3172).

7 See, in relation to England, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 21 (as amended). The Secretary of State may at any time before the close of an inquiry request from any person entitled to appear additional copies of the following: (1) an outline statement sent in accordance with r 5 (see PARA 679 ante); (2) a statement of case or comments sent in accordance with r 6 (as amended) (see PARA 680 ante); (3) a proof of evidence sent in accordance with r 13 (as amended) (see note 5 supra); or (4) any other document or information sent to the Secretary of State before or during an inquiry, and may specify the time within which such copies should be received by him: r 21(1). Any person so requested must ensure that the copies are received by the Secretary of State within the period specified: r 21(2).

For similar provisions in relation to Wales regarding the transmission of extra copies to the Assembly see the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 21(1), (2). Any obligation imposed by those rules to send more than one copy of a statement or other document may, where sending is effected using electronic communications, be complied with by transmitting one copy only of the statement or, as the case may be, document in question using such communications: r 21(3) (added by SI 2004/3172).

As to the use of electronic communications see further PARA 678 note 13 ante.

UPDATE

682 Appearances at the inquiry; evidence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--SI 2000/1624 r 11(1) amended: SI 2008/2831.

NOTE 6--For 'not less than four weeks before the date fixed for the holding of the inquiry' read 'within six weeks of the starting date': SI 2000/1924 r 14(1) (amended by SI 2009/455).

NOTE 7--In head (2) the words 'or comments' are omitted: SI 2000/1624 r 21(1) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/683. Procedure at the inquiry; site inspections.

683. Procedure at the inquiry; site inspections.

Except as otherwise provided in the relevant rules¹, the inspector² must determine the procedure at a relevant local inquiry³. At the start of the inquiry the inspector must identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear⁴; but nothing in this requirement precludes any person entitled or permitted to appear from referring to issues which that person considers relevant to the consideration of the application or appeal but which were not issues so identified by the inspector⁵.

Unless in any particular case the inspector otherwise determines, the local planning authority⁶ is to begin and the applicant⁷ is to have the right of final reply; and the other persons entitled or permitted to appear are to be heard in such order as the inspector may determine⁸.

A person entitled to appear at an inquiry is to be entitled to call evidence and the applicant, the local planning authority and any statutory party⁹ are to be entitled to cross-examine persons giving evidence, but, subject to that and to the exceptions set out below¹⁰, the calling of evidence and the cross-examination of persons giving evidence is otherwise to be at the discretion of the inspector¹¹. The inspector may refuse to permit the:

- 2749 (1) giving or production of evidence;
- 2750 (2) cross-examination of persons giving evidence; or
- 2751 (3) presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing before the close of the inquiry¹².

Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹³, the proof of evidence¹⁴ is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone¹⁵. The person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁶.

The inspector may direct that facilities are to be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection¹⁷. He may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave¹⁸ and may refuse to permit that person to return¹⁹ or permit him to return only on such conditions as he may specify²⁰. Any such person may, however, submit to him any evidence or other matter in writing²¹ before the close of the inquiry²².

The inspector may allow any person to alter or add to a statement of case received by the Secretary of State²³ (if the inquiry is held in England) or by the National Assembly for Wales²⁴ (if the inquiry is held in Wales) or by him, so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document²⁵.

The inspector may proceed with an inquiry in the absence of any person entitled to appear at it²⁶. He may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²⁷.

The inspector may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is to be required²⁸.

In respect of any inquiry that the Secretary of State or the Assembly expects to last for eight or more days, any person who appears at the inquiry and makes closing submissions must by the close of the inquiry provide the inspector with a copy of his closing submission in writing²⁹.

The inspector may make an unaccompanied inspection of the land³⁰ before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry³¹. During an inquiry or after its close, the inspector:

- 2752 (a) may inspect the land in the company of the applicant, the local planning authority and any statutory party; and

2753 (b) must make such an inspection if so requested by the applicant or the local planning authority before or during an inquiry³².

In all cases where the inspector intends to make an accompanied site inspection he must announce during the inquiry the date and time at which he proposes to make it³³; but he is not bound to defer such an inspection as is mentioned in heads (a) and (b) above where any person mentioned in those heads is not present at the time appointed³⁴.

1 As to the relevant rules see PARA 677 ante.

2 For the meaning of 'inspector' see PARA 678 note 10 ante.

3 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(1). The inquiry referred to in the text is an inquiry to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

4 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(2). As to the persons entitled or permitted to appear see PARA 682 note 3 ante.

5 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(3).

6 For the meaning of 'local planning authority' for these purposes see PARA 678 note 6 ante.

7 For the meaning of 'applicant' see PARA 678 note 6 ante.

8 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(4).

9 For the meaning of 'statutory party' see PARA 678 note 6 ante.

10 Ie subject to the provisions set out in the text to notes 12-15 infra.

11 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(5); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(5).

12 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(6); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(6).

13 Ie in accordance with the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 13(5) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 13(5): see PARA 682 note 5 ante.

14 Ie the proof of evidence referred to in the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 13(1) or, as the case may be, the written statement of evidence referred to in the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 13(1): see PARA 682 note 5 ante.

15 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(7)(a); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(7)(a).

16 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(7)(b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(7)(b).

17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(8); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(8).

18 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(9)(a); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(9)(a).

19 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(9)(b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(9)(b).

20 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(9)(c); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(9)(c).

21 As to the use of electronic communications see PARA 678 note 13 ante.

22 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(9); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(9).

23 le received under the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 6 (as amended): see PARA 681 ante. As to the Secretary of State see PARA 19 ante.

24 le received under the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 6 (as amended): see PARA 681 ante. As to the Assembly see PARA 20 ante.

25 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(10); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(10). For the meaning of 'document' see PARA 678 note 12 ante.

26 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(11); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(11).

27 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(12); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(12).

28 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(13); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(13).

29 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 15(14); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 15(14).

30 For the meaning of 'the land' see PARA 681 note 19 ante.

31 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 16(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 16(1).

32 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 16(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 16(2).

33 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 16(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 16(3).

34 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 16(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 16(4).

UPDATE

683 Procedure at the inquiry; site inspections

NOTES 10, 11--The relevant provisions are now those set out in TEXT to NOTE 12 (ie SI 2000/1624 r 15(6)) and TEXT to NOTES 18-22 (ie SI 2000/1624 r 15(9)): r 15(5) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/684. Procedure after inquiry.

684. Procedure after inquiry.

After the close of a relevant local inquiry¹, the inspector² must make a report in writing³ to the Secretary of State⁴ (if the inquiry was held in England) or to the National Assembly for Wales⁵ (if the inquiry was held in Wales) which must include his conclusions and his recommendations or his reasons for not making any recommendations⁶. Where an assessor⁷ has been appointed, he may, after the close of the inquiry, make a report in writing to the inspector in respect of the matters on which he was appointed to advise⁸; and if he does so, the inspector must append it to his own report and must state in his own report how far he agrees or disagrees with the assessor's report and, where he disagrees with the assessor, his reasons for that disagreement⁹.

When making his or its decision the Secretary of State or the Assembly may disregard any written representations, evidence or any other document¹⁰ received after the close of the inquiry¹¹.

If, after the close of an inquiry, the Secretary of State or the Assembly:

- 2754 (1) differs from the inspector on any matter of fact¹² mentioned in, or appearing to him to be material to, a conclusion reached by the inspector; or
- 2755 (2) takes into consideration any new evidence¹³ or new matter of fact, not being a matter of government or Assembly policy,

and is for that reason disposed to disagree with a recommendation made by the inspector, he or the Assembly may not come to a decision which is at variance with that recommendation without first notifying the persons entitled to appear at the inquiry¹⁴ who appeared at it of his or its disagreement and the reasons for it and affording them an opportunity of:

- 2756 (a) making written representations to him or to the Assembly; or
- 2757 (b) if the Secretary of State or the Assembly has taken into consideration any new evidence or new matter of fact, not being a matter of government or Assembly policy, of asking for the reopening of the inquiry¹⁵.

Those persons so making written representations or requesting the inquiry to be reopened must ensure that such representations or requests are received by the Secretary of State or the Assembly within three weeks of the date of his or its notification¹⁶.

The Secretary of State or the Assembly may, as he or it thinks fit, cause an inquiry to be reopened¹⁷. He or the Assembly must do so if asked by the applicant¹⁸ or the local planning authority¹⁹ in the circumstances²⁰ and within the period²¹ mentioned above²². Where an inquiry is reopened, whether by the same or a different inspector, the Secretary of State or the Assembly must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited²³.

1 le an inquiry to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

2 For the meaning of 'inspector' see PARA 678 note 10 ante.

3 As to the use of electronic communications see PARA 678 note 13 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the Assembly see PARA 20 ante.

6 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(1).

7 For the meaning of 'assessor' see PARA 678 note 11 ante.

8 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(2).

9 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(3).

10 For the meaning of 'document' see PARA 678 note 12 ante.

11 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(4).

12 The question of whether an area falls within the curtilage of a building is not a question solely of primary fact, but one which involves the application of planning judgment to findings of primary fact, and does not required to be notified under head (1) in the text: *George Wimpey Ltd v First Secretary of State* [2004] All ER (D) 139 (Sep). The question of whether a development would be detrimental to the character of the locality is a matter of opinion or judgment, but it does not necessarily follow that such a matter may not also be a matter of fact for these purposes: see *Portsmouth Water plc v Secretary of State for the Environment* (1993) 66 P & CR 410 (where it was held that the Secretary of State's difference of opinion was not a difference on a matter of fact); *Coal Contractors Ltd v Secretary of State for the Environment* (1995) 68 P & CR 285, [1995] JPL 421 (difference clearly one of opinion not difference as to fact) (both decided under previous rules).

13 As to taking into account new evidence see *Sherburn Sand Co Ltd v First Secretary of State* [2004] EWHC 1314 (Admin), [2004] All ER (D) 241 (May) (where, however, the court held that there had been a 'technical breach' of the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(5) which did not prejudice the claimant).

14 As to the persons entitled to appear and participate in the inquiry see PARA 680 ante.

15 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(5); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(5).

16 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(6); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(6). As to the extension of time limits see PARA 678 note 6 ante.

17 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(7); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(7).

18 For the meaning of 'applicant' see PARA 678 note 6 ante.

19 For the meaning of 'local planning authority' for these purposes see PARA 678 note 6 ante.

20 Ie in the circumstances mentioned in the text to notes 14-15 supra.

21 Ie within the period mentioned in the text to note 16 supra.

22 See note 17 supra.

23 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(7)(a); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(7)(a). The Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(3)-(8) (as amended) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r10(3)-(8) (as amended) (see PARA 681 ante) applies as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 17(7)(b); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 17(7)(b).

UPDATE

684 Procedure after inquiry

TEXT AND NOTES 14, 15--After the words 'without first notifying' add 'in writing': SI 2000/1924 r 17(5) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(ii) Inquiries before Decisions by the Secretary of State or the Assembly/C. OTHER REFERRED APPLICATIONS AND APPEALS/685. Notification of Secretary of State's or Assembly's decision; procedure if that decision is later quashed.

685. Notification of Secretary of State's or Assembly's decision; procedure if that decision is later quashed.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² must, as soon as practicable, notify his or its decision on a relevant application or appeal³, and his or its reasons for it in writing⁴ to:

- 2758 (1) all persons entitled to appear at the inquiry⁵ who did appear; and
- 2759 (2) any other person who, having appeared at the inquiry, has asked to be notified of the decision⁶.

Where a copy of the inspector's report⁷ is not sent with the notification of the decision, the notification must be accompanied by a statement of his conclusion and of any recommendations made by him, and if a person entitled to be notified of the decision has not received a copy of that report, he must be supplied with a copy of it on written application⁸ to the Secretary of State or the Assembly⁹.

Where a decision of the Secretary of State or the Assembly on an application or appeal in respect of which a relevant inquiry¹⁰ has been held is quashed in proceedings before any court¹¹, the Secretary of State or the Assembly:

- 2760 (a) must send to the persons entitled to appear at the inquiry who appeared at it a written statement of the matters with respect to which further representations are invited for the purposes of his or the Assembly's further consideration of the application or appeal;
- 2761 (b) must afford to those persons the opportunity of making written representations to him or to the Assembly in respect of those matters or of asking for the reopening of the inquiry¹²; and
- 2762 (c) may, as he or the Assembly thinks fit, cause the inquiry to be reopened, whether by the same or a different inspector¹³.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 I.e. an application or appeal before the determination of which an inquiry has been held to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

4 Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State or the Assembly and the person have agreed that decisions and reasons so required to be given in writing may instead be accessed by that person on a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified, in a manner for the time being agreed between him and the Secretary of State or the Assembly, of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Inquiries

Procedure) (England) Rules 2000, SI 2000/1624, r 18(1A) (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(1A) (added by SI 2004/3172).

5 As to the persons entitled to appear at or participate in the inquiry see PARA 680 note 3 ante.

6 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 18(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(1).

7 For these purposes, 'report' includes any assessor's report appended to the inspector's report but does not include any other documents so appended; but any person who has received a copy of the report may apply to the Secretary of State or the Assembly in writing, within six weeks of the date of the Secretary of State's or Assembly's decision, for an opportunity of inspecting any such documents and the Secretary of State or the Assembly must afford him that opportunity: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 18(3); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(3). As to the extension of time limits see PARA 678 note 6 ante. For these purposes an opportunity is to be taken to have been afforded to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 18(3A) (added by SI 2003/956); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(3A) (added by SI 2004/3172). For the meanings of 'inspector' and 'assessor' see PARA 678 notes 10-11 ante.

8 Any person so applying must ensure that his application is received by the Secretary of State or the Assembly within four weeks of the Secretary of State's or Assembly's determination: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 18(4); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(4).

9 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 18(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 18(2).

10 If an inquiry has been held to which the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended), or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended), apply: see PARA 677 ante.

11 As to challenging the validity of decisions see PARAS 43 et seq, 650 ante.

12 Those persons making representations or asking for the inquiry to be reopened under head (b) in the text must ensure that such representations or requests are received by the Secretary of State or the Assembly within three weeks of the date of the written statement sent under head (a) in the text: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 19(2); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 19(2).

13 Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 19(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 19(1). If he or the Assembly does so, the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 10(3)-(8) (as amended) or, as the case may be, the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 10(3)-(8) (as amended) (see PARA 681 ante) applies as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 19(1); Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 19(1).

The power to reopen the inquiry under the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 19 is discretionary and the Secretary of State is justified in not exercising it where he has all the relevant facts before him: see eg *R (on the application of Hammerson UK Properties Ltd) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 270 (Admin), [2002] All ER (D) 138 (Feb).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/686. Application of rules.

(iii) Inquiries before Appeals determined by Inspectors

A. IN GENERAL

686. Application of rules.

Rules have been made¹ which apply in relation to any local inquiry held in England by an inspector² before he determines an appeal to the Secretary of State³:

- 2763 (1) in relation to an application for planning permission⁴ under the relevant provision of the Town and Country Planning Act 1990⁵;
- 2764 (2) in relation to an application for listed building consent⁶ or conservation area consent⁷ under specified provisions⁸ of the Planning (Listed Buildings and Conservation Areas) Act 1990⁹.

Those rules do not, however, apply to any local inquiry by reason of the application of any provision mentioned in heads (1) and (2) above by any other enactment¹⁰. Where an inquiry is held into an appeal arising from an application in respect of which the Mayor of London¹¹ has directed the local planning authority¹² to refuse the application, the relevant rules apply subject to modifications¹³.

Rules have also been made¹⁴ which apply in relation to any local inquiry held in Wales by an inspector¹⁵ before he determines an appeal to the National Assembly for Wales:

- 2765 (a) in relation to such an application as is referred to in heads (1) and (2) above;
- 2766 (b) in relation to an application made under specified provisions of the Town and Country Planning Act 1990 as they are applied to tree preservation orders¹⁶;
- 2767 (c) against the service of a tree preservation enforcement notice¹⁷ under specified provisions of the Town and Country Planning Act 1990¹⁸;

but those rules do not apply to any local inquiry by reason of the application of any provision mentioned in heads (a) to (c) above by any other enactment¹⁹.

1 See the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended); and PARAS 687-694 post.

2 For these purposes, 'inspector' means a person appointed by the Secretary of State under the Town and Country Planning Act 1990 Sch 6 (paras 1-8) (as amended) (see PARA 621 ante) or, as the case may be, the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (paras 1-8) (as amended) (see PARA 1199 et seq post) to determine an appeal: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (renumbered by SI 2003/956).

3 As to the Secretary of State see PARA 19 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 In an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

6 'Listed building consent' has the meaning given in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(7) (see PARA 1109 post): Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 2 supra). An identical definition applies in relation to Wales: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 15 infra).

7 'Conservation area consent' has the meaning given in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(1) (see PARA 1174 post): Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 2 supra). An identical definition applies in relation to Wales: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 15 infra).

8 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 post) or under s 20 (as amended) as applied by s 74(3) (see PARA 1190 post).

9 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 3(1).

10 Ibid r 3(1). For transitional provisions see rr 3(2), 25.

11 As to the Mayor of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 81.

12 For these purposes, 'local planning authority' means the body which was responsible for dealing with the application occasioning the appeal: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 2 supra). An identical definition applies in relation to Wales: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 15 infra).

13 For the relevant modifications see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 24.

14 See the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended); and PARAS 687-694 post.

15 For these purposes, 'inspector' means a person appointed by the Assembly under the Town and Country Planning Act 1990 Sch 6 (paras 1-8) (as amended) (see PARA 621 et seq ante) or, as the case may be, the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (paras 1-8) (as amended) (see PARA 1199 et seq post) to determine an appeal: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (renumbered by SI 2004/3172). As to the Assembly see PARA 20 ante.

16 le under the Town and Country Planning Act 1990 s 78 (as amended) as it applies to tree preservation orders: see PARA 883 post.

17 le under ibid s 208 (as amended): see PARA 885 post.

18 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 3(1).

19 Ibid r 3(1). For transitional provisions see rr 3(2), 24.

UPDATE

686-687 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

686 Application of rules

NOTE 9--See also SI 2000/1625 r 3A (added by SI 2009/455).

NOTE 13--SI 2000/1625 r 24 amended: SI 2009/455.

NOTE 18--See also SI 2003/1267 r 3A (added by SI 2007/2285).

before Appeals determined by Inspectors/A. IN GENERAL/687. Pre-inquiry procedure; use of electronic communications.

687. Pre-inquiry procedure; use of electronic communications.

Rules have been made¹ in relation to the pre-inquiry procedure for local inquiries² held in England or Wales by an inspector³ before he determines a relevant appeal⁴ to the Secretary of State⁵ or to the National Assembly for Wales⁶. Those rules set out the procedure with regard to:

- 2768 (1) preliminary information to be supplied by the local planning authority⁷;
- 2769 (2) notification of the name of the inspector⁸;
- 2770 (3) the procedure where a pre-inquiry meeting is to be held⁹;
- 2771 (4) service of statements of case etc¹⁰;
- 2772 (5) the inquiry timetable¹¹;
- 2773 (6) the appointment of an assessor¹².

Provision is also made for the service of documents¹³, for any purposes of the relevant rules which are capable of being carried out electronically, by the use of electronic communications¹⁴.

1 See PARA 686 ante.

2 In local inquiries to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

3 For the meaning of 'inspector' for these purposes see PARA 686 notes 2, 15 ante.

4 In such an appeal as is described in PARA 686 ante.

5 As to the Secretary of State see PARA 19 ante.

6 See the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, rr 4-9 (as amended); the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, rr 4-9 (as amended); and the text and notes 7-12 infra. As to the Assembly see PARA 20 ante.

7 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 4. The local planning authority must, on receipt of the relevant notice, forthwith inform the Secretary of State and the appellant in writing of the name and address of any statutory party who has made representations to the authority; and the Secretary of State must, as soon as practicable thereafter, inform the appellant and the local planning authority in writing of the name and address of any statutory party who has made representations to him: r 4(1). Where (1) the Secretary of State has given to the local planning authority a direction restricting the grant of planning permission for which application was made; or (2) in a case relating to listed building consent, the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') has given a direction to the local planning authority pursuant to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14(2) (see PARA 1117 post) as to how the application is to be determined; or (3) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 11(1)(c) (see PARA 691 post), has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions; or (4) any person consulted in pursuance of a development order has made representations to the local planning authority about the application, then the local planning authority must forthwith after the starting date inform the person concerned of the inquiry and, unless he has already done so, that person must thereupon give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representations, as the case may be: r 4(2), (3). The local planning authority must ensure that within two weeks of the starting date the Secretary of State and the appellant have received a completed questionnaire and a copy of each of the documents referred to in it and that any statutory party and other person who made representations to the local planning authority about the application occasioning the appeal have been notified that an appeal has

been made and of the address to which and of the period within which they may make representations to the Secretary of State: r 4(4).

The Secretary of State may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the 2000 Rules, and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: r 21.

An inspector may in place of the Secretary of State take such steps as the Secretary of State is required or enabled to take under or by virtue of r 21, and also by virtue of r 6(6)-(10), (14), (15) (see PARA 689 the text and notes 15-20, 28-31 post), r 10 (as amended) (see PARA 690 post), r 12(1), (2) (see PARA 691 post), and r 22 (see PARA 691 post); and where an inspector requires further information or copies pursuant to r 6(8) (see PARA 689 the text and note 18 post) or r 22, that information or copies must be sent to him: r 13. An inspector may similarly act in place of the Assembly: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 13.

For these purposes, 'relevant notice' means the Secretary of State's written notice informing the appellant and the local planning authority that an inquiry is to be held; 'statutory party' means: (a) a person mentioned in the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 19(1)(b)(i) (see PARA 474 ante at head (2)(a) in the text) whose representations the inspector is required by art 19(3) to take into account in determining the appeal to which an inquiry relates (see PARA 474 ante); and such a person whose representations the local planning authority was required by art 19(1) to take into account in determining the application occasioning the appeal (see PARA 474 ante); and (b) a person whose representations the inspector is required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(3)(b), (5) to take into account in determining the appeal to which an inquiry relates (see PARA 1114 post); and a person whose representations the local planning authority was required by reg 6(3)(b) to take into account in determining the application occasioning the appeal (see PARA 1114 post); and 'starting date' means the date of the Secretary of State's written notice to the applicant and the local planning authority that he has received all the documents required to enable him to entertain the application or appeal, or the date of the relevant notice, whichever is the later: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (renumbered by SI 2003/956). 'Questionnaire' means a document in the form supplied by the Secretary of State to local planning authorities for the purpose of proceedings under the 2000 Rules, and for this purpose a form is taken to be supplied where the Secretary of State has published it on a website and has notified the local planning authority, in a manner for the time being agreed between the Secretary of State and the authority for that purpose, of publication of the form on the website, the address of the website and the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as so renumbered and amended). For the meaning of 'local planning authority' see PARA 686 note 12 ante.

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 4. The local planning authority must, on receipt of the relevant notice, forthwith inform the Assembly and the appellant in writing of the name and address of any statutory party who has made representations to the local planning authority; and the Assembly must, as soon as practicable thereafter, inform the appellant and the local planning authority in writing of the name and address of any statutory party who has made representations to the Assembly: r 4(1). Where: (i) the Assembly has given to the local planning authority a direction restricting the grant of planning permission for which application was made; or (ii) the Assembly, any Minister of the Crown or government department, or any body falling within r 11(1)(c) (see PARA 695 post) has expressed in writing to the local planning authority the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions; or (iii) any person consulted in pursuance of a development order has made representations to the local planning authority about the application, then the local planning authority must forthwith after the starting date inform the person concerned of the inquiry and, unless the person concerned has already done so, that person must thereupon give the local planning authority a written statement of the reasons for making the direction, expressing the view or making the representations, as the case may be: r 4(2), (3). The local planning authority must ensure that within two weeks of the starting date the Assembly and the appellant have received a completed questionnaire and a copy of each of the documents referred to in it and any statutory party, and other person who made representations to the local planning authority about the application occasioning the appeal, have been notified that an appeal has been made and of the address to which, and of the period within which, they may make representations to the Assembly: r 4(4). For the relevant definitions for these purposes see r 2(1) (renumbered and amended by SI 2004/3172).

The Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the 2003 Rules; and references in those rules to a day by which, or a period within which, any step is required or enabled to be taken are to be construed accordingly: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 21.

8 The Secretary of State or the Assembly must notify the name of the inspector to every person entitled to appear at the inquiry; but where the Secretary of State or the Assembly appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the inquiry is

held, the inspector holding the inquiry must, at its commencement, announce his name and the fact of his appointment: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 5(1), (2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 5(1), (2).

9 See PARA 688 post.

10 See PARA 689 post.

11 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 8. In respect of all inquiries that appear to the Secretary of State likely to last for eight days or more, the inspector must prepare a timetable for the proceedings: r 8(1). In respect of shorter inquiries, the inspector may at any time prepare a timetable for the proceedings at, or at part of, an inquiry: r 8(2). The inspector may, at any time, vary the timetable so arranged (r 8(3)) and may specify in a timetable so arranged a date by which any proof of evidence and summary sent in accordance with r 14(1) (see PARA 691 post) is to be received by him (r 8(4)).

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 8(1)-(4), which refers to the Assembly rather than to the Secretary of State.

12 Where the Secretary of State or, as the case may be, the Assembly appoints an assessor, he or the Assembly must notify every person entitled to appear at the inquiry of the name of the assessor and of the matters on which he is to advise the inspector: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 9; Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 9. 'Assessor' means a person appointed by the Secretary of State or the Assembly to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State or, as the case may be, the Assembly may specify: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 7 supra); the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 7 supra).

13 'Document' includes a photograph, map or plan: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 7 supra); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 7 supra).

14 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(2)-(8) (added by SI 2003/956). In the 2000 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address (r 2(2)(a) (as so added)); and references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form (r 2(2)(b) (as so added)). Rule 2(4)-(8) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules to give or send any statement, notice or other document to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 2(6) (as so added). A requirement in the 2000 Rules that any document should be in writing is fulfilled where that document meets the criteria in r 2(4) (as so added) (see heads (1)-(3) supra), and 'written' and cognate expressions are to be construed accordingly: r 2(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or other document in question: r 2(8) (as so added).

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(2)-(8) (added by SI 2004/3172).

For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning Appeals (Determination by Inspectors) (Inquiries

Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (as renumbered: see note 7 supra); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (as renumbered: see note 7 supra).

Notices or documents required or authorised to be sent or supplied under the 2000 or, as the case may be, the 2003 Rules may be sent or supplied by post or by using electronic communications to send or supply the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 23 (substituted by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 23 (substituted by SI 2004/3172).

Where a person is no longer willing to accept the use of electronic communications for any purpose of the 2000 or 2003 Rules which is capable of being effected electronically, he must give notice in writing: (a) withdrawing any address notified to the Secretary of State (or the Assembly) or to a local planning authority for that purpose; or (b) revoking any agreement entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 23A (added by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 23A (added by SI 2004/3172).

UPDATE

686-687 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

687 Pre-inquiry procedure; use of electronic communications

NOTE 7--For 'relevant notice' read 'notice under SI 2000/1625 r 3A' (see PARA 686): SI 2000/1625 r 4(1) (amended by SI 2009/455). Definition of 'relevant notice' omitted in consequence: SI 2000/1625 r 2(1) (amended by SI 2009/455). 'Starting date' now means the date of the notice given by the Secretary of State under r 3A above: SI 2000/1625 r 2(1) (definition substituted by SI 2009/455). Local planning authority's notification must be in writing: SI 2000/1625 r 4(4) (amended by SI 2009/455). References to SI 2000/1925 r 6(14), (15) (revoked) omitted: r 13 (amended by SI 2009/455). See also SI 2003/1267 r 4(A) (added by SI 2007/2285).

NOTE 8--Secretary of State's notification of the name of the inspector must be in writing: SI 2000/1625 r 5(1) (amended by SI 2009/455).

NOTE 12--Secretary of State's notification must be in writing: SI 2000/1625 r 9 (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/688. Statement of matters and pre-inquiry meetings.

688. Statement of matters and pre-inquiry meetings.

An inspector¹ may, within 12 weeks of the starting date², send to the appellant, the local planning authority³ and any statutory party⁴ a written statement of the matters about which he particularly wishes to be informed for the purposes of his consideration of the appeal⁵ in question⁶.

An inspector must hold a pre-inquiry meeting⁷:

- 2774 (1) if he expects an inquiry⁸ to last for eight days or more, unless he considers it is unnecessary; or
- 2775 (2) in respect of shorter inquiries, if it appears to him necessary⁹.

He must give not less than two weeks' written notice¹⁰ of a pre-inquiry meeting to:

- 2776 (a) the appellant;
- 2777 (b) the local planning authority;
- 2778 (c) any statutory party;
- 2779 (d) any other person known to be entitled to appear at or participate in the inquiry¹¹; and
- 2780 (e) any other person whose presence at the meeting appears to him to be desirable¹².

The inspector must preside at the pre-inquiry meeting¹³ and must determine the matters to be discussed and the procedure to be followed¹⁴. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify¹⁵.

If the inspector requests any further information from the appellant or the local planning authority at the pre-inquiry meeting, they must ensure that two copies of it¹⁶ have been received by him and a copy has been received by any statutory party within four weeks of the conclusion of the pre-inquiry meeting¹⁷. The inspector must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the appellant and a copy of the further information received from the appellant to the local planning authority¹⁸.

1 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante.

2 For the meaning of 'starting date' see PARA 687 note 7 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 686 note 12 ante.

4 For the meaning of 'statutory party' see PARA 687 note 7 ante.

5 Ie an appeal such as is described in PARA 686 ante.

6 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(1).

7 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (renumbered by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (renumbered by SI 2004/3172).

8 Ie an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended) or, as the case may be, the Town and Country

Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

9 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(2).

10 As to the use of electronic communications see PARA 686 note 14 ante.

11 As to persons entitled to appear or participate see PARA 691 post.

12 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(3).

13 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(4)(a); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(4)(a).

14 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(4)(b); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(4)(b).

15 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(4)(c), (d); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(4)(c), (d).

16 Where electronic communications are used, only one copy need be sent: see PARA 687 note 14 ante.

17 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(5); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(5). As to the extension of time limits see PARA 687 note 7 ante.

18 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 7(5); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 7(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/689. Statements of case.

689. Statements of case.

The local planning authority¹ must ensure that, within six weeks of the starting date², two copies³ of its statement of case⁴ have been received by the Secretary of State⁵, if the relevant local inquiry⁶ is held in England, or by the National Assembly for Wales⁷, if the inquiry⁸ is held in Wales⁹. The authority must also ensure that a copy of its statement of case has been received by any statutory party¹⁰.

The appellant must ensure that, within six weeks of the starting date, two copies of his statement of case have been received by the Secretary of State or the Assembly and a copy has been received by any statutory party¹¹. The Secretary of State must, as soon as practicable after receipt, send a copy of the local planning authority's statement of case to the appellant and a copy of the appellant's statement of case to the local planning authority¹².

The appellant and the local planning authority may in writing¹³ each require the other to send them a copy of any document, or of the relevant part of any document, referred to in the list of documents comprised in their statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the party who required it¹⁴.

The Secretary of State or the Assembly may in writing require any other person who has notified him or it of an intention or a wish to appear at an inquiry to send:

- 2781 (1) three copies of that person's statement of case to him or to the Assembly within four weeks of being so required; and
- 2782 (2) a copy of that statement of case to any statutory party;

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of each such statement of case to the local planning authority and the appellant¹⁵. The Secretary of State or the Assembly must also, as soon as practicable, send to any person from whom he requires a statement of case in accordance with heads (1) and (2) above a copy of the statements of case of the appellant and the local planning authority and must inform that person of the name and address of every person to whom his statement of case is required to be sent¹⁶.

The Secretary of State or the Assembly may in writing require any person who has sent a statement of case in accordance with the relevant rules¹⁷ to provide such further information about the matters contained in the statement of case as he or it may specify and may specify the time within which the information is to be received¹⁸. A local planning authority or appellant required to provide further information must ensure that:

- 2783 (a) two copies of that information in writing have been received by the Secretary of State or the Assembly within the specified time; and
- 2784 (b) a copy has been received by any statutory party within the specified time;

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the appellant and a copy of the further information received from the appellant to the local planning authority¹⁹. Any other person required to provide further information must ensure that:

- 2785 (i) three copies of that information in writing have been received by the Secretary of State or the Assembly within the specified time; and
- 2786 (ii) a copy has been received by any statutory party within the specified time;

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the further information to the local planning authority and the appellant²⁰.

Any person other than the appellant who sends a statement of case to the Secretary of State or the Assembly must send with it a copy of any document, or the relevant part of any document, referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available²¹ for inspection²². The Secretary of State or the Assembly must, as soon as practicable after receipt, send to the inspector²³ any statement of case, document, further information and written comments sent to him or to it in accordance with the above provisions and received by him or by it within the relevant period, if any, specified therein²⁴.

The local planning authority must afford to any person who so requests a reasonable opportunity²⁵ to inspect and, where practicable, take copies of:

- 2787 (A) any statement of case, written comments, information or other document a copy of which has been sent to the local planning authority in accordance with the above provisions; and
- 2788 (B) the local planning authority's completed questionnaire²⁶ and statement of case together with a copy of any document, or of the relevant part of any

document, referred to in the list comprised in that statement, and any written comments, information or other documents sent by the local planning authority pursuant to those provisions²⁷.

If the local planning authority or the appellant wish to comment on another person's statement of case they must ensure that within nine weeks of the starting date two copies of their written comments have been received by the Secretary of State or the Assembly and that a copy of their written comments has been received by any statutory party²⁸. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments received from the local planning authority to the appellant and copy of the written comments received from the appellant to the local planning authority²⁹. Any person who sends a statement of case to the Secretary of State or the Assembly under the above provisions and who wishes to comment on another person's statement of case must ensure that within nine weeks of the starting date three copies of his written comments have been received by the Secretary of State or the Assembly and that a copy of his written comments has been received by any statutory party³⁰. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments to the local planning authority and the appellant³¹.

1 For the meaning of 'local planning authority' for these purposes see PARA 686 note 12 ante.

2 As to the extension of time limits, and for the meaning of 'starting date' see PARA 687 note 7 ante.

3 Where electronic communications are used, only one copy need be sent: see PARA 687 note 14 ante.

4 'Statement of case' means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry and a list of any documents which that person intends to refer to or put in evidence: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (renumbered by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (renumbered by SI 2004/3172). For the meaning of 'document' see PARA 687 note 13 ante. The local planning authority must (1) include in its statement of case (a) details of the time and place where the opportunity to inspect and take copies described in the text to notes 25-27 infra is to be afforded (including, in any case in which the local planning authority relies on the provision set out in note 25 infra, the details mentioned in that provision); and (b) where the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 4(2) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 4(2) applies (see PARA 687 note 7 ante), the terms of any direction given together with a statement of the reasons therefor and any view expressed or representation made on which it intends to rely in its submissions at the inquiry; and (2) where the rule referred to in head (1)(b) supra applies, within the period mentioned in the text to note 2 supra, send a copy of its statement of case to the person concerned: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(2) (amended by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(2) (amended by SI 2004/3172).

5 As to the Secretary of State see PARA 19 ante; and as to when an inspector may act in his place for certain purposes see PARA 687 note 7 ante.

6 In an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), apply: see PARA 686 ante.

7 As to the Assembly see PARA 20 ante; and as to when an inspector may act in its place see PARA 687 note 7 ante.

8 In an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

9 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(1).

10 See note 9 supra. For the meaning of 'statutory party' see PARA 687 note 7 ante.

11 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(3).

12 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(4); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(4).

13 As to the use of electronic communications see PARA 687 note 14 ante.

14 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(5); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(5).

15 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(6); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(6).

16 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(7); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(7).

17 Ie in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended).

18 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(8); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(8). See also note 5 supra.

19 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(9); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(9).

20 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(10); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(10).

21 Ie pursuant to the provisions set out in the text to notes 25-27 infra.

22 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(11); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(11).

23 For the meaning of 'inspector' for these purposes see PARA 686 notes 2, 15 ante.

24 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(12); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(12).

25 For these purposes, an opportunity is to be taken to have been afforded to a person where the person is notified of (1) publication on a website of the documents mentioned in heads (A)-(B) in the text; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(13A) (added by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(13A) (added by SI 2004/3172).

26 For the meaning of 'questionnaire' see PARA 687 note 7 ante.

27 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(13); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(13).

28 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(14)(a), (b); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(14)(a), (b).

29 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(14); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(14).

30 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(15)(a), (b); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(15)(a), (b).

31 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(15); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(15).

UPDATE

689 Statements of case

TEXT AND NOTE 15--For 'Assembly' read 'Welsh Ministers' (in each place); the Welsh Ministers must send the copies mentioned in heads (1), (2) so as to be received within four weeks of being so required: SI 2003/1267 r 6(6) (amended by SI 2007/2285). The Secretary of State must send the copies mentioned in heads (1), (2) within four weeks of being so required: SI 2000/1625 r 6(6) (amended by SI 2009/455).

TEXT AND NOTES 19, 20--Words 'in writing' in heads (a) and (i) omitted: SI 2000/1925 r 6(9), (10) (amended by SI 2009/455).

TEXT AND NOTES 23, 24--Words 'and written comments' omitted: SI 2000/1925 r 6(12) (amended by SI 2009/455).

TEXT AND NOTES 25-27--Words 'written comments' in head (A) and 'any written comments' in head (B) omitted: SI 2000/1925 r 6(13) (amended by SI 2009/455).

TEXT AND NOTES 28-31--SI 2000/1925 r 6(14), (15) revoked: SI 2009/455.

TEXT AND NOTE 28--After 'starting date' add 'or, were a pre-inquiry meeting has been held, within seven weeks of the conclusion of that meeting,': SI 2003/1267 r 6(14) (amended by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/690. Date and notification of inquiry.

690. Date and notification of inquiry.

The date fixed by the Secretary of State¹ for the holding of a relevant local inquiry² in England, or by the National Assembly for Wales³ for the holding of such an inquiry⁴ in Wales, must be:

- 2789 (1) not later than 20 weeks⁵ after the starting date⁶ unless he or the Assembly considers such a date impracticable; or
 2790 (2) the earliest date after that period which he or it considers to be practicable⁷.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the appellant and the local planning authority⁸, he or the Assembly must give not less than four

weeks' written notice⁹ of the date, time and place fixed by him for the holding of an inquiry to every person entitled to appear at, or participate in¹⁰, the inquiry¹¹.

The Secretary of State or the Assembly may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period of 20 weeks mentioned above¹². He or it may also may vary the time or place for the holding of an inquiry and must give such notice of any such variation as appears to him or to it to be reasonable¹³.

The Secretary of State or the Assembly may in writing require the local planning authority to take one or more of the following steps:

- 2791 (a) not less than two weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating in the locality in which the land¹⁴ is situated;
- 2792 (b) to send a notice of the inquiry to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify; or
- 2793 (c) to post a notice of the inquiry in a conspicuous place near to the land, within such period as he or it may specify¹⁵.

Where the land is under the control of the appellant he must;

- 2794 (i) if so required in writing¹⁶ by the Secretary of State or the Assembly, affix a notice of the inquiry firmly to the land or to some object on or near the land, in such manner as to be readily visible to and legible by members of the public; and
- 2795 (ii) not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State or the Assembly may specify¹⁷.

Every notice of inquiry so published, sent or posted¹⁸ or so affixed¹⁹ must contain:

- 2796 (A) a clear statement of the date, time and place of the inquiry and of the powers enabling the inspector²⁰ to determine the appeal in question;
- 2797 (B) a written description of the land sufficient to identify approximately its location;
- 2798 (C) a brief description of the subject matter of the appeal; and
- 2799 (D) details of where and when copies of the local planning authority's completed questionnaire²¹ and any documents²² sent by and copied to the authority²³ may be inspected²⁴.

1 As to the Secretary of State see PARA 19 ante. An inspector may act in his place for the purposes of the provisions set out in the text: see PARA 687 note 7 ante.

2 Ie an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), apply: see PARA 686 ante.

3 As to the Assembly see PARA 20 ante. An inspector may act in its place for the purposes of the provisions set out in the text: see PARA 687 note 7 ante.

4 Ie an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

5 As to the extension of time limits see PARA 687 note 7 ante.

6 For the meaning of 'starting date' see PARA 687 note 7 ante.

7 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(1).

8 For the meaning of 'local planning authority' see PARA 686 note 12 ante.

9 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he or it and any person entitled to appear at or participate in the inquiry have agreed that notice of the matters mentioned in the text may instead be accessed by that person on a website, and (1) the notice is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published that notice on a website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry, the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(2A) (added by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(2A) (added by SI 2004/3172).

10 As to the persons so entitled see PARA 691 post.

11 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(2).

12 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(3). The provisions set out in the text and notes 8-11 supra apply to the variation of a date as they applied to the date originally fixed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(3) (amended by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(3) (amended by SI 2004/3172).

13 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(4); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(4).

14 For these purpose, 'land' means the land or building to which an inquiry relates: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 2(1) (renumbered by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (renumbered by SI 2004/3172).

15 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(5); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(5).

16 As to the use of electronic communications see PARA 686 note 14 ante.

17 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(6); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(6).

18 Ie pursuant to the provisions set out in the text to notes 14-15 supra.

19 Ie pursuant to the provisions set out in the text to notes 16-17 supra.

20 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante.

21 For the meaning of 'questionnaire' see PARA 687 note 7 ante.

22 For the meaning of 'document' see PARA 686 note 13 ante.

23 Ie pursuant to the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6 (as amended) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6 (as amended): see PARA 689 ante.

24 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(7); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/691. Appearances at the inquiry; evidence.

691. Appearances at the inquiry; evidence.

Rules have been made¹ in relation to appearances at or participation in, and evidence in relation to, relevant local inquiries². Those rules make provision with regard to:

- 2800 (1) the persons entitled to appear at or participate in such an inquiry³;
- 2801 (2) the availability of representatives of government departments and other authorities at the inquiry⁴;
- 2802 (3) proofs of evidence⁵;
- 2803 (4) preparation of a statement of common ground⁶;
- 2804 (5) the provision of additional copies of documents and information⁷.

¹ See PARA 686 ante.

² See the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, rr 11, 12, 14, 15, 22 (as amended); the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, rr 11, 12, 14, 15, 22 (as amended); and the text and notes 3-7 infra. The inquiries referred to in the text are inquiries to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

³ The persons entitled to appear at an inquiry held in England are (1) the appellant; (2) the local planning authority; (3) any of the following bodies if the land is situated in their area and they are not the local planning authority: (a) a county or district council; (b) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended) (see PARA 1491 et seq post); (c) the Broads Authority, within the meaning of the Norfolk and Suffolk Broads Act 1988; (d) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 332); (4) where the land is in an area previously designated as a new town, the Commission for the New Towns; (5) any statutory party; (6) the council of the parish in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order; (7) where the application was required to be notified to the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14 (as amended) (see PARA 1117 post), the Commission; (8) any other person who has sent a statement of case in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6(6) (see PARA 689 ante): r 11(1). Nothing in r 11(1) prevents the inspector from permitting any other person to appear at an inquiry, and such permission must not be unreasonably withheld: r 11(2).

The persons entitled to take part in an inquiry held in Wales are: (i) the appellant; (ii) the local planning authority; (iii) any of the following bodies if the land is situated in their area and the body is not the local planning authority: (A) a county or county borough council; (B) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended); (C) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended); (iv) where the land is in an area previously designated as a new town, the Commission for the New Towns; (v) any statutory party; (vi) the council of the community in which the land is situated, if that council made representations to the local planning authority in respect of the application in pursuance of a provision of a development order; (vi) any other person who has sent a statement of case in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6(6) (see PARA 689 ante): r 11(1). Nothing in r 11(1) precludes the inspector from permitting any other person to take part in an inquiry; and such permission is not to be unreasonably withheld: r 11(2).

Any person entitled or permitted to appear or take part may do so on his own behalf or be represented by any other person: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 11(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 11(3).

For the meanings of 'local planning authority', 'applicant' and 'statutory party' for these purposes see PARA 687 note 7 ante; for the meaning of 'the land' see PARA 690 note 14 ante; and for the meaning of 'inspector' see PARA 686 notes 2, 15 ante. As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to the Commission for the New Towns see PARA 1383 et seq post; and as to English Heritage see PARA 1058 post.

4 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 12. Where (1) the Secretary of State or the Commission has given a direction described in r 4(2)(a) or (b) (see PARA 687 note 7 ante); or (2) the Secretary of State or any other Minister of the Crown or any government department, or any body falling within r 11(1)(c) (see note 3 head (3) supra), has expressed a view described in r 4(2)(c) (see PARA 687 note 7 ante) and the local planning authority has included its terms in a statement served in accordance with r 6(1) (see PARA 689 ante), the appellant, the local planning authority or a person entitled to appear may, not later than four weeks before the date of an inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or of the other minister, department or body concerned to be made available at the inquiry: r 12(1). Where an application is so made, the Secretary of State must make a representative available to attend the inquiry or, as the case may be, send the application to the other minister, department or body concerned, who must make a representative available to attend the inquiry: 12(2). The inspector may act in place of the Secretary of State under r 12(1), (2): see PARA 687 note 7 ante. As to the Secretary of State see PARA 19 ante.

Any person attending an inquiry as a representative in pursuance of r 12 must state the reasons for the direction or expressed view and is to give evidence and be subject to cross-examination to the same extent as any other witness (r 12(3)); but nothing in r 12(3) requires a representative of a minister or a government department to answer any question which in the opinion of the inspector is directed to the merits of government policy (r 12(4)).

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 12. Where the Assembly has given a direction described in r 4(2)(a) (see PARA 687 note 7 ante); or (b) the Assembly, any Minister of the Crown or government department, or any body falling within r 11(1)(c) (see note 3 head (iii) supra) has expressed a view described in r 4(2)(b) (see PARA 687 note 7 ante) and the local planning authority has included its terms in a statement served in accordance with r 6(1) (see PARA 689 ante), the appellant, the local planning authority or a person entitled to take part in an inquiry may, not later than four weeks before the date of an inquiry, apply in writing to the Assembly for a representative of the Assembly or of the minister, department or body concerned to be made available at the inquiry: r 12(1). Where an application is made in accordance with r 12(1), the Assembly must make a representative available to attend the inquiry or, as the case may be, send the application to the minister, department or body concerned, who must make a representative available to attend the inquiry: r 12(2). The inspector may act in place of the Assembly under r 12(1), (2): see PARA 687 note 7 ante. As to the Assembly see PARA 20 ante.

Any person attending an inquiry as a representative in pursuance of r 12 must state the reasons for the direction or expressed view and give evidence and is to be subject to cross-examination to the same extent as any other witness (r 12(3)); but nothing in r 12(3) requires a representative of the Assembly to answer any question which, in the opinion of the inspector, is directed to the merits of Assembly policy or requires a representative of a minister or government department to answer any question which, in the opinion of the inspector, is directed to the merits of government policy (r 12(4)).

5 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 14 (as amended). Any person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence must simultaneously send two copies of the proof of evidence, in the case of the local planning authority and the appellant, and three copies in the case of any other person, to the Secretary of State together with any written summary, and one copy of these to any statutory party; and the Secretary of State must, as soon as practicable after receipt, send a copy of each proof of evidence together with any summary to the local planning authority and the appellant: r 14(1). No written summary is, however, to be required where the proof of evidence proposed to be read contains no more than 1,500 words: r 14(2). The proof of evidence and any summary must be received by the Secretary of State no later than (1) four weeks before the date fixed for the holding of the inquiry; or (2) where a timetable has been arranged pursuant to r 8 (see PARA 687 note 11 ante), which specifies a date by which the proof of evidence and any summary are to be received by the Secretary of State, that date: r 14(3). As to the extension of time limits see PARA 687 note 7 ante; and as to the use of electronic communications see PARA 686 note 14 ante.

The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with r 14 (as amended) and received by him within the relevant period, if any, specified therein: r 14(4). Where a written summary is provided in accordance with r 14(1), only that summary is to be read at the inquiry, unless the inspector permits or requires otherwise: r 14(5). Any person required by r 14 (as amended) to send copies of a proof of evidence to the inspector must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to r 6(13) (see PARA 689 ante): r 14(7). The local planning authority must afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any

document sent to or by the authority in accordance with r 14 (as amended): r 14(7). For these purposes an opportunity is to be taken to have been afforded to a person where the person is notified, in a manner for the time being agreed between him and the local planning authority for that purpose, of: (a) publication of the relevant document on a website; (b) the address of the website; (c) the place on the website where the document may be accessed, and how it may be accessed: r 14(8) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 14(1)-(8) (amended by SI 2004/3172), which refers to written statements of evidence rather than to proofs of evidence and to the Assembly rather than to the Secretary of State.

6 See, in relation to England, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 15 (as amended). The local planning authority and the appellant must (1) together prepare an agreed statement of common ground; and (2) ensure that the Secretary of State and any statutory party receives a copy of it, not less than four weeks before the date fixed for the holding of the inquiry: r 15(1). 'Statement of common ground' means a written statement prepared jointly by the local planning authority and the appellant and which contains agreed factual information about the proposal which is the subject of the appeal: r 2(1) (renumbered by SI 2003/956). The local planning authority must afford to any person, who so requests, a reasonable opportunity to inspect and, where practicable, take copies of the statement of common ground sent to the Secretary of State: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 15(2). For these purposes, an opportunity is to be taken to have been afforded to a person where the person is notified, in a manner for the time being agreed between him and the local planning authority for that purpose, of: (a) publication of the statement of common ground on a website; (b) the address of the website; (c) the place on the website where the document may be accessed, and how it may be accessed: r 15(3) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 15(1)-(3) (amended by SI 2004/3172), which refers to the Assembly rather than to the Secretary of State. For the relevant definition see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 2(1) (renumbered by SI 2004/3172).

7 The Secretary of State may at any time before the close of an inquiry held in England request from any person entitled to appear additional copies of the following: (1) a statement of case sent in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6 (as amended) (see PARA 689 ante); (2) a proof of evidence sent in accordance with r 14 (as amended) (see note 5 supra); or (3) any other document or information sent to the Secretary of State before or during an inquiry, and may specify the time within which such copies should be received by him: r 22(1). Any person so requested must ensure that the copies are received by the Secretary of State within the period specified: r 22(1). The inspector may act in place of the Secretary of State under r 22: see PARA 687 note 7 ante.

Similarly, the Assembly may at any time before the close of an inquiry held in Wales request from any person entitled to take part additional copies of the following: (a) a statement of case sent in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6 (as amended) (see PARA 689 ante); (b) a statement of evidence sent in accordance with r 14 (as amended) (see note 5 supra); or (c) any other document or information sent to the Assembly before or during an inquiry, and may specify the time within which such copies should be received by it: r 22(1). Any person so requested must ensure that the copies are received by the Assembly within the period specified: r 22(2). The inspector may act in place of the Assembly under r 22 (as amended): see PARA 687 note 7 ante. Any obligation imposed by the 2003 Rules to send more than one copy of a statement or other document may, where sending is effected using electronic communications, be complied with by sending one copy only of the statement or (as the case may be) document in question: r 22(3) (added by SI 2004/3172).

UPDATE

691 Appearances at the inquiry; evidence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 3--SI 2000/1625 r 11(1) amended: SI 2008/2831.

NOTE 6--For 'not less than four weeks before the date fixed for the holding of the inquiry' read 'within six weeks of the starting date': SI 2000/1925 r 15(1) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/692. Procedure at the inquiry; site inspections.

692. Procedure at the inquiry; site inspections.

Except as otherwise provided in the relevant rules¹, the inspector² must determine the procedure at an inquiry³. At the start of the inquiry the inspector must identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear⁴ or to take part⁵; but nothing in this requirement precludes any person so entitled or permitted from referring to issues which they consider relevant to the consideration of the appeal but which were not issues so identified by the inspector⁶.

Unless in any particular case the inspector otherwise determines, the local planning authority⁷ is to begin and the appellant is to have the right of final reply; and the other persons entitled or permitted to appear or to take part are to be heard in such order as the inspector may determine⁸. A person entitled to appear at an inquiry is to be entitled to call evidence and the appellant, the local planning authority and any statutory party⁹ are to be entitled to cross-examine persons giving evidence, but, subject to that and to the exceptions set out below¹⁰, the calling of evidence and the cross-examination of persons giving evidence is otherwise to be at the discretion of the inspector¹¹.

The inspector may refuse to permit the:

- 2805 (1) giving or production of evidence;
- 2806 (2) cross-examination of persons giving evidence; or
- 2807 (3) presentation of any other matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing¹² before the close of the inquiry¹³.

Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹⁴:

- 2808 (a) the proof of evidence¹⁵ is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of the summary alone; and
- 2809 (b) the person whose evidence the proof of evidence contains is then to be subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁶.

The inspector may direct that facilities are to be afforded to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection¹⁷. He may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return, or permit him to return only

on such conditions as he may specify; but any such person may submit to him any evidence or other matter in writing before the close of the inquiry¹⁸. The inspector may proceed with an inquiry in the absence of any person entitled to appear at it¹⁹.

The inspector may allow any person to alter or add to a statement of case received²⁰ by the Secretary of State²¹ (or by the National Assembly for Wales)²² or by him, so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document²³. The inspector may take into account any written representation or evidence or any other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²⁴.

The inspector may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice is to be required²⁵.

In respect of any inquiry that the Secretary of State or the Assembly expects to last for eight or more days, any person who appears at the inquiry and makes closing submissions must by the close of the inquiry provide the inspector with a copy of their closing submissions in writing²⁶.

The inspector may make an unaccompanied inspection of the land²⁷ before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry²⁸. During an inquiry or after its close, the inspector may:

- 2810 (i) inspect the land in the company of the appellant, the local planning authority and any statutory party; and
- 2811 (ii) must make such an inspection if so requested by the appellant or the local planning authority before or during an inquiry²⁹.

In all cases where the inspector intends to make an accompanied inspection he must announce during the inquiry the date and time at which he proposes to make it³⁰; but he is not bound to defer an inspection of the kind referred to in heads (i) and (ii) above where any person mentioned in those heads is not present at the time appointed³¹.

1 As to the relevant rules see PARA 686 ante.

2 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante.

3 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(1). The inquiry referred to in the text is an inquiry to which those 2000 Rules, or, as the case may be, 2003 Rules apply: see PARA 686 ante.

4 As to the persons entitled or permitted to appear or take part see PARA 691 ante.

5 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(2).

6 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(3). See eg *Tatham Homes Ltd v First Secretary of State* [2005] All ER (D) 160 (Jun).

7 For the meaning of 'local planning authority' for these purposes see PARA 687 note 7 ante.

8 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(4); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(4).

9 For the meaning of 'statutory party' see PARA 687 note 7 ante.

10 le subject to the provisions set out in the text to notes 12-16 infra.

11 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(5); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(5).

12 As to the use of electronic communications see PARA 686 note 14 ante.

13 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(6); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(6).

14 le in accordance with the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 14(5) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 14(5): see PARA 691 ante.

15 le the proof of evidence referred to in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 14(1) or, as the case may be, the statement of evidence referred to in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 14(1): see PARA 691 ante.

16 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(7); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(7).

17 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(8); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(8).

18 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(9); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(9).

19 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(11); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(11).

20 le under the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 6 (as amended) or, as the case may be, the statement of evidence referred to in the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 6 (as amended): see PARA 689 ante.

21 As to the Secretary of State see PARA 19 ante.

22 As to the Assembly see PARA 20 ante.

23 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(10); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(10). For the meaning of 'document' see PARA 686 note 13 ante.

24 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(12); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(12).

25 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(13); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(13).

26 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 16(14); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 16(14).

27 For the meaning of 'the land' see PARA 690 note 14 ante.

28 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 17(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 17(1).

29 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 17(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 17(2).

30 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 17(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 17(3).

31 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 17(4); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 17(4).

UPDATE

692 Procedure at the inquiry; site inspections

NOTES 10, 11--The relevant provisions are now those set out in TEXT to NOTES 12, 13 (ie SI 2000/1625 r 16(6)) and TEXT to NOTE 18 (ie SI 2000/1625 r 16(9)): r 16(5) (amended by SI 2009/455).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/A. IN GENERAL/693. Procedure after inquiry.

693. Procedure after inquiry.

Where an assessor¹ has been appointed, he may after the close of the inquiry² make a report in writing³ to the inspector⁴ in respect of the matters on which he was appointed to advise, and where he does so the inspector must state in his notification of his decision⁵ that such a report was made⁶.

When making his decision the inspector may disregard any written representations or evidence or any other document⁷ received after the close of the inquiry⁸.

If, after the close of an inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact (not being a matter of government policy or National Assembly for Wales⁹ policy) which was not raised at the inquiry and which he considers to be material to his decision, he must not come to a decision without first:

- 2812 (1) notifying the persons entitled to appear at or take part in the inquiry¹⁰ who appeared at it or took part in it of the matter in question; and
- 2813 (2) affording them an opportunity of making written representations to him or of asking for the reopening of the inquiry;

and they must ensure that such written representations or request to reopen the inquiry are received by the Secretary of State¹¹ or the Assembly within three weeks¹² of the date of the notification¹³.

An inspector may, as he thinks fit, cause an inquiry to be reopened, and he must do so if asked by the appellant or the local planning authority¹⁴ in the circumstances and within the period mentioned¹⁵ above¹⁶. Where an inquiry is reopened, the inspector must send to the persons

entitled to appear at or take part in the inquiry who appeared at or took part in it a written statement of the matters with respect to which further evidence is invited¹⁷.

1 For the meaning of 'assessor' see PARA 687 note 11 ante.

2 The inquiry referred to in the text is an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

3 As to the use of electronic communications see PARA 687 note 14 ante.

4 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante.

5 le pursuant to the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19 (as amended), or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19 (as amended): see PARA 694 post.

6 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(1).

7 For the meaning of 'document' see PARA 687 note 13 ante.

8 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(2).

9 As to the Assembly see PARA 20 ante.

10 As to such persons see PARA 691 ante.

11 As to the Secretary of State see PARA 19 ante.

12 As to the extension of time limits see PARA 687 note 7 ante.

13 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(3).

14 For the meaning of 'local planning authority' for these purposes see PARA 687 note 7 ante.

15 le mentioned in the text to notes 9-13 supra.

16 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(4); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(4). As to the matters which should generally be included in a consideration of whether a further public inquiry should be held see *Alfred McAlpine Homes Northumbria Ltd v Darlington Borough Council* [1998] EGCS 105, [1999] JPL 53 (decided under previous rules).

17 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(4)(a); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(4)(a). The Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(2)-(7) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(2)-(7) (see PARA 690 ante) apply as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 18(4)(b); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 18(4)(b).

UPDATE

693 Procedure after inquiry

TEXT AND NOTES 9-13--In head (1), after the word 'notifying' add 'in writing': SI 2000/1925 r 18(3) (amended by SI 2009/455).

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694. Notification of decision; procedure if decision is subsequently quashed.

The inspector¹ must, as soon as practicable, notify his decision on a relevant appeal², and his reasons for it, in writing³ to:

- 2814 (1) all persons entitled to appear at or take part in the inquiry⁴ who did appear or take part; and
- 2815 (2) any other person who, having appeared at or taken part in the inquiry, has asked to be notified of the decision⁵.

Any person so entitled to be notified of the inspector's decision may apply to the Secretary of State⁶ or to the National Assembly for Wales⁷ in writing⁸ for an opportunity to inspect any documents⁹ listed in the notification and any report made by an assessor¹⁰ and the Secretary of State or the Assembly must afford him that opportunity¹¹. Any application so made must be received by the Secretary of State or the Assembly within six weeks of the date of the decision¹².

Where a decision of an inspector on an appeal in respect of which an inquiry¹³ has been held is quashed in proceedings before any court¹⁴, the Secretary of State or the Assembly:

- 2816 (a) must send to the persons entitled to appear at or take part in the inquiry who appeared at or took part in it a written statement of the matters with respect to which further representations are invited for the purposes of his or its further consideration of the appeal; and
- 2817 (b) must afford to those persons the opportunity of making written representations to him or to the Assembly in respect of those matters or of asking for the reopening of the inquiry¹⁵; and
- 2818 (c) may, as he or the Assembly thinks fit, cause the inquiry to be reopened, whether by the same or a different inspector¹⁶.

1 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante.

2 Ie such an appeal as is described in PARA 686 ante.

3 Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State or the National Assembly for Wales and the person have agreed that decisions and reasons so required to be given in writing may instead be accessed by that person via a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified, in a manner for the time being agreed between him and the Secretary of State or the Assembly, of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19(1A) (added by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19(1A) (added by SI 2004/3172).

4 As to such persons see PARA 691 ante.

5 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19(1). As to the duty to give reasons see eg *Secretary of State for the Environment v MJT Securities Ltd* (1997) 75 P & CR 188, CA (decided under previous rules).

6 As to the Secretary of State see PARA 19 ante.

7 As to the Assembly see PARA 20 ante.

8 As to the use of electronic communications see PARA 687 note 14 ante.

9 For the meaning of 'document' see PARA 687 note 13 ante.

10 For the meaning of 'assessor' see PARA 687 note 11 ante.

11 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19(2). For these purposes an opportunity is to be taken to have been afforded to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19(2A) (added by SI 2003/956); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19(2A) (added by SI 2004/3172).

12 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 19(3); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 19(3). As to the extension of time limits see PARA 687 note 7 ante.

13 Is an inquiry to which the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended), or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended), apply: see PARA 686 ante.

14 As to challenging the validity of a decision see PARAS 43 et seq, 650 ante.

15 Those persons making representations or asking for the inquiry to be reopened under head (b) in the text must ensure that such representations or requests are received by the Secretary of State or the Assembly within three weeks of the date of the written statement sent under head (a) in the text: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 20(2); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 20(2).

16 Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 20(1); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 20(1). If he does so, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 10(2)-(7) or, as the case may be, the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 10(2)-(7) (see PARA 690 ante) apply as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625, r 20(1)(c); Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267, r 20(1)(c).

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B. ENFORCEMENT ETC APPEALS

695. Application of rules.

Rules have been made¹ which apply in relation to any local inquiry held in England by an inspector² before he determines an appeal made on or after 23 December 2002:

- 2819 (1) under the relevant provision of the Town and Country Planning Act 1990³ against an enforcement notice⁴;
- 2820 (2) under the relevant provision of that Act⁵ against the refusal or non-determination of an application for a certificate of lawful use or development⁶;
- 2821 (3) under the relevant provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990⁷ against a listed building enforcement notice⁸ or a conservation area enforcement notice⁹.

Those rules do not, however, apply to any local inquiry by reason of the application of any provision mentioned in heads (1) to (3) above by or under any other enactment¹⁰.

Rules have also been made¹¹ which apply in relation to any local inquiry held in Wales by an inspector¹² before the inspector determines an appeal under the provisions mentioned in heads (1) to (3) above made on or after 1 June 2003¹³. Again, those rules do not apply to any local inquiry by reason of the application of any provision mentioned in those heads by or under any other enactment¹⁴.

1 See the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended); and PARA 696 et seq post.

2 For these purposes, 'inspector' means a person appointed by the Secretary of State under the Town and Country Planning Act 1990 Sch 6 (paras 1-8) (as amended) (see PARA 621 et seq ante) or, as the case may be, the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (paras 1-8 (as amended) (see PARA 1199 et seq post) to determine an appeal: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (renumbered by SI 2003/956). As to the Secretary of State see PARA 19 ante.

3 Ie under the Town and Country Planning Act 1990 s 174 (as amended): see PARA 603 ante. As to the proper procedure to be adopted by the inspector if a question arises as to his jurisdiction to entertain the appeal see *R v Secretary of State for the Environment, ex p Eauville Ltd (a firm)* (1999) 80 P & CR 85.

4 Ie a notice under the Town and Country Planning Act 1990 s 172 (as substituted): see PARA 561 ante.

5 Ie under ibid s 195 (as amended): see PARAS 613-614 ante.

6 Ie a certificate under ibid s 191 or s 192 (as substituted): see PARA 586 et seq ante.

7 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) (see PARA 1191 post) or under s 39 (as amended) as applied by s 74(3) (see PARA 1197 post).

8 As to listed building enforcement notices see PARA 1146 post.

9 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 3(1). As to conservation area enforcement notices see PARA 1180 post. For transitional provisions see rr 3(2), 25.

10 Ibid r 3(1).

11 See the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended); and PARA 696 et seq post.

12 For these purposes, 'inspector' means a person appointed by the National Assembly for Wales under the Town and Country Planning Act 1990 Sch 6 (paras 1-8) (as amended) (see PARA 621 et seq ante) or, as the case may be, the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (paras 1-8 (as amended) (see PARA 1199 et seq post) to determine an appeal: Town and Country Planning (Enforcement) (Determination by

Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (renumbered by SI 2004/3172). As to the Assembly see PARA 20 ante.

13 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 3(1). For transitional provisions see rr 3(2), 25.

14 Ibid r 3(1).

UPDATE

695-696 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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696. Pre-inquiry procedure; use of electronic communications.

Rules have been made¹ in relation to the pre-inquiry procedure for local inquiries² held in England or Wales by an inspector³ before he determines a relevant enforcement or other appeal⁴. Those rules set out the procedure with regard to:

- 2822 (1) preliminary information to be supplied by the local planning authority⁵;
- 2823 (2) notification of the name of the inspector⁶;
- 2824 (3) the procedure where a pre-inquiry meeting is to be held⁷;
- 2825 (4) service of statements of case etc⁸;
- 2826 (5) the inquiry timetable⁹;
- 2827 (6) the appointment of an assessor¹⁰.

Provision is also made for the service of documents¹¹, for any purposes of the relevant rules which are capable of being carried out electronically, by the use of electronic communications¹².

1 See PARA 695 ante.

2 I.e. a local inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

3 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

4 See the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, rr 4-8, 10, 22 (as amended); the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, rr 4-8, 10, 22 (as amended); and the text and notes 5-10 infra. The appeal referred to in the text is such an appeal as is described in PARA 695 ante.

5 The Secretary of State or the National Assembly for Wales must, as soon as practicable after it is determined to hold an inquiry under the relevant rules, inform the appellant and the local planning authority in writing that an inquiry is to be held; and the local planning authority must within two weeks of the starting date: (1) send to the Secretary of State or to the Assembly, and to the appellant, a completed questionnaire and a copy of each of the documents referred to in it; (2) in the case of an enforcement appeal, notify any (a) person on whom a copy of the enforcement notice has been served; (b) occupier of property in the locality in which the land to which the enforcement notice relates is situated; and (c) other person who in the opinion of the local planning authority is affected by the breach of planning control or contravention of listed building or conservation area control which is alleged in the enforcement notice, that an appeal has been made and of the address to which and of the period within which they may make representations to the Secretary of State or the Assembly: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 4(1), (2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 4(1), (2). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

The Secretary of State or the Assembly may at any time in any particular case allow further time for the taking of any step which is required or enabled to be taken by virtue of the relevant 2002 or 2003 Rules, and references in those rules to a day by which, or period within which, any step is required or enabled to be taken are to be construed accordingly: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 22; Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 22. An inspector may in place of the Secretary of State or the Assembly take such steps as he or it is required or enabled to take under or by virtue of r 22 of the relevant rules and also under or by virtue of r 6(6)-(10), (14), (15) (see PARA 698 post), r 9 (see PARA 699 post), and r 23 (see PARA 700 post) of those rules; and where an inspector requires further information or copies pursuant to r 6(8) or r 23 of those rules, that information or copies must be sent to him: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 14; Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 14.

For these purposes, 'local planning authority' means in relation to (i) an enforcement appeal, the body which issued the relevant enforcement notice; (ii) an appeal against the refusal or non-determination of an application for a certificate of lawful use or development, the body to which the application was made; 'enforcement appeal' means an appeal against an enforcement notice; 'enforcement notice' means a notice under the Town and Country Planning Act 1990 s 172 (as substituted) (see PARA 561 ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) (see PARA 1146 post); and 'land' means the land or building to which an inquiry relates: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (renumbered by SI 2004/3172). 'Starting date' means the date of the (A) Secretary of State's or Assembly's written notice to the appellant and the local planning authority that he has received all the documents required to enable him to entertain the appeal pursuant to the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10 or, as the case may be, the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9 (see PARA 607 ante); or (B) relevant notice, whichever is the later; 'relevant notice' means the Secretary of State's or Assembly's written notice under the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 4(1) or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 4(1) informing the appellant and the local planning authority that an inquiry is to be held; and 'questionnaire' means a document in the form supplied by the Secretary of State or the Assembly to local planning authorities for the purpose of proceedings under the relevant 2002 or 2003 Rules, and for this purpose a form is taken to be supplied where the Secretary of State or the Assembly has published it on a website and has notified the local planning authority, in a manner for the time being agreed between the Secretary of State or the Assembly and the authority for that purpose, of publication of the form on the website, of the address of the website, and of the place on the website where the form may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (as so renumbered and amended); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (as so renumbered and amended).

6 The Secretary of State or the Assembly must notify the name of the inspector to every person entitled to appear at or take part in the inquiry; but where he or it appoints another inspector instead of the person previously appointed and it is not practicable to notify the new appointment before the inquiry is held, the inspector holding the inquiry must, at its commencement, announce his name and the fact of his appointment: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 5(1), (2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 5(1), (2).

7 See PARA 697 post.

8 See PARA 698 post.

9 In respect of inquiries that appear to the Secretary of State or the Assembly likely to last for four days or more, the inspector must prepare a timetable for the proceedings; and in respect of shorter inquiries, the inspector may at any time prepare a timetable for the proceedings at, or at part of, an inquiry: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 8(1), (2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 8(1), (2). The inspector may, at any time, vary the timetable so prepared; and he may specify in a timetable so prepared a date by which any proof of evidence and summary sent in accordance with r 15(1) of the relevant 2002 or 2003 Rules (see PARA 700 post) must be sent to him: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 8(3), (4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 8(3), (4).

10 Where the Secretary of State or the Assembly appoints an assessor he or it must notify every person entitled to appear at or take part in the inquiry of the name of the assessor and of the matters on which he is to advise the inspector: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 10; Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 10. 'Assessor' means a person appointed by the Secretary of State or the Assembly to sit with an inspector at an inquiry or reopened inquiry to advise the inspector on such matters arising as the Secretary of State or the Assembly may specify: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (as renumbered: see note 5 supra).

11 For these purposes, 'document' includes a photograph, map or plan: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (as renumbered: see note 5 supra).

12 See, in relation to England, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(2)-(8) (added by SI 2003/956). In the 2002 Rules, and in relation to the use of electronic communications for any purpose of those rules which is capable of being carried out electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those rules impose an obligation on any person to provide a name and address to any other person, the obligation is not to be fulfilled unless the person on whom it is imposed provides a postal address (Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(2)(a) (as so added)); and references to statements, notices, or other documents, or to copies of such documents, include references to such documents or copies of them in electronic form (r 2(2)(b) (as so added)). Rule 2(4)-(8) (as so added) applies where an electronic communication is used by a person for the purpose of fulfilling any requirement in those rules to give or send any statement, notice or other document to any other person ('the recipient'): r 2(3) (as so added). The requirement is to be taken to be fulfilled where the notice or other document transmitted by means of the electronic communication is (1) capable of being accessed by the recipient; (2) legible in all material respects; and (3) sufficiently permanent to be used for subsequent reference; and for these purposes 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: r 2(4), (5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: r 2(6) (as so added). A requirement in the 2000 Rules that any document should be in writing is fulfilled where that document meets the criteria in r 2(4) (as so added) (see heads (1)-(3) supra), and 'written' and cognate expressions are to be construed accordingly: r 2(7) (as so added). A requirement in those rules to send more than one copy of a statement or other document may be complied with by sending one copy only of the statement or other document in question: r 2(8) (as so added).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(2)-(8) (added by SI 2004/3172).

For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (as renumbered: see note 5 supra); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (as renumbered: see note 5 supra).

Notices or documents required or authorised to be sent or supplied under the relevant 2002 or, as the case may be, the 2003 Rules may be sent or supplied by post or by using electronic communications to send or supply

the notice or document (as the case may be) to a person at such address as may for the time being be specified by the person for that purpose: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 24 (substituted by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 24 (substituted by SI 2004/3172).

Where a person is no longer willing to accept the use of electronic communications for any purpose of the relevant 2002 or 2003 Rules which is capable of being effected electronically, he must give notice in writing: (a) withdrawing any address notified to the Secretary of State (or the Assembly) or to a local planning authority for that purpose; or (b) revoking any agreement entered into with the Secretary of State (or the Assembly) or with a local planning authority for that purpose; and such withdrawal or revocation is to be final and to take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 24A (added by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 24A (added by SI 2004/3172).

UPDATE

695-696 Application of rules, Pre-inquiry procedure; use of electronic communications

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

696 Pre-inquiry procedure; use of electronic communications

NOTE 5--SI 2003/1270 r 4(1) amended: SI 2007/2285.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/B. ENFORCEMENT ETC APPEALS/697. Statement of matters and pre-inquiry meetings.

697. Statement of matters and pre-inquiry meetings.

An inspector¹ may, within 12 weeks² of the starting date³, send to the appellant, the local planning authority⁴ and, in the case of an enforcement appeal⁵, any person on whom a copy of the enforcement notice⁶ has been served, a written statement of the matters about which he particularly wishes to be informed for the purposes of his consideration of the enforcement or other appeal⁷.

An inspector must hold a pre-inquiry meeting⁸:

- 2828 (1) if he expects a relevant inquiry⁹ to last for four days or more, unless he considers it is unnecessary; or
- 2829 (2) for shorter inquiries, if it appears to him necessary¹⁰.

An inspector must give not less than two weeks' written notice¹¹ of a pre-inquiry meeting to:

- 2830 (a) the appellant;
- 2831 (b) the local planning authority;

- 2832 (c) any other person known to be entitled to appear at or take part in the inquiry¹²; and
- 2833 (d) any other person whose presence at the pre-inquiry meeting appears to him to be desirable¹³.

The inspector must preside at the pre-inquiry meeting¹⁴ and must determine the matters to be discussed and the procedure to be followed¹⁵. He may require any person present at the pre-inquiry meeting who, in his opinion, is behaving in a disruptive manner to leave and may refuse to permit that person to return or to attend any further pre-inquiry meeting, or may permit him to return or attend only on such conditions as he may specify¹⁶.

An inspector may request any further information from the appellant or the local planning authority at the pre-inquiry meeting¹⁷. The appellant and the local planning authority must, within four weeks of the conclusion of the pre-inquiry meeting:

- 2834 (i) send two copies¹⁸ of any further information so requested to the inspector; and
- 2835 (ii) in the case of an enforcement notice appeal, send a copy to any person on whom a copy of the enforcement notice has been served¹⁹;

and the inspector must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the appellant and a copy of any further information received from the appellant to the local planning authority²⁰.

1 For the meaning of 'inspector' for these purposes see PARA 695 notes 2, 12 ante.

2 As to the extension of time limits see PARA 696 note 5 ante.

3 For the meaning of 'starting date' see PARA 696 note 5 ante.

4 For the meaning of 'local planning authority' for these purposes see PARA 696 note 5 ante.

5 For the meaning of 'enforcement appeal' see PARA 696 note 5 ante.

6 For the meaning of 'enforcement notice' see PARA 696 note 5 ante.

7 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(1). The appeal referred to in the text is such an appeal as is described in PARA 695 ante.

8 'Pre-inquiry meeting' means a meeting held before an inquiry to consider what may be done with a view to securing that the inquiry is conducted efficiently and expeditiously, and where two or more such meetings are held references to the conclusion of a pre-inquiry meeting are references to the conclusion of the final meeting: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (renumbered by SI 2004/3172).

9 Ie an inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

10 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(2).

11 As to the use of electronic communications see PARA 696 note 12 ante.

12 As to the persons so entitled see PARA 700 post.

13 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(3).

14 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(4)(a); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(4)(a).

15 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(4)(b); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(4)(b).

16 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(4)(c), (d); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(4)(c), (d).

17 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(5); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(5).

18 Where electronic communications are used, only one copy need be sent: see PARA 696 note 12 ante.

19 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(6); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(6). The latter provision specifies that the copies described in heads (i), (ii) in the text must be sent so as to be received within the four-week period mentioned in the text.

20 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 7(7); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 7(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/B. ENFORCEMENT ETC APPEALS/698. Statements of case.

698. Statements of case.

The local planning authority¹ must, within six weeks² of the starting date³, serve two copies⁴ of its statement of case⁵ on the Secretary of State⁶, in the case of a relevant inquiry to be held in England⁷, or on the National Assembly for Wales⁸, in the case of a relevant inquiry⁹ to be held in Wales¹⁰. In the case of an enforcement appeal¹¹, it must also serve a copy on any person on whom a copy of the enforcement notice¹² has been served¹³. The appellant must, within six weeks of the starting date, serve two copies of his statement of case on the Secretary of State or on the Assembly and, in the case of an enforcement appeal, a copy on any person on whom a copy of the enforcement notice has been served¹⁴. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the local planning authority's statement of case to the appellant and a copy of the appellant's statement of case to the local planning authority¹⁵.

The appellant and the local planning authority may in writing¹⁶ each require the other to send them a copy of any document, or the relevant part of any document, referred to in the list of documents comprised in that party's statement of case; and any such document, or relevant part, must be sent, as soon as practicable, to the party who required it¹⁷.

The Secretary of State or the Assembly may in writing require any other person who has notified him or it of an intention or a wish to appear at or take part in the inquiry¹⁸ to serve:

- 2836 (1) three copies of that person's statement of case on him or on the Assembly within four weeks of being so required; and
- 2837 (2) in the case of an enforcement appeal, simultaneously, a copy of his statement of case on any person specified by the Secretary of State or the Assembly,

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of each such statement of case to the local planning authority and to the appellant¹⁹. The Secretary of State or the Assembly must, as soon as practicable, send to any person from whom he or it so requires a statement of case a copy of the statements of case of the appellant and the local planning authority and must inform that person of the name and address of every person to whom his statement of case is required to be sent²⁰.

The Secretary of State or the Assembly may in writing require any person who has served on him or on it a statement of case in accordance with the above provisions to provide such further information about the matters contained in the statement of case as he or the Assembly may specify and may specify the time within which the information must be sent²¹. A local planning authority or appellant required to provide further information must send within the time specified:

- 2838 (a) two copies of that information in writing to the Secretary of State or to the Assembly; and
- 2839 (b) in the case of an enforcement appeal, a copy to any person on whom a copy of the enforcement notice has been served,

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the further information received from the local planning authority to the appellant and a copy of the further information received from the appellant to the local planning authority²². Any other person required to provide further information must send within the time specified:

- 2840 (i) three copies of that information in writing to the Secretary of State or to the Assembly; and
- 2841 (ii) in the case of an enforcement appeal, a copy to any person on whom a copy of the enforcement notice has been served,

and the Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the further information to the local planning authority and the appellant²³.

Any person other than the appellant who serves a statement of case on the Secretary of State or the Assembly must send with it a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement, unless a copy of the document or part of the document in question is already available²⁴ for inspection²⁵.

The Secretary of State or the Assembly must, as soon as practicable after receipt, send to the inspector²⁶ any statement of case, document, further information and written comments sent to him or to the Assembly in accordance with the above provisions and received by him or by it within the relevant period, if any, specified therein²⁷.

The local planning authority must give any person who so requests a reasonable opportunity²⁸ to inspect and, where practicable, take copies of:

- 2842 (A) any statement of case, written comments, further information or other document a copy of which has been sent to the local planning authority in accordance with the above provisions; and

2843 (B) the local planning authority's completed questionnaire²⁹ and statement of case together with a copy of any document, or of the relevant part of any document, referred to in the list comprised in that statement, and any written comments, information or other document sent by the local planning authority pursuant to those provisions³⁰.

If the local planning authority or the appellant wish to comment on another person's statement of case, they must send, within nine weeks of the starting date, two copies of their written comments to the Secretary of State or the Assembly and, in the case of an enforcement appeal, a copy of their written comments to any person on whom a copy of the enforcement notice has been served³¹. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments received from the appellant to the local planning authority and a copy of the written comments received from the local planning authority to the appellant³². Any person, other than the local planning authority or the appellant, who serves a statement of case on the Secretary of State or the Assembly under the above provisions and who wishes to comment on another person's statement of case must send, not less than four weeks before the date fixed for the holding of the inquiry, three copies of his written comments to the Secretary of State or to the Assembly and, in the case of an enforcement appeal, a copy of his written comments to any person on whom a copy of the enforcement notice has been served³³. The Secretary of State or the Assembly must, as soon as practicable after receipt, send a copy of the written comments to the local planning authority and to the appellant³⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 696 note 5 ante.

2 As to the extension of time limits see PARA 696 note 5 ante.

3 For the meaning of 'starting date' see PARA 696 note 5 ante.

4 Where electronic communications are used, only one copy need be sent: see PARA 696 note 12 ante.

5 'Statement of case' means, and is comprised of, a written statement which contains full particulars of the case which a person proposes to put forward at an inquiry, and a list of any documents which that person intends to refer to or put in evidence: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 2(1) (renumbered by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (renumbered by SI 2004/3172). The local planning authority must include in its statement of case details of the time and place where the opportunity will be given to inspect and take copies described in the text to notes 28-30 infra and including, in any case in which the local planning authority relies on the provision set out in note 28 infra, the details mentioned in that provision: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(2) (amended by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(2) (amended by SI 2004/3172). For the meaning of 'document' see PARA 696 note 12 ante.

6 As to the Secretary of State see PARA 19 ante. The inspector may act in place of the Secretary of State for the purposes of certain provisions of the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6 (as amended): see PARA 696 note 5 ante.

7 In the case of an inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), apply: see PARA 695 ante.

8 As to the Assembly see PARA 20 ante. The inspector may act in place of the Assembly for the purposes of certain provisions of the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6 (as amended): see PARA 696 note 5 ante.

9 In the case of an inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

10 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(1).

11 For the meaning of 'enforcement appeal' see PARA 696 note 5 ante.

12 For the meaning of 'enforcement notice' see PARA 696 note 5 ante.

13 See note 10 supra.

14 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(3).

15 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(4).

16 As to the use of electronic communications see PARA 696 note 12 ante.

17 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(5); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(5).

18 As to participation in the inquiry see PARA 700 post.

19 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(6); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(6). The latter provision specifies that the copies referred to in heads (1)-(2) in the text must be received within the four-week period mentioned in the text.

20 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(7); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(7).

21 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(8); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(8). See also notes 6, 8 supra.

22 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(9); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(9). The latter provision specifies that the copies referred to in heads (a)-(b) in the text must be received within the period mentioned in the text.

23 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(10); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(10). The latter provision specifies that the copies referred to in heads (i)-(ii) in the text must be received within the period mentioned in the text.

24 Ie pursuant to the provisions set out in the text to notes 28-30 infra.

25 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(11); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(11).

26 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

27 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(12); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(12).

28 For these purposes, an opportunity is to be taken to have been given to a person where the person is notified of (1) publication on a website of the documents mentioned in the text; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(13A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(13A) (added by SI 2004/3172).

29 For the meaning of 'questionnaire' see PARA 696 note 5 ante.

30 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(13); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(13).

31 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(14)(a), (b); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(14)(a), (b). The latter provision specifies that the copies referred to in the text must be received within the nine-week period there mentioned.

32 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(14); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(14).

33 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(15)(a), (b); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(15)(a), (b). The latter provision specifies that the copies referred to in the text must be received within the four-week period there mentioned.

34 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(15); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(15).

UPDATE

698 Statements of case

TEXT AND NOTE 31--After 'starting date' add 'or, where a pre-inquiry meeting has been held, within seven weeks of the conclusion of that meeting,': SI 2003/1270 r 6(14) (amended by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/B. ENFORCEMENT ETC APPEALS/699. Date and notification of the inquiry.

699. Date and notification of the inquiry.

The date fixed by the Secretary of State¹ for the holding of a relevant inquiry² in England, or by the National Assembly for Wales³ for the holding of a relevant inquiry⁴ in Wales, must be:

- 2844 (1) not later than 20 weeks⁵ after the starting date⁶ unless the Secretary of State or the Assembly considers such a date impracticable; or
- 2845 (2) the earliest date after that period which he or it considers to be practicable⁷.

Unless the Secretary of State or the Assembly agrees a lesser period of notice with the appellant and the local planning authority⁸, he or it must give not less than four weeks' written notice⁹ of the date, time and place fixed by him or by the Assembly for the holding of an inquiry to every person entitled to appear at the inquiry¹⁰.

The Secretary of State or the Assembly may vary the date fixed for the holding of an inquiry, whether or not the date as varied is within the period of 20 weeks mentioned above¹¹. He or it

may also vary the time or place for the holding of an inquiry and must give such notice as appears to him or to it to be reasonable¹².

The Secretary of State or the Assembly may in writing¹³ require the local planning authority to take one or more of the following steps:

- 2846 (a) not less than two weeks before the date fixed for the holding of an inquiry, to publish a notice of the inquiry in one or more newspapers circulating in the locality in which the land¹⁴ is situated;
- 2847 (b) to send a notice of the inquiry to such persons or classes of persons as he or the Assembly may specify, within such period as he or it may specify; or
- 2848 (c) to post a notice of the inquiry in a conspicuous place near to the land, within such period as he or it may specify¹⁵.

Where the land is under the control of the appellant, he must:

- 2849 (i) if so required in writing by the Secretary of State or the Assembly, affix a notice of the inquiry firmly to the land or to some object on or near the land, in such manner as to be readily visible to and legible by members of the public; and
- 2850 (ii) not remove the notice, or cause or permit it to be removed, for such period before the inquiry as the Secretary of State or the Assembly may specify¹⁶.

Every notice of inquiry so published, sent or posted¹⁷, or so affixed¹⁸, must contain:

- 2851 (A) a clear statement of the date, time and place of the inquiry and of the powers enabling the inspector¹⁹ to determine the appeal in question;
- 2852 (B) a written description of the land sufficient to identify approximately its location;
- 2853 (C) a brief description of the subject matter of the appeal; and
- 2854 (D) details of where and when copies of the local planning authority's completed questionnaire²⁰ and any document²¹ sent by and copied to the authority pursuant to the relevant statutory provisions²² may be inspected²³.

1 As to the Secretary of State see PARA 19 ante. The inspector may act in place of the Secretary of State for the purposes of the provisions set out in the text to this paragraph: see PARA 696 note 5 ante.

2 I.e. an inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), apply: see PARA 695 ante.

3 As to the Assembly see PARA 20 ante. The inspector may act in place of the Assembly for the purposes of the provisions set out in the text to this paragraph: see PARA 696 note 5 ante.

4 I.e. an inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

5 As to the extension of time limits see PARA 696 note 5 ante.

6 For the meaning of 'starting date' see PARA 696 note 5 ante.

7 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(1).

8 For the meaning of 'local planning authority' see PARA 696 note 5 ante.

9 A written notice is to be taken to have been given by the Secretary of State or the Assembly for these purposes where he or it and any person entitled to appear at or take part in the inquiry have agreed that notice of the matters mentioned in the text may instead be accessed by that person via a website, and (1) the notice

is a notice to which that agreement applies; (2) the Secretary of State or the Assembly has published that notice on the website; (3) not less than four weeks before the date fixed by the Secretary of State or the Assembly for the holding of the inquiry, the person is notified of (a) the publication of the notice on a website; (b) the address of the website; and (c) the place on the website where the notice may be accessed, and how it may be accessed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(3A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(3A) (added by SI 2004/3172). The amending instruments refer to notice for the purposes of r 9(3) of the relevant rules, but it is apprehended that these are drafting errors and that the references should be to r 9(2) of the relevant rules: see, by way of analogy, the provisions set out in PARA 690 note 9 ante.

10 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(2).

11 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(3). The provisions set out in the text to notes 8-10 supra apply to a variation of a date as they applied to the date originally fixed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(3).

12 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(4).

13 As to the use of electronic communications see PARA 696 note 12 ante.

14 For the meaning of 'land' for these purposes see PARA 696 note 5 ante.

15 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(5); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(5).

16 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(6); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(6).

17 Ie pursuant to the provisions set out in the text to notes 13-15 supra.

18 Ie pursuant to the provisions set out in the text to note 16 supra.

19 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

20 For the meaning of 'questionnaire' see PARA 696 note 5 ante.

21 For the meaning of 'document' see PARA 696 note 11 ante.

22 Ie pursuant to the provisions set out in PARA 698 ante.

23 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(7); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/B. ENFORCEMENT ETC APPEALS/700. Appearances at the inquiry; evidence.

700. Appearances at the inquiry; evidence.

Rules have been made¹ in relation to appearances at or participation in, and evidence in relation to, local inquiries² held in England or Wales by an inspector³ before he determines a relevant enforcement or other appeal⁴. Those rules make provision with regard to:

- 2855 (1) the persons entitled to appear at or participate in such an inquiry⁵;
- 2856 (2) information to be provided by all parties⁶;
- 2857 (3) the availability of representatives of government departments and other authorities at the inquiry⁷;
- 2858 (4) proofs of evidence⁸;
- 2859 (5) preparation of a statement of common ground⁹;
- 2860 (6) the provision of additional copies of documents and information¹⁰.

1 See PARA 695 ante.

2 In a local inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

3 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

4 See the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, rr 11-13, 15-16, 23 (as amended); the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, rr 11-13, 15-16, 23 (as amended); and the text and notes 5-10 infra. The appeal referred to in the text is such an appeal as is described in PARA 695 ante.

5 In relation to England, the persons entitled to appear at the inquiry are (1) the appellant; (2) the local planning authority; (3) any of the following bodies if the land is situated in their area and the body is not the local planning authority: (a) a county or a district council; (b) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended) (see PARA 1491 et seq post); (c) the Broads Authority, within the meaning of the Norfolk and Suffolk Broads Act 1988; (d) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended) (see HOUSING vol 22 (2006 Reissue) PARA 332); (4) where the land is in an area previously designated as a new town, the Commission for the New Towns; (5) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; (6) in the case of an appeal under the Town and Country Planning Act 1990 s 195 (as amended) (see PARAS 613-614 ante), any person having an interest in the land; (7) the Historic Buildings and Monuments Commission for England (commonly known as 'English Heritage') where (a) the inquiry relates to an enforcement notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) (see PARA 1146 post); (b) the listed building is in Greater London; and (c) if an application for listed building consent had been made for the works set out in the enforcement notice, the Commission would have been notified of the application under a direction given under s 15(5) (see PARA 1119 post); (8) any other person who has served a statement of case in accordance with the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6(6) (see PARA 698 ante); r 11(1). Nothing in r 11(1) prevents the inspector from permitting any other person to appear at an inquiry and such permission must not be unreasonably withheld: r 11(2).

In relation to Wales, the persons entitled to take part in the inquiry are (i) the appellant; (ii) the local planning authority; (iii) any of the following bodies if the land is situated in the body's area and it is not the local planning authority: (A) a county or county borough council; (B) an enterprise zone authority designated under the Local Government, Planning and Land Act 1980 Sch 32 (as amended); (C) a housing action trust specified in an order made under the Housing Act 1988 s 67(1) (as amended); (D) where the land is in an area previously designated as a new town, the Commission for the New Towns; (E) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served; (F) in the case of an appeal under the Town and Country Planning Act 1990 s 195 (as amended), any person having an interest in the land; (G) where the inquiry relates to an enforcement notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) and, where an application for listed building consent had been made for the works set out in the enforcement notice, the National Assembly for Wales would have been notified of the application pursuant to a direction given under s 15(5), Cadw; (H) any other person who has served a statement of case in accordance with the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6(6): r 11(1). Nothing in r 11(1) precludes the inspector from permitting any other person to take part in an inquiry; and such permission is not to be unreasonably withheld: r 11(2).

Any person entitled or permitted to appear at or take part in an inquiry may do so on his own behalf or be represented by any other person: Town and Country Planning (Enforcement) (Determination by Inspectors)

(Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 11(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 11(3).

For the meanings of 'local planning authority', 'enforcement appeal', 'enforcement notice' and 'land' for these purposes see PARA 696 note 5 ante; and for the meaning of 'inspector' see PARA 695 notes 2, 12 ante. As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to the Commission for the New Towns see PARA 1383 et seq post; and as to English Heritage see PARA 1058 post. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to Cadw see PARA 70 note 9 ante.

6 Any person entitled or permitted to appear at or take part in the inquiry who proposes to give, or call another person to give, evidence at the inquiry, must send in writing to the Secretary of State (if the inquiry is held in England) or to the National Assembly for Wales (if the inquiry is held in Wales), no later than four weeks before the inquiry (1) an estimate of the time required to present all his evidence; and (2) the number of witnesses that he intends to call to give evidence: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 12; Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 12. As to the extension of time limits see PARA 696 note 5 ante; and as to the use of electronic communications see PARA 696 note 12 ante. As to the Secretary of State and the Assembly see PARAS 19-20 ante.

7 See, in relation to England, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 13. Where the Secretary of State or any other Minister of the Crown or any government department has expressed in writing to the local planning authority a view on an appeal and the authority refers to that view in a statement prepared pursuant to r 6(1) (see PARA 698 ante), the appellant may, not later than four weeks before the date of an inquiry, apply in writing to the Secretary of State for a representative of the Secretary of State or of the other minister or department concerned to be made available at the inquiry: r 13(1). Where an application is so made, the Secretary of State must make a representative available to attend the inquiry or, as the case may be, send the application to the other minister or department concerned, who must make a representative available to attend the inquiry: r 13(2). A person attending an inquiry as a representative pursuant to r 13 must state the reasons for the expressed view and must give evidence and is to be subject to cross-examination to the same extent as any other witness (r 13(3)); but nothing in r 13(3) requires a representative of a minister or government department to answer any question which in the opinion of the inspector is directed to the merits of government policy (r 13(4)).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 13. Where the Assembly, any Minister of the Crown or any government department has expressed in writing to the local planning authority a view on an appeal and the authority refers to that view in a statement prepared pursuant to r 6(1) (see PARA 698 ante), the appellant may apply in writing, so as to be received no later than four weeks before the date of the inquiry, to the Assembly for a representative of the Assembly or of the minister or department concerned to be made available at the inquiry: r 13(1). Where an application is so made, the Assembly must make a representative available to attend the inquiry or, as the case may be, send the application to the minister or government department concerned, who must make a representative available to attend the inquiry: r 13(2). A person attending an inquiry as a representative pursuant to r 13 must state the reasons for the expressed view and must give evidence and is to be subject to cross-examination to the same extent as any other witness (r 13(3)); but nothing in r 13(3) requires a representative of the Assembly to answer any questions which, in the opinion of the inspector, are directed to the merits of Assembly policy or requires a representative of a minister or government department to answer any questions which, in the opinion of the inspector, are directed to the merits of government policy (r 13(4)).

8 See, in relation to England, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 15 (as amended). Any person entitled to appear at an inquiry who proposes to give, or to call another person to give, evidence at the inquiry by reading a proof of evidence must (1) subject to r 15(2), send two copies, in the case of the local planning authority and the appellant, or three copies in the case of any other person, of the proof of evidence together with a written summary to the Secretary of State; and (2) in the case of an enforcement appeal, simultaneously send copies of these to any person on whom a copy of the enforcement notice has been served; and the Secretary of State must, as soon as practicable after receipt, send a copy of each proof of evidence together with any summary to the local planning authority and the appellant: r 15(1). No written summary is, however, to be required where the proof of evidence proposed to be read contains no more than 1,500 words: r 15(2). As to the number of copies to be sent where electronic communications are used see PARA 696 note 12 ante.

The proof of evidence and any summary must be sent to the Secretary of State no later than (a) four weeks before the date fixed for the holding of the inquiry; or (b) where a timetable has been prepared pursuant to r 8 (see PARA 696 note 9 ante) which specifies a date by which the proof of evidence and any summary is to be sent to the Secretary of State, that date: r 15(3). The Secretary of State must send to the inspector, as soon as practicable after receipt, any proof of evidence together with any summary sent to him in accordance with r 15 (as amended) within the relevant period specified in that rule: r 15(4). Where a written summary is provided in accordance with r 15(1), only that summary is to be read at the inquiry, unless the inspector permits or requires

otherwise: r 15(5). Any person required by r 15 (as amended) to send copies of a proof of evidence to the Secretary of State, or any other person, must send with them the same number of copies of the whole, or the relevant part, of any document referred to in the proof of evidence, unless a copy of the document or part of the document in question is already available for inspection pursuant to r 6(13) (see PARA 698 ante): r 15(6). The local planning authority must give any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any document sent to or by them in accordance with r 15 (as amended). For these purposes, an opportunity is to be taken to have been given to a person where the person is notified of (i) publication of the relevant document on a website; (ii) the address of the website; (iii) the place on the website where the document may be accessed, and how it may be accessed: r 15(8) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 15(1)-(8) (amended by SI 2004/3172) which refers to written statements of evidence rather than to proofs of evidence and to the Assembly rather than to the Secretary of State.

9 See, in relation to England, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 16 (as amended). The local planning authority and the appellant must together prepare an agreed statement of common ground and must send it to (1) the Secretary of State; and (2) in the case of an enforcement appeal, any person on whom a copy of the enforcement notice has been served, not less than four weeks before the date fixed for the holding of the inquiry: r 16(1). 'Statement of common ground' means a written statement prepared jointly by the local planning authority and the appellant, which contains agreed factual information about the development, breach of condition or works which are the subject of the appeal: r 2(1) (renumbered by SI 2003/956). The local planning authority must give any person who asks a reasonable opportunity to inspect, and where practicable, take copies of the statement of common ground sent to the Secretary of State: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 16(2). For these purposes an opportunity is to be taken to have been given to a person where the person is notified of (a) publication of the statement of common ground on a website; (b) the address of the website; (c) the place on the website where the document may be accessed, and how it may be accessed: r 16(3) (added by SI 2003/956).

See further, in relation to Wales, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 16(1)-(3) (amended by SI 2004/3172) which refers to the Assembly rather than to the Secretary of State and specifies that the statement must be sent so as to be received within four weeks of the relevant date. For the relevant definition see the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 2(1) (renumbered by SI 2004/3172).

10 The Secretary of State may at any time before the close of an inquiry held in England, request from any person entitled to appear additional copies of the following: (1) a statement of case sent in accordance with the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6 (as amended) (see PARA 698 ante); (2) a proof of evidence sent in accordance with r 15 (as amended) (see note 8 supra); (3) any other document or information sent to the Secretary of State before or during an inquiry; and may specify the time within which such copies should be sent to him: r 23(1). Any person so requested must send the copies to the Secretary of State within the period specified: r 23(2). The inspector may act in place of the Secretary of State for the purposes of r 23: see PARA 696 note 5 ante. For the meaning of 'document' see PARA 696 note 11 ante.

Similarly, the Assembly may at any time before the close of an inquiry held in Wales request from any person entitled to take part in an inquiry additional copies of the following: (a) a statement of case sent in accordance with the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6 (as amended) (see PARA 698 ante); (b) a written statement of evidence sent in accordance with r 15 (as amended) (see note 8 supra); (c) any other document or information sent to the Assembly before or during an inquiry; and may specify the time within which such copies should be sent to it: r 23(1). Any person so requested must send the copies to the Assembly within the period specified: r 23(2). The inspector may act in place of the Assembly for the purposes of r 23: see PARA 696 note 5 ante.

UPDATE

700 Appearances at the inquiry; evidence

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 5--SI 2002/2685 r 11(1) amended: SI 2008/2831.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(1) LOCAL INQUIRIES/(iii) Inquiries before Appeals determined by Inspectors/B. ENFORCEMENT ETC APPEALS/701. Procedure at the inquiry; site inspections.

701. Procedure at the inquiry; site inspections.

Except as otherwise provided in the relevant rules¹, the inspector² must determine the procedure at an inquiry³ to be held in England or Wales before the determination of certain enforcement or other appeals⁴. At the start of the inquiry the inspector must identify what are, in his opinion, the main issues to be considered at the inquiry and any matters on which he requires further explanation from the persons entitled or permitted to appear or to take part⁵ in the inquiry⁶; but nothing in this requirement precludes any person so entitled or permitted from referring to issues which that person considers relevant to the consideration of the appeal but which were not issues so identified by the inspector⁷.

Unless the inspector otherwise determines, the appellant is to begin and to have the right of final reply; and the other persons entitled or permitted to appear or to take part are to be heard in such order as the inspector may determine⁸. A person entitled to appear at or take part in an inquiry is to be entitled to call evidence and the appellant, the local planning authority⁹ and, in the case of an enforcement appeal¹⁰, any person on whom a copy of the enforcement notice¹¹ has been served is to be entitled to cross-examine persons giving evidence, but, subject to that and to the specific rules set out below¹², the calling of evidence and the cross-examination of persons giving evidence is otherwise to be at the discretion of the inspector¹³.

The inspector may refuse to permit the:

- 2861 (1) giving or production of evidence;
- 2862 (2) cross-examination of persons giving evidence; or
- 2863 (3) presentation of any matter,

which he considers to be irrelevant or repetitious; but where he refuses to permit the giving of oral evidence, the person wishing to give the evidence may submit to him any evidence or other matter in writing¹⁴ before the close of the inquiry¹⁵.

Where a person gives evidence at an inquiry by reading a summary of his proof of evidence¹⁶:

- 2864 (a) the proof of evidence¹⁷ is to be treated as tendered in evidence, unless the person required to provide the summary notifies the inspector that he now wishes to rely on the contents of that summary alone; and
- 2865 (b) the person whose evidence the proof contains is then to be subject to cross-examination on it to the same extent as if it were evidence he had given orally¹⁸.

The inspector may direct that facilities are to be made available to any person appearing at an inquiry to take or obtain copies of documentary evidence open to public inspection¹⁹.

The inspector may require any person appearing or present at an inquiry who, in his opinion, is behaving in a disruptive manner to leave²⁰ and may refuse to permit that person to return²¹ or may permit him to return only on such conditions as the inspector may specify²²; but any such

person may submit to him any evidence or other matter in writing before the close of the inquiry²³. The inspector may proceed with an inquiry in the absence of any person entitled to appear at or take part in it²⁴.

The inspector may allow any person to alter or add to a statement of case²⁵ so far as may be necessary for the purposes of the inquiry; but he must, if necessary by adjourning the inquiry, give every other person entitled to appear who is appearing at the inquiry an adequate opportunity of considering any fresh matter or document²⁶. He may take into account any written representation or evidence or other document received by him from any person before an inquiry opens or during the inquiry provided that he discloses it at the inquiry²⁷.

The inspector may from time to time adjourn an inquiry and, if the date, time and place of the adjourned inquiry are announced at the inquiry before the adjournment, no further notice is to be required²⁸.

Where the Secretary of State²⁹ expects an inquiry to be held in England to last for four days or more, or where the National Assembly for Wales³⁰ expects an inquiry to be held in Wales to last for that period or more, any person who appears at the inquiry and makes closing submissions must before the close of the inquiry provide the inspector with a copy of that person's closing submissions in writing³¹.

The inspector may make an unaccompanied inspection of the land³² before or during an inquiry without giving notice of his intention to the persons entitled to appear at the inquiry³³. During an inquiry or after its close, the inspector:

- 2866 (i) may inspect the land in the company of the appellant, the local planning authority, any person with an interest in the land and, in the case of an enforcement appeal, any other person on whom a copy of the enforcement notice has been served; and
- 2867 (ii) must make such an inspection if so requested by the appellant or the local planning authority before or during an inquiry³⁴.

In all cases where the inspector intends to make an accompanied site inspection he must announce during the inquiry the date and time at which he proposes to make it³⁵; but he is not bound to defer an inspection of the kind referred to in heads (i) and (ii) above where any person mentioned in those heads is not present at the time appointed³⁶.

1 As to the relevant rules see PARA 695 ante.

2 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

3 I.e. a local inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

4 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(1). The appeals referred to in the text are such appeals as are described in PARA 695 ante.

5 As to the persons so entitled or permitted see PARA 700 ante.

6 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(2).

7 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(3).

8 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(4).

9 For the meaning of 'local planning authority' for these purposes see PARA 696 note 5 ante.

10 For the meaning of 'enforcement appeal' see PARA 696 note 5 ante.

11 For the meaning of 'enforcement notice' see PARA 696 note 5 ante.

12 Ie subject to the rules set out in the text to notes 14-18 infra.

13 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(5); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(5).

14 As to the use of electronic communications see PARA 696 note 12 ante.

15 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(6); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(6).

16 Ie in accordance with the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 15(5) or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 15(5): see PARA 698 ante. The latter provision refers to a 'written statement' rather than to a 'proof' of evidence.

17 Ie referred to in the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 15(1) or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 15(1): see PARA 698 ante. The latter provision refers to a 'written statement' rather than to a 'proof' of evidence.

18 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(7); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(7).

19 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(8); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(8).

20 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(9)(a); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(9)(a).

21 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(9)(b); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(9)(b).

22 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(9)(c); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(9)(c).

23 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(9); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(9).

24 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(11); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(11).

25 Ie served under the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 6 (as amended) or, as the case may be, under the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 6 (as amended): see PARA 698 ante.

26 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(10); Town and Country Planning (Enforcement) (Determination by Inspectors)

(Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(10). For the meaning of 'document' see PARA 696 note 11 ante.

27 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(12); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(12).

28 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(13); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(13).

29 As to the Secretary of State see PARA 19 ante.

30 As to the Assembly see PARA 20 ante.

31 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 17(14); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 17(14).

32 For the meaning of 'land' for these purposes see PARA 696 note 5 ante.

33 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 18(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 18(1).

34 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 18(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 18(2).

35 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 18(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 18(3).

36 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 18(4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 18(4).

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702. Procedure after the inquiry.

Where an assessor¹ has been appointed, he may, after the close of the relevant local inquiry², make a report in writing³ to the inspector⁴ in respect of the matters on which he was appointed to advise, and where he does so the inspector must state in his notification of his decision⁵ that such a report was made⁶.

When making his decision the inspector may disregard any written representations or evidence or any other document⁷ received after the close of the inquiry⁸.

If, after the close of the inquiry, an inspector proposes to take into consideration any new evidence or any new matter of fact, not being a matter of government policy if the inquiry is held in England, or of National Assembly for Wales⁹ policy, if the inquiry is held in Wales, which was not raised at the inquiry and which he considers to be material to his decision, he may not come to a decision without first:

- 2868 (1) notifying the persons entitled to appear at or take part in the inquiry¹⁰ who appeared at it of the matter in question; and
- 2869 (2) giving them an opportunity of making written representations to him or of asking for the reopening of the inquiry;

and they must send such written representations or request to reopen the inquiry either:

- 2870 (a) to the Secretary of State¹¹ within three weeks¹² of the date of the notification, if the inquiry was held in England¹³; or
- 2871 (b) so as to be received by the Assembly within three weeks of the date of the notification, if the inquiry was held in Wales¹⁴.

An inspector may, as he thinks fit, cause an inquiry to be reopened, and he must do so if asked by the appellant or the local planning authority¹⁵ in the circumstances and within the period mentioned in heads (1) and (2) or (a) and (b) above¹⁶. Where an inquiry is reopened the inspector must send to the persons entitled to appear at or take part in the inquiry who appeared at it a written statement of the matters with respect to which further evidence is invited¹⁷.

1 For the meaning of 'assessor' see PARA 696 note 10 ante.

2 I.e. a local inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.

3 As to the use of electronic communications see PARA 696 note 12 ante.

4 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.

5 I.e. under the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20 (as amended): see PARA 703 post.

6 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(1).

7 For the meaning of 'document' see PARA 696 note 11 ante.

8 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(2).

9 As to the Assembly see PARA 20 ante.

10 As to the persons so entitled see PARA 700 ante.

11 As to the Secretary of State see PARA 19 ante.

12 As to the extension of time limits see PARA 696 note 5 ante.

13 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(3).

14 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(3).

15 For the meaning of 'local planning authority' for these purposes see PARA 696 note 5 ante.

16 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(4); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(4).

17 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(4)(a); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(4)(a). The Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(2)-(7) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(2)-(7) (as amended) (see PARA 699 ante) applies as if references to an inquiry were references to a reopened inquiry: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 19(4)(b); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 19(4)(b).

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703. Notification of decision; procedure if appeal is subsequently remitted for rehearing and redetermination.

The inspector¹ must, as soon as practicable after reaching his decision, notify his decision on a relevant enforcement or other appeal², and his reasons for it in writing³, to:

- 2872 (1) the appellant and the local planning authority⁴;
- 2873 (2) all other persons entitled to appear at or take part in the inquiry⁵ who did appear; and
- 2874 (3) any other person who, having appeared at the inquiry, has asked to be notified of the decision⁶.

Any person so entitled to be notified of the inspector's decision may apply to the Secretary of State, if the inquiry was held in England, or to the National Assembly for Wales, if the inquiry was held in Wales, in writing⁷ for an opportunity to inspect any documents⁸ listed in the notification and any report made by an assessor and the Secretary of State or the Assembly must give him that opportunity⁹. Any application so made must be sent to the Secretary of State or the Assembly within six weeks¹⁰ of the date of the decision¹¹.

Where a decision of an inspector on an appeal for which a relevant inquiry¹² has been held is remitted by any court to the Secretary of State or to the Assembly for rehearing and redetermination¹³, the Secretary of State or the Assembly:

- 2875 (a) must send to the persons entitled to appear at or take part in the inquiry who appeared at or took part in it a written statement of the matters on which further representations are invited in order for him or the Assembly to consider the appeal further;
- 2876 (b) must give those persons the opportunity of making written representations to him or to the Assembly about those matters or asking for the reopening of the inquiry¹⁴; and
- 2877 (c) may, as he or the Assembly thinks fit, cause the inquiry to be reopened, whether by the same or a different inspector¹⁵.

- 1 For the meaning of 'inspector' see PARA 695 notes 2, 12 ante.
- 2 le such an appeal as is described in PARA 695 ante.
- 3 Notification in writing of a decision and reasons is to be taken to have been given to a person for these purposes where (1) the Secretary of State (or, as the case may be, the National Assembly for Wales) and the person have agreed that decisions, reasons, and copies of reports so required to be given in writing may instead be accessed by that person on a website; (2) the decision and reasons are a decision and reasons to which that agreement applies; (3) the Secretary of State or the Assembly has published the decision and reasons on a website; (4) the person is notified, in a manner for the time being agreed between him and the Secretary of State or the Assembly, of (a) the publication of the decision and reasons on a website; (b) the address of the website; (c) the place on the website where the decision and reasons may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20(1A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20(1A) (added by SI 2004/3172). As to the Secretary of State and the Assembly see PARAS 19-20 ante.
- 4 For the meaning of 'local planning authority' for these purposes see PARA 696 note 5 ante.
- 5 As to the persons so entitled see PARA 700 ante.
- 6 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20(1) (amended by SI 2004/3172).
- 7 As to the use of electronic communications see PARA 696 note 12 ante.
- 8 For the meaning of 'document' see PARA 696 note 11 ante.
- 9 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20(2). For these purposes, an opportunity is to be taken to have been given to a person where that person is notified of (1) publication of the relevant documents on a website; (2) the address of the website; (3) the place on the website where the documents may be accessed, and how they may be accessed: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20(2A) (added by SI 2003/956); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20(2A) (added by SI 2004/3172).
- 10 As to the extension of time limits see PARA 696 note 5 ante.
- 11 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 20(3); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 20(3). The latter rule specifies that the application must be received within the six-week period.
- 12 le a local inquiry to which the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended), or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended), apply: see PARA 695 ante.
- 13 As to challenging a decision on an appeal see PARAS 43 et seq, 648-650 ante.
- 14 Those persons so making representations or asking for the inquiry to be reopened must send such representations or requests to the Secretary of State within three weeks of the date of the written statement sent under head (a) in the text, or to the Assembly so as to be received within three weeks of the date of that statement: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 21(2); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 21(2).
- 15 Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 21(1); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 21(1). If the Secretary of State or the Assembly does so, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 9(2)-(8) (as amended) or, as the case may be, the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 9(2)-(8) (as amended) (see PARA 699 ante) applies as if the references to an inquiry were references to a reopened inquiry: Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure)

(England) Rules 2002, SI 2002/2685, r 21(1)(c); Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 21(1)(c).

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(2) PLANNING INQUIRY COMMISSIONS

704. Power to refer certain planning questions to a commission.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may constitute a planning inquiry commission to inquire into and report on any matter referred to it under heads (a) to (d) below if it appears expedient to the responsible minister or ministers³ that the question whether the proposed development⁴ should be permitted to be carried out should be the subject of a special inquiry on either or both of the following grounds:

- 2878 (1) that there are considerations of national or regional importance which are relevant to the determination of that question and require evaluation, but a proper evaluation of them cannot be made unless there is a special inquiry for the purpose;
- 2879 (2) that the technical or scientific aspects of the proposed development are of so unfamiliar a character as to jeopardise a proper determination of that question unless there is a special inquiry for the purpose⁵.

The matters which may be so referred to a planning inquiry commission are:

- 2880 (a) an application for planning permission⁶ which the Secretary of State or the Assembly has directed⁷ to be referred to him or to it instead of being dealt with by a local planning authority⁸;
- 2881 (b) an appeal against planning decisions and failure to take such decisions⁹;
- 2882 (c) a proposal that a government department¹⁰ shall give a direction¹¹ that planning permission shall be deemed to be granted for development by a local authority¹² or National Park authority¹³ or by statutory undertakers¹⁴ which is required by any enactment¹⁵ to be authorised by that department;
- 2883 (d) a proposal that development should be carried out by or on behalf of a government department¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 101 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, the references to 'the responsible minister or ministers' are to be construed in accordance with the Town and Country Planning Act 1990 s 101(4), Sch 8 Pt II (paras 6, 7): s 101(4).

In relation to the matters specified in Sch 8 para 7 Table, col 1, which are matters mentioned in s 101(2)(a), (b), (c) or (d) (as amended) (see heads (a)-(d) in the text) as matters which may be referred to a planning inquiry commission under s 101 (as amended), 'the responsible minister or ministers' for the purposes of s 101 (as amended) and s 101(4), Sch 8 (as amended) (see PARA 705 et seq post): (1) in the case of a matter affecting England only, are those specified opposite in Sch 8 para 7 Table, col 2; (2) in the case of a matter affecting Wales only, are those specified opposite in Sch 8 para 7 Table, col 3; and (3) in the case of a matter affecting both England and Wales, are those specified opposite in Sch 8 para 7 Table, col 4 (Sch 8 para 6); and, where an

entry in Sch 8 para 7 col 2, col 3 or col 4 specifies two or more ministers, that entry is to be construed as referring to those ministers acting jointly (Sch 8 para 7). All functions of the Secretary of State for Wales under Sch 8 (as amended) are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

The referred matters and the responsible minister or ministers are as follows:

- 48 (1) application for planning permission or appeal under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante) relating to land to which s 266(1) applies (see PARA 1013 post):
51. (a) affecting England only, the Secretary of State for the time being having general responsibility in planning matters in relation to England and the appropriate minister (if different);
51
52. (b) affecting Wales only, the Assembly and the appropriate minister (if different);
52
53. (c) affecting both England and Wales, the Secretary of State for the time being having general responsibility in planning matters in relation to England and the Assembly and the appropriate minister (if different);
53
- 49 (2) application for planning permission or appeal under s 78 (as amended) relating to land to which s 266(1) does not apply:
54. (a) affecting England only, the Secretary of State for the time being having general responsibility in planning matters in relation to England;
54
55. (b) affecting Wales only, the Assembly;
55
56. (c) affecting both England and Wales, the Secretary of State for the time being having general responsibility in planning matters in relation to England and the Assembly;
56
- 50 (3) proposal that a government department should give a direction under s 90(1) (as amended) (see PARA 238 ante) or that development should be carried out by or on behalf of a government department:
57. (a) affecting England only, the Secretary of State for the time being having general responsibility in planning matters in relation to England and the minister (if different) in charge of the government department concerned;
57
58. (b) affecting Wales only, the Assembly and the minister (if different) in charge of the government department concerned;
58
59. (c) affecting both England and Wales, the Secretary of State for the time being having general responsibility in planning matters in relation to England and the Assembly and the minister (if different) in charge of the government department concerned.
59

For the meaning of 'the appropriate minister' see PARA 1012 post.

4 For the meaning of 'development' see PARA 217 ante.

5 Town and Country Planning Act 1990 s 101(1), (3). In relation to any matter affecting both England and Wales the functions of the Secretary of State under s 101(1) must be exercised by the Secretary of State for the time being having general responsibility in planning matters in relation to England and by the Assembly acting jointly: s 101(5); and see note 2 supra. For the meaning of 'functions' see PARA 2 note 1 ante.

Section 101(4), Sch 8 Pt I (paras 1-5) (as amended) (see PARA 705 et seq post) has effect as respects the constitution of any such commission and its functions and procedure on references under s 101: s 101(4).

6 For the meaning of 'planning permission' see PARA 43 note 6 ante.

7 Ie under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

- 8 As to local planning authorities see PARA 28 et seq ante.
- 9 le an appeal under the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante), including s 78 (as amended) as applied by or under any other provision of the Town and Country Planning Act 1990.
- 10 For the meaning of 'government department' see PARA 3 note 5 ante.
- 11 le under the Town and Country Planning Act 1990 s 90(1) (as amended): see PARA 238 ante.
- 12 For the meaning of 'local authority' see PARA 3 note 3 ante.
- 13 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 14 For the meaning of 'statutory undertakers' see PARA 1009 post.
- 15 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 16 Town and Country Planning Act 1990 s 101(2) (amended by the Environment Act 1995 s 78, Sch 10 para 32(4)).

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705. Constitution of commission.

A planning inquiry commission must consist of a chairman and not less than two nor more than four other members appointed by the Secretary of State¹ in relation to England, by the National Assembly for Wales in relation to Wales² or, in relation to any matter affecting both England and Wales, by the Secretary of State and the Assembly acting jointly³.

The Secretary of State or the Assembly⁴ may:

- 2884 (1) pay to the members of any such commission such remuneration and allowances as he or the Assembly may with the consent of the Treasury determine; and
- 2885 (2) provide for each such commission such officers or servants, and such accommodation, as appears to him or to the Assembly expedient to provide for the purpose of assisting the commission in the discharge of its functions⁵.

The validity of any proceedings of any such commission is not affected by any vacancy among the members of the commission or by any defect in the appointment of any member⁶.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions of the Secretary of State for Wales under the Town and Country Planning Act 1990 s 101(4), Sch 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 Town and Country Planning Act 1990 s 101(4), Sch 8 para 1(1), (4)(a); and see note 2 supra.
Members of a planning inquiry commission are disqualified for membership of the House of Commons: see the House of Commons Disqualification Act 1975 s 1(1)(f), Sch 1 Pt II (as amended) and PARLIAMENT vol 78 (2010) PARA 908.

4 In relation to any matter affecting both England and Wales, functions under the Town and Country Planning Act 1990 Sch 8 para 1(2) (see heads (1)-(2) in the text) must be exercised by one of (1) the Secretary of State; and (2) the Assembly, authorised by the other to act on behalf of both of them for those purposes: Sch 8 para 1(4)(b); and see note 2 *supra*.

5 Ibid Sch 8 para 1(2).

6 Ibid Sch 8 para 1(3).

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706. Reference to commission.

Two or more of the specified matters¹ may be referred to the same planning inquiry commission if it appears to the responsible minister or ministers² that they relate to proposals to carry out development³ for similar purposes on different sites⁴.

Where a matter referred to a commission relates to a proposal to carry out development for any purpose at a particular site, the responsible minister or ministers may also refer to the commission the question whether development for that purpose should instead be carried out at an alternative site⁵.

On referring a matter to a commission, the responsible minister or ministers:

- 2886 (1) must state in the reference the reasons for the reference; and
- 2887 (2) may draw the attention of the commission to any points which seem to him or them to be relevant to its inquiry⁶.

1 ie two or more of the matters mentioned in the Town and Country Planning Act 1990 s 101(2) (as amended): see PARA 704 *ante*.

2 For the meaning of 'the responsible minister or ministers' see PARA 704 note 3 *ante*.

3 For the meaning of 'development' see PARA 217 *ante*.

4 Town and Country Planning Act 1990 s 101(4), Sch 8 para 2(1).

5 Ibid Sch 8 para 2(2).

6 Ibid Sch 8 para 2(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(2) PLANNING INQUIRY COMMISSIONS/707. Functions of commission on reference.

707. Functions of commission on reference.

A planning inquiry commission inquiring into a matter referred¹ to it must:

- 2888 (1) identify and investigate the considerations relevant to, or the technical or scientific aspects of, that matter which in its opinion are relevant to the question whether the proposed development² should be permitted to be carried out; and
- 2889 (2) assess the importance to be attached to those considerations or aspects³.

If in specified cases⁴ the applicant or in any case the local planning authority⁵ so wishes, the commission must give to each of them and, in specified cases⁶, also to any person who has made representations relating to the subject matter of the application or appeal which the authority is required to take into account⁷, an opportunity of appearing before, and being heard by, one or more members of the commission⁸. The commission must then report to the responsible minister or ministers⁹ on the matter referred to it¹⁰.

A commission may, with the approval of and at the expense of:

- 2890 (a) in relation to England, the Secretary of State¹¹;
- 2891 (b) in relation to Wales, the National Assembly for Wales¹²;
- 2892 (c) in relation to any matter affecting both England and Wales, either the Secretary of State or the Assembly acting, by arrangements between the two of them, on behalf of both,

arrange for the carrying out, whether by the commission itself or by others, of research of any kind appearing to the commission to be relevant to a matter referred to it for inquiry and report¹³.

1 Ie under the Town and Country Planning Act 1990 s 101 (as amended): see PARA 704 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 Town and Country Planning Act 1990 s 101(4), Sch 8 para 3(1).

4 Ie in the case of a matter mentioned in *ibid* s 101(2)(a), (b) or (c) (as amended): see PARA 704 ante at heads (a)-(c) in the text.

5 For the meaning of 'local planning authority' for these purposes see PARA 708 note 22 post.

6 Ie in the case of an application or appeal mentioned in the Town and Country Planning Act 1990 s 101(2) (a) or (b): see PARA 704 ante.

7 Ie under any provision of a development order made by virtue of *ibid* s 71(2)(a) (as substituted): see PARA 473 ante. For the meaning of 'development order' see PARA 252 ante.

8 *Ibid* Sch 8 para 3(2) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 55).

9 For the meaning of 'the responsible minister or ministers' see PARA 704 note 3 ante.

10 Town and Country Planning Act 1990 Sch 8 para 3(3).

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions of the Secretary of State for Wales under the Town and Country Planning Act 1990 Sch 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Town and Country Planning Act 1990 Sch 8 para 3(4), (5); and see note 12 *supra*.

PARAS 1009-1508)/7. PLANNING INQUIRIES; IN GENERAL/(2) PLANNING INQUIRY COMMISSIONS/708. Procedure on reference to commission.

708. Procedure on reference to commission.

A reference to a planning inquiry commission of a proposal that development¹ should be carried out by or on behalf of a government department² may be made at any time³. A reference of any other specified matter⁴ may be made at any time before, but not after, the determination of the relevant application referred⁵ to the Secretary of State⁶ (or, in relation to Wales, to the National Assembly for Wales⁷) or the relevant appeal⁸ or, as the case may be, the giving⁹ of the relevant direction¹⁰.

The fact that an inquiry or other hearing has been held into a proposal by a person appointed by any minister¹¹ for the purpose does not prevent a reference of the proposal to a planning inquiry commission¹².

Notice of the making of a reference to any such commission must be published in the London Gazette and in at least one newspaper circulating in the locality, or in each locality, where there are more than one, in which it is proposed that the relevant development will be carried out¹³. A copy of the notice must be served on the local planning authority¹⁴ for the area in which it is proposed that the relevant development will be carried out and:

2893 (1) in the case of an application for planning permission¹⁵ referred¹⁶ to the Secretary of State (or the Assembly) or an appeal¹⁷, on the applicant and any person who has made representations relating to the subject matter of the application or appeal which the authority is required¹⁸ to take into account;

2894 (2) in the case of a proposal that a direction should be given¹⁹ with respect to any development, on the local authority²⁰ or statutory undertakers²¹ applying for authorisation to carry out that development²².

A commission has power²³ to regulate its own procedure²⁴.

1 For the meaning of 'development' see PARA 217 ante.

2 For the meaning of 'government department' see PARA 3 note 5 ante.

3 Town and Country Planning Act 1990 s 101(4), Sch 8 para 4(1).

4 Ie any other matter mentioned in ibid s 101 (as amended): see PARA 704 ante.

5 Ie under ibid s 77 (as amended): see PARA 483 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the Assembly see PARA 20 ante.

8 Ie under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.

9 Ie under ibid s 90(1) (as amended): see PARA 238 ante.

10 Ibid Sch 8 para 4(2).

11 For the meaning of 'minister' see PARA 3 note 5 ante.

12 Town and Country Planning Act 1990 Sch 8 para 4(3).

13 Ibid Sch 8 para 4(4); Town and Country Planning (Planning Inquiry Commissions) Regulations 1968, SI 1968/1911, reg 2; Planning (Consequential Provisions) Act 1990 s 2.

- 14 As to local planning authorities see PARA 28 et seq ante.
- 15 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 16 See note 5 supra.
- 17 See note 8 supra.
- 18 Ie under any provision of a development order made by virtue of the Town and Country Planning Act 1990 s 71(2)(a) (as substituted): see PARA 473 ante. For the meaning of 'development order' see PARA 252 ante.
- 19 See note 9 supra.
- 20 For the meaning of 'local authority' see PARA 3 note 3 ante.
- 21 For the meaning of 'statutory undertakers' see PARA 1009 post.
- 22 Town and Country Planning Act 1990 Sch 8 para 4(5) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 55). As to the service of notices see PARA 54 ante.
- The copy of the notice required to be served by the Town and Country Planning Act 1990 Sch 8 para 4(5) (as so amended) on a local planning authority must, in the case of a proposal that a government department should give a direction under s 90(1) (as amended) (see PARA 238 ante) or that development should be carried out by or on behalf of a government department, be served on the local planning authority which, in the opinion of the Secretary of State or, in relation to Wales, of the Assembly, would have been responsible for dealing with an application for planning permission for the development in question if such an application had fallen to be made (s 1(5), Sch 1 para 15(1), Sch 1A para 7(1) (Sch 1A para 7 added by the Local Government (Wales) Act 1994 s 18(7), Sch 4)); and references in the Town and Country Planning Act 1990 Sch 8 para 3(2) (as amended) (see PARA 707 ante) and Sch 8 para 5(1) (see PARA 709 post) to the local planning authority are to be construed as references to the local planning authority on which that copy is required to be served (Sch 1 para 15(2), Sch 1A para 7(2) (as so added)). As to the transfer of functions under Sch 1A (as added) to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.
- 23 Ie subject to the provisions of the Town and Country Planning Act 1990 Sch 8 para 4 (as amended), Sch 8 para 5 (as amended) (see PARA 709 post) and to any directions given to the commission by the responsible minister or ministers. For the meaning of 'the responsible minister or ministers' see PARA 704 note 3 ante.
- 24 Ibid Sch 8 para 4(6).

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709. Local inquiries held by commission.

A planning inquiry commission must hold a local inquiry for the specified purposes¹; and may hold such an inquiry if it thinks it necessary for the proper discharge of its functions², notwithstanding that neither the applicant nor the local planning authority³ wants an opportunity to appear and be heard⁴.

Where a commission is to hold such a local inquiry in connection with a matter referred to it, and it appears to the responsible minister or ministers, in the case of some other matter falling to be determined by a Minister of the Crown and required or authorised by an enactment⁵ to be the subject of a local inquiry, that the two matters are so far cognate that they should be considered together, he or, as the case may be, they may direct that the two inquiries be held concurrently or combined as one inquiry⁶.

At any such inquiry oral evidence must be heard in public and documentary evidence must be open for public inspection⁷. If, however, the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ is satisfied in the case of any such inquiry:

- 2895 (1) that the giving of evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to national security or the measures taken or to be taken to ensure the security of any premises or property; and
- 2896 (2) that the public disclosure of that information would be contrary to the national interest,

he or the Assembly may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, be open to inspection at that inquiry by such persons or persons of such descriptions as he or it may specify in the direction¹⁰. The appointment of a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if such a direction is given has already been discussed¹¹.

1 He for the purpose of complying with the Town and Country Planning Act 1990 s 101(4), Sch 8 para 3(2) (as amended): see PARA 707 ante.

2 For the meaning of 'functions' see PARA 2 note 1 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 708 note 22 ante.

4 Town and Country Planning Act 1990 Sch 8 para 5(1).

An inquiry so held by a commission is treated for the purposes of the Tribunals and Inquiries Act 1992 as one held by a minister in pursuance of a duty imposed by a statutory provision: Town and Country Planning Act 1990 Sch 8 para 5(3) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 30).

The Local Government Act 1972 s 250(2)-(5) (as amended) (evidence and costs at local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held under the Town and Country Planning Act 1990 Sch 8 para 5(1) as it applies in relation to an inquiry caused to be held by a minister under the Local Government Act 1972 s 250(1), with the substitution for references to the minister causing the inquiry to be held, other than the first reference in s 250(4) (as amended), of references to the responsible minister or ministers: Town and Country Planning Act 1990 Sch 8 para 5(4). For the meaning of 'minister' see PARA 3 note 5 ante; and for the meaning of 'the responsible minister or ministers' see PARA 704 note 3 ante.

5 He an enactment other than *ibid* Sch 8 para 5 (as amended). For the meaning of 'enactment' see PARA 2 note 11 ante.

6 *Ibid* Sch 8 para 5(2).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 s 321, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 *Ibid* s 321(1), (2).

10 *Ibid* s 321(3), (4).

11 See PARA 652 ante.

UPDATE

709 Local inquiries held by commission

NOTE 4--An inquiry held by a commission under the 1990 Act Sch 8 para 5 will be a statutory inquiry for the purposes of the Tribunals, Courts and Enforcement Act 2007 Sch 7 (functions etc of Administrative Justice and Tribunals Council): 1990 Act Sch 8 para 5(3A) (added by 2007 Act Sch 8 para 12).

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8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT

(1) MINERAL WORKING

(i) Notification of Mineral Applications

710. In general.

Where notice has been given¹ to a mineral planning authority² as respects land which is in the authority's area and specified in the notice:

- 2897 (1) by the British Coal Authority³ that the land contains coal⁴;
- 2898 (2) by the Secretary of State for Trade and Industry that it contains gas or oil;
- or
- 2899 (3) by the Crown Estate Commissioners⁵ that it contains silver or gold,

the mineral planning authority may not determine any application for planning permission⁶ to win and work any mineral on that land, without first notifying the body or person who gave the notice that an application has been made⁷.

¹ See for the purposes of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 16: see the text and notes 2-7 infra.

² For the meaning of 'mineral planning authority' see PARA 29 ante.

³ As to the British Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52.

⁴ For these purposes, 'coal' means coal other than that (1) won or worked during the course of operations which are carried on exclusively for the purpose of exploring for coal; or (2) which it is necessary to dig or carry away in the course of activities carried on for purposes which do not include the getting of coal or any product of coal: Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 16(2).

⁵ As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

⁶ For the meaning of 'planning permission' see PARA 43 note 6 ante.

⁷ Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 16(1).

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WORKING/(ii) Conditions Imposed on Grant of Planning Permission/711. Duration of development.

(ii) Conditions Imposed on Grant of Planning Permission

711. Duration of development.

Every planning permission¹ for development² consisting of the winning and working of minerals³ or involving the depositing of mineral waste⁴ must be subject to a condition as to the duration of the development⁵.

The condition in the case of planning permission granted or deemed to be granted:

2900 (1) after 22 February 1982 is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of the period of 60 years⁶ beginning with the date of the permission⁷; but an authority granting planning permission after that date or directing after that date that planning permission shall be deemed to be granted may specify a longer or shorter period than 60 years⁸ and, if the authority does so, the condition is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of a period of the specified length beginning with the date of the permission⁹;

2901 (2) before 22 February 1982 is that the winning and working of minerals or the depositing of mineral waste must cease not later than the expiration of the period of 60 years beginning with that date¹⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

4 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

5 Town and Country Planning Act 1990 s 72(5), Sch 5 para 1(1) (s 72(5), Sch 5 amended by the Planning and Compensation Act 1991 ss 21, 84(6), Sch 1 paras 1, 2, 14, Sch 19). A condition to which planning permission for development is so subject (1) is not to be regarded for the purposes of the planning Acts as a condition such as is mentioned in the Town and Country Planning Act 1990 s 72(1)(b) (see PARA 522 ante); but (2) is to be regarded for the purposes of s 78 (as amended) (see PARA 598 ante) and s 79 (as amended) (see PARA 601 ante) as a condition imposed by a decision of the local planning authority, and may accordingly be the subject of an appeal under s 78 (as amended): Sch 5 para 1(6) (as so amended). For the meaning of 'the planning Acts' see PARA 2 ante.

In the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies, the Town and Country Planning Act 1990 Sch 5 (as amended) has effect with the omission of Sch 5 para 1(6)(b) (as so amended) (see head (2) supra): Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1)(c), Sch 1.

6 A longer or shorter period than 60 years may be prescribed for the purposes of the Town and Country Planning Act 1990 Sch 5 para 1(2) or (3) (as amended): Sch 5 para 1(4). See also note 5 supra. For the meaning of 'prescribed' see PARA 16 note 5 ante. At the date at which this title states the law, no such period had been prescribed.

7 Ibid Sch 5 para 1(2) (as amended: see note 5 supra).

8 See note 6 supra.

9 Town and Country Planning Act 1990 Sch 5 para 1(3) (as amended: see note 5 supra).

10 Ibid Sch 5 para 1(5) (as amended: see note 5 supra).

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712. Power to impose aftercare conditions.

Where planning permission¹ for development² consisting of the winning and working of minerals³ or involving the depositing of refuse or waste materials⁴ is granted, and the permission is subject to a condition ('a restoration condition') requiring that, after the winning and working is completed or the depositing has ceased, the site is to be restored by the use of any or all of the following, namely subsoil, topsoil and soil-making material, it may be granted subject also to any such condition ('an aftercare condition') as the mineral planning authority⁵ thinks fit requiring that such steps shall be taken as may be necessary to bring the land⁶ to the required standard⁷ for whichever of the following uses is specified in the condition, namely:

- 2902 (1) use for agriculture⁸;
- 2903 (2) use for forestry⁹; or
- 2904 (3) use for amenity¹⁰.

An aftercare condition may either specify the steps to be taken or require that the steps be taken in accordance with a scheme ('an aftercare scheme') approved by the mineral planning authority¹¹. A mineral planning authority may approve an aftercare scheme in the form in which it is submitted to the authority or may modify the scheme and approve it as modified¹².

The steps that may be specified in an aftercare condition or an aftercare scheme may consist of planting, cultivating, fertilising, watering, draining or otherwise treating the land¹³ and, where a step is specified in a condition or scheme, the period during which it is to be taken may also be specified, but no step may be required to be taken after the expiry of the aftercare period¹⁴.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

4 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

5 For these purposes, any reference to a mineral planning authority is to be construed, in relation to the exercise of functions with respect to the depositing of refuse or waste materials, other than mineral waste, as a reference to the authority entitled to discharge such functions: Town and Country Planning Act 1990 s 72(5), Sch 5 para 9 (added by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 14(7)). For the meaning of 'mineral planning authority' generally see PARA 29 ante; for the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante; and for the meaning of 'functions' see PARA 2 note 1 ante.

As to the application of the Town and Country Planning Act 1990 Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 For the meaning of 'required standard' see PARA 713 post.

8 For the meaning of 'agriculture' see PARA 16 note 6 ante.

9 For these purposes, 'forestry' means the growing of a utilisable crop of timber: Town and Country Planning Act 1990 Sch 5 para 2(9).

10 Ibid Sch 5 para 2(1), (2) (amended by the Planning and Compensation Act 1991 Sch 1 paras 1, 14(4)). See also note 5 supra. As to the meaning of 'amenity' see PARA 158 note 8 ante.

11 Town and Country Planning Act 1990 s 336(1), Sch 5 para 2(3). See also note 5 supra.

12 Ibid Sch 5 para 2(4). See also note 5 supra.

13 Ibid Sch 5 para 2(5). See also note 5 supra.

14 Ibid Sch 5 para 2(6). See also note 5 supra. For these purposes, 'the aftercare period' means a period of five years from compliance with the restoration condition or such other maximum period after compliance with that condition as may be prescribed; and in respect of any part of a site the aftercare period commences on compliance with the restoration condition in respect of that part: Sch 5 para 2(7). The power so to prescribe maximum periods includes power to prescribe maximum periods differing according to the use specified: Sch 5 para 2(8). At the date at which this title states the law, no period had been so prescribed.

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713. Meaning of 'required standard'.

The land is brought to the required standard, in a case where:

- 2905 (1) the use specified in an aftercare condition¹ is a use for agriculture²; and
- 2906 (2) the land³ was in use⁴ for agriculture at the time of the grant of the planning permission⁵ or had previously been used for that purpose and had not at the time of the grant been used for any authorised⁶ purpose since its use for agriculture ceased; and
- 2907 (3) the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸ has notified the mineral planning authority⁹ of the physical characteristics of the land when it was last used for agriculture,

when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture¹⁰.

In any other case where the use specified in an aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use¹¹.

Where the use specified in an aftercare condition is:

- 2908 (a) a use for forestry¹², the land is brought to the required standard when it is reasonably fit for that use¹³;
- 2909 (b) a use for amenity¹⁴, the land is brought to the required standard when it is suitable for sustaining trees, shrubs or other plants¹⁵.

1 For the meaning of 'an aftercare condition' see PARA 712 ante.

2 For the meaning of 'agriculture' see PARA 16 note 6 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

- 4 For the meaning of 'use' see PARA 221 note 4 ante.
- 5 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 6 For these purposes, 'authorised' means authorised by planning permission: Town and Country Planning Act 1990 s 72(5), Sch 5 para 3(5). As to the application of Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.
- 7 The Secretary of State for Environment, Food and Rural Affairs. The statutory wording is 'the Minister of Agriculture, Fisheries and Food' (Town and Country Planning Act 1990 Sch 5 para 3(5)); but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. As to the Secretary of State generally see PARA 19 ante.
- 8 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 5 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 9 For the meaning of 'mineral planning authority' for these purposes see PARA 712 note 5 ante.
- 10 Town and Country Planning Act 1990 Sch 5 para 3(1). See also note 6 supra.
- 11 Ibid Sch 5 para 3(2). See also note 6 supra.
- 12 For these purposes, 'forestry' has the same meaning as in ibid Sch 5 para 2 (as amended) (see PARA 712 note 9 ante): Sch 5 para 3(5). See also note 6 supra.
- 13 Ibid Sch 5 para 3(3). See also note 6 supra.
- 14 As to the meaning of 'amenity' see PARA 158 note 8 ante.
- 15 Town and Country Planning Act 1990 Sch 5 para 3(4). See also note 6 supra.

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714. Consultations.

Before imposing an aftercare condition¹, the mineral planning authority² must consult³:

- 2910 (1) the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵, where the authority proposes that the use⁶ specified in the condition shall be a use for agriculture⁷; and
- 2911 (2) the Forestry Commission⁸, where the authority proposes that the use so specified shall be a use for forestry⁹,

as to whether it is appropriate to specify that use¹⁰.

Where, after the consultations so required, the mineral planning authority is satisfied that the use that it ought to specify is a use for agriculture or for forestry, it must consult:

- 2912 (a) where it is for agriculture, the Secretary of State or the Assembly; and
- 2913 (b) where it is for forestry, the Forestry Commission,

with regard to whether the steps to be taken should be specified in the aftercare condition or in an aftercare scheme¹¹.

The mineral planning authority must also consult the Secretary of State or the Assembly or, as the case may be, the Forestry Commission:

- 2914 (i) as to the steps to be specified in an aftercare condition which specifies a use for agriculture or for forestry; and
- 2915 (ii) before approving an aftercare scheme submitted in accordance with an aftercare condition which specifies such a use¹².

The mineral planning authority must also, from time to time as it considers expedient, consult the Secretary of State or the Assembly or the Commission, as the case may be, as to whether the steps specified in an aftercare condition or an aftercare scheme are being taken¹³.

1 For the meaning of 'an aftercare condition' see PARA 712 ante.

2 For the meaning of 'mineral planning authority' for these purposes see PARA 712 note 5 ante.

3 For the meaning of 'consult' see PARA 2 note 1 ante.

4 I.e. the Secretary of State for Environment, Food and Rural Affairs. The statutory wording is 'the Minister of Agriculture, Fisheries and Food' (Town and Country Planning Act 1990 Sch 5 para 3(5) applied by Sch 5 para 4(5)); but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794. As to the Secretary of State generally see PARA 19 ante. See also note 5 infra.

5 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 5 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Without prejudice to the application of the Town and Country Planning Act 1990 Sch 5 para 4 (as amended) in relation to consultation with the Forestry Commission, where the Secretary of State or the Assembly is consulted pursuant to any provision of Sch 5 para 4 (as amended): (1) he or it is not required to inspect any land or to express a view on any matter or question; and (2) he or it is not precluded from responding in general terms or otherwise in terms which are not specific to the land in question: Sch 5 para 4(4A) (added by the Environment Act 1995 s 120(1), Sch 22 para 43). As to the application of the Town and Country Planning Act 1990 Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.

6 For the meaning of 'use' see PARA 221 note 4 ante.

7 For the meaning of 'agriculture' see PARA 16 note 6 ante.

8 As to the Forestry Commission see FORESTRY vol 52 (2009) PARA 34 et seq.

9 For these purposes, 'forestry' has the same meaning as in the Town and Country Planning Act 1990 Sch 5 para 3 (which applies the meaning given in Sch 5 para 2: see PARAS 712 note 9, 713 note 12 ante): Sch 5 para 4(5). See also note 5 supra.

10 Ibid Sch 5 para 4(1). See also note 5 supra.

11 Ibid Sch 5 para 4(2). See also note 5 supra. For the meaning of 'an aftercare scheme' see PARA 712 ante.

12 Ibid Sch 5 para 4(3). See also note 5 supra.

13 Ibid Sch 5 para 4(4). See also note 5 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(ii) Conditions Imposed on Grant of Planning Permission/715. Certificate of compliance.

715. Certificate of compliance.

If, on the application of any person with an interest in land¹ in respect of which an aftercare condition² has been imposed, the mineral planning authority³ is satisfied that the condition has been complied with, it must issue a certificate to that effect⁴.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'an aftercare condition' see PARA 712 ante.

3 For the meaning of 'mineral planning authority' for these purposes see PARA 712 note 5 ante.

4 Town and Country Planning Act 1990 s 72(5), Sch 5 para 5. As to the application of Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(ii) Conditions Imposed on Grant of Planning Permission/716. Recovery of expenses of compliance.

716. Recovery of expenses of compliance.

A person who has complied with an aftercare condition¹ but who has not himself won and worked minerals² or deposited refuse or waste materials³ is entitled, subject to any condition to the contrary contained in a contract which is enforceable against him by the person who last carried out such operations, to recover from that person any expenses reasonably incurred in complying with the aftercare condition⁴.

1 For the meaning of 'an aftercare condition' see PARA 712 ante.

2 For the meaning of 'minerals' see PARA 16 note 2 ante.

3 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

4 Town and Country Planning Act 1990 s 72(5), Sch 5 para 6 (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 14(5)). As to the application of the Town and Country Planning Act 1990 Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iii) Conditions Imposed on Revocation or Modification of Planning Permission/717. In general.

(iii) Conditions Imposed on Revocation or Modification of Planning Permission**717. In general.**

An order revoking or modifying planning permission¹ may, in relation to planning permission for development² consisting of the winning and working of minerals³ or involving the depositing of refuse or waste materials⁴, include such aftercare condition⁵ as the mineral planning authority⁶ thinks fit if:

- 2916 (1) it also includes a restoration condition⁷; or
- 2917 (2) a restoration condition has previously been imposed⁸ in relation to the land⁹.

1 le an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

4 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

5 For the meaning of 'an aftercare condition' see PARA 712 ante.

6 For the meaning of 'mineral planning authority' for these purposes see PARA 712 note 5 ante.

7 For the meaning of 'a restoration condition' see PARA 712 ante.

8 le by virtue of any provision of the Town and Country Planning Act 1990.

9 Ibid s 97(6) (as added), Sch 5 para 7 (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 14(6)). For the meaning of 'land' see PARA 2 note 10 ante. The Town and Country Planning Act 1990 Sch 5 paras 2(3)-(9), 3-6 (as amended) (see PARAS 712-716 ante) apply in relation to an aftercare condition so imposed as they apply in relation to such a condition imposed under Sch 5 para 2 (as amended) (see PARA 712 ante); Sch 5 para 8.

As to the application of Sch 5 (as amended) in the case of applications for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 711 note 5 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948/718. Effect of old mining permissions.

(iv) Old Mining and Mineral Planning Permissions

A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948

718. Effect of old mining permissions.

The Planning and Compensation Act 1991 makes provision with regard to old mining permissions, that is, any planning permission¹ for development² consisting of the winning and working of minerals or involving the depositing of mineral waste which was deemed to be granted under Part III of the Town and Country Planning Act 1947³ under a provision of that Act⁴ which authorised development carried out under interim development orders after 21 July

1943⁵. Such an old mining permission now has effect, if an application⁶ to determine the conditions to which the permission was to be subject has been finally determined⁷, as from the final determination as if granted on the terms required to be registered⁸.

If no such development had, at any time in the period of two years ending with 1 May 1991, been carried out to any substantial extent anywhere in, on or under the land⁹ to which an old mining permission relates, that permission does not authorise any such development to be carried out at any time after 25 September 1991 unless the permission has effect as described above and the development is carried out after such an application has been finally determined¹⁰. An environmental impact assessment may be required and if the question whether such assessment is needed has not been considered either at the stage of determining new conditions or at the stage of approving matters reserved by the new conditions, the courts may determine whether it is possible for a consent already granted to be revoked or suspended in order to carry out that assessment¹¹.

An old mining permission ceased to have effect:

2918 (1) if no application for the registration of the permission was made¹², on the day following the last date on which such an application might be made and, if such an application was refused, on the day following the date on which the application was finally determined¹³;

2919 (2) if such an application¹⁴ was granted but an application to determine the conditions to which the permission was to be subject was required to be served before the end of any period and was not so served, on the day following the last date on which the application to determine those conditions might be served¹⁵.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 Ie under the Town and Country Planning Act 1947 Pt III (ss 12-36) (repealed).

4 Ie under ibid s 77 (repealed).

5 Planning and Compensation Act 1991 s 22(1).

6 Ie under ibid s 22, Sch 2: see PARA 719 et seq post.

7 For these purposes, an application is finally determined when the following conditions are met: (1) the proceedings on the application, including any proceedings on or in consequence of an application under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante), have been determined; and (2) any time for appealing under the Planning and Compensation Act 1991 Sch 2 para 5 (see PARA 724 post), or applying or further applying under the Town and Country Planning Act 1990 s 288 (as amended), where there is a right to do so, has expired: Planning and Compensation Act 1991 Sch 2 para 10(2).

8 Ibid s 22(2). Subject to s 22(3) (see the text and notes 9-10 infra), s 22 does not affect (1) any development carried out under an old mining permission before an application under Sch 2 to determine the conditions to which the planning permission was to be subject has been finally determined or, as the case may be, the date on which the permission ceased to have effect; and (2) any order made or having effect as if made under the Town and Country Planning Act 1990 s 102 (as amended) or s 102(8), Sch 9 (as amended) (discontinuance of mineral working: see PARA 757 et seq post): Planning and Compensation Act 1991 s 22(6). Section 22(2), (6) does not prohibit as a matter of law the imposition of conditions where no further act of development has taken place: *Morland v Secretary of State for the Environment* [1999] JPL 622, CA.

The Planning and Compensation Act 1991 s 22, Sch 2 and the Town and Country Planning Act 1990 have effect as if the Planning and Compensation Act 1991 s 22 and Sch 2 were included in the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante): Planning and Compensation Act 1991 s 22(7).

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Ibid ss 22(3), 84(2); Planning and Compensation Act 1991 (Commencement No 1 and Transitional Provisions) Order 1991, SI 1991/2067, art 3.

11 See Case C-201/02 *R (on the application of Wells) v Secretary of State for Transport, Local Government and the Regions* [2005] All ER (EC) 323, [2004] 1 CMLR 1027, [2004] All ER (D) 04 (Jan), ECJ; explained in *R (on the application of the Noble Organisation) v Thanet District Council* [2004] EWHC 2576 (Admin), [2004] All ER (D) 202 (Nov) (affd [2005] EWCA Civ 782, (2005) Times, 26 August, [2005] All ER (D) 322 (Jun)). As to environmental impact assessment see generally para 487 et seq ante; and as to such assessment on the renewal of old mining permissions ('ROMP' applications) see PARA 741 et seq post.

12 See note 6 supra.

13 Planning and Compensation Act 1991 s 22(4).

14 See note 6 supra.

15 Planning and Compensation Act 1991 s 22(5).

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719. Application for registration; in general.

Any person who was an owner¹ of any land² to which an old mining permission³ related, or was entitled to an interest in a mineral⁴ to which such a permission related, might apply to the mineral planning authority⁵ for the permission to be registered⁶.

The application had:

- 2920 (1) to specify the development⁷ which the applicant claimed was authorised by the permission, including the land to which the permission related, and the conditions, if any, to which the permission was subject⁸; and
- 2921 (2) to be served on the mineral planning authority before the end of the period of six months beginning with 25 September 1991⁹.

On such an application the mineral planning authority had:

- 2922 (a) if satisfied that¹⁰ the permission authorised development consisting of the winning and working of minerals¹¹ or involving the depositing of mineral waste¹², ascertain the area of land to which the permission related and the conditions, if any, to which the permission was subject, and grant the application; and
- 2923 (b) in any other case, refuse the application¹³.

Where application had been so made but the mineral planning authority had not given the applicant notice of its determination within the period of three months beginning with the service of notice of the application, or within such extended period as might at any time be agreed upon in writing between the applicant and the authority, the application was to be treated¹⁴ as having been refused by the authority¹⁵.

1 For these purposes, 'owner', in relation to any land, means any person who (1) is the estate owner in respect of the fee simple; or (2) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: Planning and Compensation Act 1991 s 22, Sch 2 para 10(1).

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'old mining permission' see PARA 718 ante.

4 For the meaning of 'minerals' see PARA 16 note 2 ante.

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 Planning and Compensation Act 1991 Sch 2 para 1(1). Subject to Sch 2 para 3 (see PARA 721 post), the Town and Country Planning Act 1990 s 69 (as amended and as prospectively substituted) (see PARA 466 ante), and any provision of a development order made by virtue of s 69 (as amended), have effect with any necessary modifications as if references to applications for planning permission included applications under the Planning and Compensation Act 1991 Sch 2 para 1 or Sch 2 para 2 (see PARA 720 post): Sch 2 para 9(1). Where the mineral planning authority is not the authority required to keep the register under the Town and Country Planning Act 1990 s 69 (as so amended and substituted), the mineral planning authority must provide the authority required to keep the register with such information and documents as that authority requires to comply with the Planning and Compensation Act 1991 Sch 2 para 3 and with the Town and Country Planning Act 1990 s 69 (as so amended and substituted) as applied by these provisions: Planning and Compensation Act 1991 Sch 2 para 9(2).

The Town and Country Planning Act 1990 s 284 (as amended) (see PARA 43 ante) and s 288 (as amended) (see PARA 47 ante) have effect as if the action mentioned in s 284(3) (as amended) included any decision of the Secretary of State on an application referred to him under the Planning and Compensation Act 1991 Sch 2 para 7 (see PARA 722 post): Sch 2 para 9(3).

An application under Sch 2 para 1 or Sch 2 para 2 (see PARA 720 post) is an application which is made on an official form and accompanied by an appropriate certificate: Sch 2 para 4(1). The applicant must, so far as reasonably practicable, give the information required by the form: Sch 2 para 4(2). Where the mineral planning authority receives such an application, it must as soon as reasonably practicable give to the applicant a written acknowledgment of the application: Sch 2 para 4(3). Where a person has served an application in respect of an old mining permission: (1) he may not serve any further application in respect of the same permission; and (2) if the application has been determined, whether or not it has been finally determined, no other person may serve such an application in respect of the same permission: Sch 2 para 8(1). Where (a) a person has served an application in respect of an old mining permission; and (b) another person duly serves an application in respect of the same permission, then, for the purposes of the determination of the applications and any appeal against such a determination, the statutory provisions relating to old mining permissions have effect as if the applications were a single application served on the date on which the later application was served; and references to the applicant are to be read as references to either or any of the applicants: Sch 2 para 8(2). For these purposes, 'official form' means, in relation to an application or appeal, a document supplied by or on behalf of the Secretary of State or, in relation to Wales, by the National Assembly for Wales for use for the purpose in question: Sch 2 para 10(1). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 2, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

An appropriate certificate is such a certificate (i) as would be required under the provisions mentioned in the Planning and Compensation Act 1991 Sch 2 para 4(6) or, as the case may be, Sch 2 para 4(7) to accompany the application if it were an application for planning permission for development consisting of the winning and working of minerals or, as the case may be, involving the depositing of mineral waste; but (ii) with such modifications as are required for the purposes of Sch 2: Sch 2 para 4(5). For the purposes of Sch 2 para 1, the provisions referred to in Sch 2 para 4(5) are any provision corresponding to the provisions of the Town and Country Planning Act 1990 ss 66-68 (repealed), of the Town and Country Planning Act 1990 s 65 (as substituted and amended) (see PARA 468 ante) and of a development order made by virtue thereof: Planning and Compensation Act 1991 Sch 2 para 4(6). For the purposes of Sch 2 para 2 (see PARA 720 post), the provisions referred to in Sch 2 para 4(5) are the Town and Country Planning Act 1990 s 65 (as substituted) and any provision of a development order made by virtue thereof: Planning and Compensation Act 1991 Sch 2 para 4(7). The Town and Country Planning Act 1990 s 65(5) [sic] (as substituted) (offences) also has effect in relation to any certificate purporting to be an appropriate certificate: Planning and Compensation Act 1991 Sch 2 para 4(8). It is apprehended that the reference to the Town and Country Planning Act 1990 s 65(5) (as substituted) is a drafting error and that the reference should be to s 65(6) (as substituted). Cf the Environment Act 1995 Sch 13 para 7(5) (as amended); and PARA 732 note 12 post. For the meaning of 'development order' see PARA 252 ante.

7 For the meaning of 'development' see PARA 217 ante.

- 8 Planning and Compensation Act 1991 Sch 2 para 1(2).
- 9 Ibid s 84(2), Sch 2 para 1(3); Planning and Compensation Act 1991 (Commencement No 1 and Transitional Provisions) Order 1991, SI 1991/2067, art 3.
- 10 Ie apart from the Planning and Compensation Act 1991 s 22(3): see PARA 718 ante.
- 11 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.
- 12 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.
- 13 Planning and Compensation Act 1991 Sch 2 para 1(4). As to appeals see PARA 724 post.
- 14 Ie for the purposes of ibid s 22 (see PARA 718 ante) and Sch 2.
- 15 Ibid Sch 2 para 1(5). For policy guidance on the procedure for registration and determination of conditions see *MPG8--Interim Development Order Permissions (IDOS), Statutory Provisions and Procedures*; and as to the status of such guidance see PARA 9 ante.

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720. Determination of conditions.

The conditions to which an old mining permission¹ is to be subject:

- 2924 (1) may include any conditions which may be imposed on a grant of planning permission² for development³ consisting of the winning and working of minerals⁴ or involving the depositing of mineral waste⁵;
- 2925 (2) may be imposed in addition to, or in substitution for, any conditions ascertained by the mineral planning authority⁶; and
- 2926 (3) must include a condition that the winning and working of minerals or depositing of mineral waste must cease not later than 21 February 2042⁷.

Where an application for the registration of an old mining permission has been granted, any person who is an owner⁸ of any land⁹ to which the permission relates, or is entitled to an interest in a mineral to which the permission relates, may apply to the mineral planning authority to determine the conditions to which the permission is to be subject¹⁰; and the application must set out proposed conditions¹¹.

The application must be served on the mineral planning authority:

- 2927 (a) after the date on which the application for registration was granted by the mineral planning authority, if no appeal was made to the Secretary of State¹² and, in any other case, the date on which the application for registration was finally determined¹³; and
- 2928 (b) before the end of the period of 12 months beginning with that date or such extended period as may at any time be agreed upon in writing between the applicant and the authority¹⁴.

On such an application:

- 2929 (i) the mineral planning authority must determine the conditions to which the permission is to be subject; and
- 2930 (ii) if, within the period of three months beginning with the service of notice of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority has not given the applicant notice of its determination, the authority is treated¹⁵ as having determined that the permission is to be subject to the conditions set out in the application¹⁶;

but if an assessment of environmental impact may be required¹⁷ the deeming provision set out in head (ii) above does not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the mineral planning authority has adopted a screening opinion¹⁸ or the Secretary of State or, in relation to Wales, the National Assembly for Wales¹⁹ has made a screening direction²⁰ to the effect that the ROMP development²¹ in question is not EIA development²².

1 For the meaning of 'old mining permission' see PARA 718 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'the winning and working of minerals' and 'minerals' see PARA 16 note 2 ante.

5 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

6 Ie any conditions ascertained under the Planning and Compensation Act 1991 s 22, Sch 2 para 1(4)(a): see PARA 719 ante at head (a) in the text. For the meaning of 'mineral planning authority' see PARA 29 ante.

7 Ibid Sch 2 para 2(1). The condition to which an old mining permission is to be subject by reason of Sch 2 para 2(1)(c) (see head (3) in the text) is not to be regarded for the purposes of the planning Acts as a condition such as is mentioned in the Town and Country Planning Act 1990 s 72(1)(b) (see PARA 522 ante): Planning and Compensation Act 1991 Sch 2 para 2(7). For the meaning of 'the planning Acts' see PARA 2 ante; and as to the application of the Town and Country Planning Act 1990 see PARA 719 note 6 ante.

The Planning and Compensation Act 1991 Sch 2 para 2 does not apply to an old mining permission which has ceased to have effect since the application under Sch 2 para 1 (see PARA 719 ante) was granted: Sch 2 para 2(8).

Where a mineral planning authority erroneously imposed a condition limiting permission for extraction so that it would expire in 2000, and all restoration operations were to be completed in 2001, instead of extending the permission to 2042 as provided in Sch 2 para 2(1) (see head (3) in the text), it was held that the statutory language did not preclude a subsequent challenge to that condition: see *Earthline Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599, [2003] 1 P & CR 393, [2003] JPL 715; distinguished in *Stancliffe Stone Co Ltd v Peak District National Park Authority* [2005] EWCA Civ 747, (2005) Times, 14 July, [2005] All ER (D) 172 (Jun).

8 For the meaning of 'owner' see PARA 719 note 1 ante.

9 For the meaning of 'land' see PARA 2 note 10 ante.

10 Planning and Compensation Act 1991 Sch 2 para 2(2). See also note 7 supra.

11 Ibid Sch 2 para 2(3). See also note 7 supra. For policy guidance on conditions see *MPG9--Planning and Compensation Act 1991, Interim Development Order Permissions (IDOS), Conditions*; and as to the status of such guidance see PARA 9 ante.

12 Ie under the Planning and Compensation Act 1991 Sch 2 para 5: see PARA 724 post.

13 Ibid Sch 2 para 2(4)(a), (5). See also note 7 supra. As to when an application is finally determined see PARA 718 note 7 ante.

14 Ibid Sch 2 para 2(4)(b). See also note 7 supra. Schedule 2(4)(b) does not, however, apply where s 22(3) (see PARA 718 ante) applies: Sch 2 para 2(4)(b). As to the mode of application and as to the position where there are two or more applicants see Sch 2 paras 4, 8; and PARA 719 note 6 ante. As to the reference of applications to the Secretary of State see Sch 2 para 7; and PARA 722 post.

15 Ie for the purposes of ibid s 22 (see PARA 718 ante) and Sch 2.

16 Ibid Sch 2 para 2(6). As to appeals see PARA 724 post. See also note 7 supra. Notice of determination is deemed to have been given on the date of receipt of the notice, not the date of posting: *R v East Sussex County Council, ex p ARC Ltd* (1999) Times, 13 October.

17 Ie if the application is a Schedule 1 or Schedule 2 application within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) (see PARA 495 notes 3-4 ante) and is made on or after 15 November 2000.

18 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

19 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

20 For the meaning of 'screening direction' see PARA 492 note 20 ante.

21 For the meaning of 'ROMP development' see PARA 741 post.

22 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(a) (as added); and PARA 744 post (giving statutory effect to the decision in *R v Durham County Council, ex p Huddleston* [2000] 1 WLR 1484, CA (deemed permission for development of old mining works ineffective where developer had not made an environmental impact assessment)). For the meaning of 'EIA development' see PARA 488 ante. As to the necessity for an environmental impact assessment see also *R v North Yorkshire County Council, ex p Brown* [1999] 1 All ER 969, HL.

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721. Determination of application and registration of permission.

Where the mineral planning authority¹ determines an application for registration of an old mining permission² or for the determination of conditions³, it must as soon as reasonably practicable give written notice of its determination to the applicant⁴.

Where an application for the registration of an old mining permission is granted, the permission must be entered in the appropriate part of the register⁵ and the entry must specify the area of land⁶ ascertained⁷; and, where an application to determine the conditions to which an old mining permission is to be subject is finally determined, the conditions must be entered in the appropriate part of that register⁸.

The matters required to be so entered in the register must be entered as soon as reasonably practicable⁹.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 Ie under the Planning and Compensation Act 1991 s 22, Sch 2 para 1: see PARA 719 ante. For the meaning of 'old mining permission' see PARA 718 ante.

3 Ie under ibid Sch 2 para 2: see PARA 720 ante.

4 Ibid Sch 2 para 4(4).

5 Ie the register kept under the Town and Country Planning Act 1990 s 69 (as amended and as prospectively substituted): see PARA 466 ante.

6 Ie the area of land ascertained under the Planning and Compensation Act 1991 Sch 2 para 1(4)(a): see PARA 719 ante.

7 Ibid Sch 2 para 3(1). As to the application of the Town and Country Planning Act 1990 see PARA 719 note 6 ante.

8 Planning and Compensation Act 1991 Sch 2 para 3(2).

9 Ibid Sch 2 para 3(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948/722. Reference of applications to the Secretary of State or the Assembly.

722. Reference of applications to the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications for the registration of old mining permissions³ or the determination of conditions⁴ to any mineral planning authority⁵ to be referred to him or to the Assembly for determination instead of being dealt with by the authority⁶. The direction may relate either to a particular application or to applications of a class specified in the direction⁷.

Where an application is so referred to the Secretary of State or the Assembly, before determining the application, he or the Assembly must, if either the applicant or the mineral planning authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁸.

The decision of the Secretary of State or the Assembly on the application is final⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning and Compensation Act 1991 Sch 2, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under the Planning and Compensation Act 1991 s 22, Sch 2 para 1: see PARA 719 ante. For the meaning of 'old mining permission' see PARA 718 ante.

4 Ie under ibid Sch 2 para 2: see PARA 720 ante.

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 Planning and Compensation Act 1991 Sch 2 para 7(1). As to the application of the Town and Country Planning Act 1990 see PARA 719 note 6 ante.

Where an application is so referred to the Secretary of State, then, subject to the Planning and Compensation Act 1991 Sch 2 para 7(3)(b) (see the text and note 8 infra) and Sch 2 para 7(4), the provisions of Sch 2 para 1(1)-(4) (see PARA 719 ante), Sch 2 para 2(1)-(6)(a), (7), (8) (see PARA 720 ante), Sch 2 para 3 (see PARA 721 ante) and Sch 2 para 4 (see PARA 719 note 6 ante), Sch 2 para 8 (see PARA 719 note 6 ante), Sch 2 para 9 (see PARA 719 ante) and Sch 2 para 10 (interpretation) apply, with any necessary modifications, as they apply to applications which fall to be determined by the mineral planning authority: Sch 2 para 7(3)(a).

Where an application under Sch 2 para 1 (see PARA 719 ante) is so referred to the Secretary of State or the Assembly, Sch 2 para 2(5) (see PARA 720 ante) applies as if for Sch 2 para 2(5)(a), (b) there were substituted 'the date on which the application for registration is finally determined': Sch 2 para 7(4).

7 Ibid Sch 2 para 7(2).

8 Ibid Sch 2 para 7(3)(b).

9 Ibid Sch 2 para 7(3)(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948/723. Old mining permissions relating to Crown land.

723. Old mining permissions relating to Crown land.

As from a day to be appointed¹, the provisions set out in the previous paragraphs² apply, with modifications, to an old mining permission³ which relates to land which is Crown land⁴. If the permission has not been registered⁵, then if no relevant development⁶ had, at any time in the period of two years ending with the appointed day⁷, been carried out to any substantial extent anywhere in, on or under that land, that permission does not authorise any such development to be carried out⁸ unless the permission has effect as described above⁹ and the development is carried out after such an application has been finally determined¹⁰.

An application for registration may be served on the mineral planning authority before the end of the period of six months beginning with the appointed day¹¹.

1 Ibid as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2 Ibid the Planning and Compensation Act 1991 s 22, Sch 2: see PARAS 718-722 ante.

3 For these purposes, 'old mining permission' is to be construed in accordance with the Planning and Compensation Act 1991 s 22 (see PARA 718 ante): Planning and Compulsory Purchase Act 2004 s 87(3).

4 Ibid s 87(1)(a), (2). For these purposes, 'Crown land' is to be construed in accordance with the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended) (see PARA 14 ante): Planning and Compulsory Purchase Act 2004 s 87(4).

5 Ibid registered in pursuance of the Planning and Compensation Act 1991 s 22, Sch 2: see PARAS 719-722 ante.

6 Ibid development such as is mentioned in PARA 718 the text and notes 1-8 ante.

7 Ibid the date of commencement of the Planning and Compulsory Purchase Act 2004 s 87(2). At the date at which this title states the law, no such day had been appointed.

8 Ibid at any time after the relevant provisions come into force.

9 Ibid as described in PARA 718 the text to notes 6-8 ante.

10 See the Planning and Compulsory Purchase Act 2004 s 87(1)(b), (2)(a), applying, with modifications, the Planning and Compensation Act 1991 s 22(3) (see PARA 718 the text and notes 9-10 ante). At the date at which this title states the law, the Planning and Compulsory Purchase Act 2004 s 87 was not in force.

11 See ibid s 87(2)(b), applying, with modifications, the Planning and Compensation Act 1991 Sch 2 para 1(3) (see PARA 719 ante at head (2) in the text).

UPDATE**723 Old mining permissions relating to Crown land**

TEXT AND NOTE 1--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948/724. Right of appeal.

724. Right of appeal.

The applicant may appeal to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² under the Planning and Compensation Act 1991:

2931 (1) where the mineral planning authority³:

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244. (a) refuses an application for registration of an old mining permission⁴;
or

245. (b) in granting such an application, ascertains an area of land⁵, or
conditions, which differ from those specified in the application⁶;

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2932 (2) where on an application for the determination of conditions⁷, the mineral planning authority determines conditions that differ in any respect from the conditions set out in the application⁸.

Any such appeal must be made by giving notice of appeal⁹ to the Secretary of State or the Assembly¹⁰. In the case of an appeal under head (1) above, the notice must be given to the Secretary of State or the Assembly before the end of the period of three months beginning with the determination or, in the case of an application treated¹¹ as refused, beginning at the end of the specified¹² period or extended period¹³; and, in the case of an appeal under head (2) above, the notice must be given to the Secretary of State or the Assembly before the end of the period of six months beginning with the determination¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning and Compensation Act 1991 Sch 2 para 5, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'mineral planning authority' see PARA 29 ante.

4 Ie an application under the Planning and Compensation Act 1991 s 22, Sch 2 para 1: see PARA 719 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Planning and Compensation Act 1991 Sch 2 para 5(1).

7 Ie an application under the Planning and Compensation Act 1991 Sch 2 para 2: see PARA 720 ante.

8 Ibid Sch 2 para 5(2).

9 For these purposes, a notice of appeal is a notice which is made on an official form and is accompanied by an appropriate certificate: ibid Sch 2 para 5(6). The appellant must, so far as reasonably practicable, give the information required by the form: Sch 2 para 5(7). Schedule 2 para 4(5)-(8) (see PARA 719 note 6 ante) applies for the purposes of Sch 2 para 5(7): Sch 2 para 5(8). For the meaning of 'official form' see PARA 719 note 6 ante.

10 Ibid Sch 2 para 5(3).

11 Ie by virtue of ibid Sch 2 para 1(5): see PARA 719 ante.

12 Ie the period or extended period referred to in ibid Sch 2 para 1(5)(b): see PARA 719 ante.

13 Ibid Sch 2 para 5(4).

14 Ibid Sch 2 para 5(5).

UPDATE

724 Right of appeal

NOTE 9--Planning and Compensation Act 1991 Sch 2 para 5(9) added: Planning Act 2008 s 198(1), (4) (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/A. OLD MINING PERMISSIONS GRANTED UNDER INTERIM DEVELOPMENT ORDERS BETWEEN 1943 AND 1948/725. Determination of appeal.

725. Determination of appeal.

On an appeal relating to an old mining permission¹ the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 2933 (1) allow or dismiss the appeal; or
- 2934 (2) reverse or vary any part of the decision of the mineral planning authority⁴, whether the appeal relates to that part of it or not,

and may deal with the application as if it had been made to him or to it in the first instance⁵.

Before determining such an appeal, however, the Secretary of State or the Assembly must, if either the appellant or the mineral planning authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by it for the purpose⁶.

If, at any time before or during the determination of such an appeal, it appears to the Secretary of State or the Assembly that the appellant is responsible for undue delay in the progress of the appeal, he or it may:

- 2935 (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and

2936 (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly⁷.

The decision of the Secretary of State or the Assembly on such an appeal is final⁸.

1 le an appeal under the Planning and Compensation Act 1991 s 22, Sch 2 para 5: see PARA 724 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning and Compensation Act 1991 Sch 2 para 6, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'mineral planning authority' see PARA 29 ante.

5 Planning and Compensation Act 1991 Sch 2 para 6(1).

6 Ibid Sch 2 para 6(2).

7 Ibid Sch 2 para 6(3).

8 Ibid Sch 2 para 6(4). The Town and Country Planning Act 1990 s 284 (as amended) (see PARA 43 ante) and s 288 (as amended) (see PARA 47 ante) have effect as if the action mentioned in s 284(3) (as amended) (see PARA 43 ante) included any decision of the Secretary of State or the Assembly on an appeal under the Planning and Compensation Act 1991 Sch 2 para 5: Sch 2 para 9(3). These provisions do not, however, preclude a subsequent challenge to the validity of a condition imposed by a local mineral planning authority which has not been challenged by the previous landowners: *Earthline Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1599, [2003] 1 P & CR 393, [2002] All ER (D) 64 (Nov). See also PARA 601 the text and notes 19-22 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/726. Introduction.

B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982

726. Introduction.

The Environment Act 1995 makes provision in relation to mineral sites where permission for minerals development was granted after 30 June 1948 and before 21 February 1982¹. For these purposes, 'mineral site' means:

- 2937 (1) in a case where it appears to the mineral planning authority² to be expedient to treat as a single site the aggregate of the land³ to which any two or more relevant planning permissions⁴ relate⁵, the aggregate of the land to which those permissions relate; and
- 2938 (2) in any other case, the land to which a relevant planning permission relates⁶.

1 See the Environment Act 1995 s 96(1), Sch 13 (paras 1-16) (as amended); and PARA 727 et seq post. Section 96, Sch 13 (as amended) and the Town and Country Planning Act 1990 have effect as if the Environment Act 1995 s 96, Sch 13 (as amended) were included in the Town and Country Planning Act 1990 Pt

III (ss 55-106B) (as amended) (see PARA 217 et seq ante): Environment Act 1995 s 96(2) (amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).

2 For the meaning of 'mineral planning authority' see PARA 29 ante (definition applied by the Environment Act 1995 Sch 13 para 1(1) (amended for this purpose by the Planning (Consequential Provisions) (Scotland) Act 1997 Sch 1 Pt III)).

3 For the meaning of 'land' see PARA 2 note 10 ante (definition applied by virtue of the Environment Act 1995 s 96(2) (as amended)).

4 For these purposes, 'relevant planning permission' means any planning permission, other than an old mining permission or a planning permission granted by a development order, granted after 30 June 1948 for minerals development (ibid Sch 13 para 1(1)); but does not include a planning permission that is no longer extant (*Payne v Caerphilly County Borough Council* [2002] EWHC 866 (Admin), [2003] JPL 106; affd [2003] All ER (D) 75 (Jan), CA). As to whether a planning permission has lapsed see eg *R (on the application of Hart Aggregates Ltd) v Hartlepool Borough Council* [2005] EWHC 840 (Admin), [2005] All ER (D) 358 (Apr). 'Old mining permission' has the meaning given by the Planning and Compensation Act 1991 s 22(1) (see PARA 718 ante): Environment Act 1995 Sch 13 para 1(1) (definition amended by the Planning (Consequential Provisions) (Scotland) Act 1997 Sch 1 Pt III). Any reference, however expressed, in the Environment Act 1995 Sch 13 (as amended) to an old mining permission or a relevant planning permission relating to a mineral site is a reference to the mineral site, or some part of it, being the land to which the permission relates; and where any such permission authorises the carrying out of development consisting of the winning and working of minerals but only in respect of any particular mineral or minerals, that permission is not taken, for these purposes, as relating to any other mineral in, on or under the land to which the permission relates: Sch 13 para 1(4). For the meaning of 'winning and working of minerals' see PARA 16 note 2 ante; and for the meaning of 'development' see PARA 217 ante (definitions as applied: see note 3 supra).

5 In determining whether it appears to the authority to be expedient to treat as a single site the aggregate of the land to which two or more relevant planning permissions relate, a mineral planning authority must have regard to any guidance issued for the purpose by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: ibid Sch 13 para 1(3). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Environment Act 1995 Sch 13 para 1(1), (2). For policy guidance on Sch 13 (as amended) see *MPG14--Environment Act 1995: Review of Mineral Planning Permissions*; and as to the status of such guidance see PARA 9 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/727. Meanings of 'Phase I site', 'Phase II site' and 'dormant site'.

727. Meanings of 'Phase I site', 'Phase II site' and 'dormant site'.

For the purposes of the provisions relating to old mineral planning permissions¹, 'dormant site' means a Phase I or Phase II site in, on or under which no minerals development² had been carried out to any substantial extent at any time in the period beginning on 22 February 1982 and ending with 6 June 1995 otherwise than by virtue of a planning permission³ which is not a relevant planning permission⁴ relating to the site⁵.

The following provisions have effect for the purposes of determining which mineral sites⁶ are Phase I sites, which are Phase II sites, and which are neither Phase I nor Phase II sites⁷. A mineral site is neither a Phase I site nor a Phase II site where:

2939 (1) all the relevant planning permissions which relate to the site have been granted after 21 February 1982; or

- 2940 (2) some only of the relevant planning permissions which relate to the site have been granted after 21 February 1982, and the parts of the site to which those permissions relate constitute the greater part⁸ of that site⁹.

With the exception of those mineral sites which, by virtue of heads (1) and (2) above, are neither Phase I nor Phase II sites, every mineral site is either a Phase I site or a Phase II site¹⁰.

Subject to heads (1) and (2) above, where any part of a mineral site is situated within:

- 2941 (a) a National Park¹¹;
 2942 (b) a site of special scientific interest¹²; or
 2943 (c) an area designated¹³ as an area of outstanding natural beauty,

that site is a Phase I site¹⁴. Subject to that, where:

- 2944 (i) all the relevant planning permissions which relate to a mineral site, and which were not granted after 21 February 1982, were granted after 31 March 1969¹⁵; or
 2945 (ii) the parts of a mineral site to which relate such of the relevant planning permissions relating to the site as were granted after 31 March 1969 but before 22 February 1982 constitute a greater part of the site¹⁶ than is constituted by those parts of the site to which no such relevant planning permission relates but to which a relevant planning permission granted on or before 31 March 1969 does relate,

the mineral site is a Phase II site¹⁷.

Every other mineral site, that is to say any mineral site other than one:

- 2946 (A) which is, by virtue of heads (1) and (2) above, neither a Phase I nor a Phase II site; or
 2947 (B) which is a Phase I site by virtue of the above provisions¹⁸; or
 2948 (C) which is a Phase II site by virtue of the above provisions¹⁹,

is a Phase I site²⁰.

1. See for the purposes of the Environment Act 1995 s 96(1), Sch 13 (as amended): see PARA 726 ante; the text and notes 2-20 infra; and PARA 728 et seq post.

2. For the meaning of 'development' see PARA 217 ante.

3. For the meaning of 'planning permission' see PARA 2 note 6 ante.

4. For the meaning of 'relevant planning permission' see PARA 726 note 4 ante.

5. Environment Act 1995 Sch 13 para 1(1).

6. For the meaning of 'mineral site' see PARA 726 ante.

7. Environment Act 1995 Sch 13 paras 1(1), 2(1).

8. In ascertaining, for the purposes of ibid Sch 13 para 2(2) or (5), whether any parts of a mineral site constitute the greater part of that site, or whether a part of a mineral site is greater than any other part, that mineral site must be treated as not including any part of the site: (1) to which an old mining permission relates; or (2) which is a part where minerals development has been (but is no longer being) carried out and which has, in the opinion of the mineral planning authority, been satisfactorily restored; but no part of a site may be treated, by virtue of head (2) supra, as being not included in the site unless the mineral planning authority is satisfied that any aftercare conditions which relate to that part have, so far as relating to that part, been

complied with: Sch 13 para 2(8). For the meaning of 'old mining permission' see PARA 726 note 4 ante; and for the meaning of 'mineral planning authority' see PARA 29 ante.

9 Ibid Sch 13 para 2(2).

10 Ibid Sch 13 para 2(3).

11 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

12 Ie within the meaning of the Wildlife and Countryside Act 1981: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 693 et seq.

13 Ie under the Countryside and Rights of Way Act 2000 s 82: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658.

14 Environment Act 1995 Sch 13 para 2(4) (amended by the Planning (Consequential Provisions) (Scotland) Act 1997 ss 3(1), 4, Sch 1 Pt III, Sch 2 para 60(1)(a); the Countryside and Rights of Way Act 2000 ss 76(1), 93, Sch 10 Pt II para 10, Sch 15 Pt I para 13).

15 Ie after the relevant day in 1969: see the Environment Act 1995 Sch 13 para 2(5), (6) (amended by the Planning (Consequential Provisions) (Scotland) Act 1997 Sch 1 Pt III).

16 See note 8 supra.

17 Environment Act 1995 Sch 13 para 2(5).

18 Ie by virtue of ibid Sch 13 para 2(4) (as amended).

19 Ie by virtue of ibid Sch 13 para 2(5).

20 Ibid Sch 13 para 2(7).

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728. Preparation of the first list of mineral sites.

A mineral planning authority¹ was required, in accordance with the following provisions, to prepare a list of mineral sites² in its area ('the first list')³, the preparation of which was to be completed before 1 February 1996⁴. A site must, but must only, be included in the first list if it is a mineral site in the area of the mineral planning authority and is either:

- 2949 (1) an active Phase I site⁵;
- 2950 (2) an active Phase II site; or
- 2951 (3) a dormant site⁶.

In respect of each site included in the first list, the list must indicate whether the site is an active Phase I site, an active Phase II site or a dormant site⁷; and in respect of each active Phase I site included in the first list, that list must specify the date by which an application is to be made⁸ to the mineral planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject⁹. Any date so specified must be a date:

- 2952 (a) not earlier than the date upon which expires the period of 12 months from the date on which the first list is first advertised¹⁰; and
- 2953 (b) not later than the date upon which expired the period of three years from 1 November 1995¹¹.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 For the meaning of 'mineral site' see PARA 726 ante.

3 Environment Act 1995 s 96(1), Sch 13 para 3(1).

4 See *ibid* Sch 13 para 1(6), which provides that preparation of the first list must be completed before the day upon which it is first advertised in accordance with Sch 13 para 5 (see PARA 730 post), ie before the day upon which expires the period of three months from the date upon which Sch 13 (as amended) came into force (Sch 13 para 5(4)(a)). Schedule 13 (as amended) came into force on 1 November 1995: see the Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765. As to the first list see *R v North Lincolnshire Council, ex p Horticultural and Garden Sales (Humberside) Ltd* (1997) 76 P & CR 363, [1998] Env LR 295; *Dorset County Council v Secretary of State for the Environment, Transport and the Regions* [1999] JPL 633. The duty to compile a list is a duty to compile a list of mineral sites, not a definitive list of relevant planning permissions: *R v Oldham Metropolitan Borough Council and Pugmanor Properties Ltd, ex p Foster* [2000] JPL 111.

5 For these purposes, a mineral site which is a Phase I site or a Phase II site is active if it is not a dormant site: Environment Act 1995 Sch 13 para 1(5). For the meanings of 'Phase I site', 'Phase II site' and 'dormant site' see PARA 727 ante.

6 *Ibid* Sch 13 paras 1(1), 3(1).

7 *Ibid* Sch 13 para 3(2).

8 Ie under *ibid* Sch 13 para 9 (as amended): see PARA 734 post.

9 *Ibid* Sch 13 para 3(4).

10 Ie in accordance with *ibid* Sch 13 para 5: see PARA 730 post. See also note 4 supra.

11 *Ibid* Sch 13 para 3(5).

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729. Preparation of the second list.

A mineral planning authority¹ must, in accordance with the following provisions, prepare a list of the active² Phase II sites³ in its area ('the second list')⁴. The preparation of the second list was to be completed before 31 October 1998 but that period may be extended⁵.

The second list must include each mineral site⁶ in the mineral planning authority's area which is an active Phase II site⁷. In respect of each site included in the second list, that list must indicate the date by which an application is to be made⁸ to the mineral planning authority to determine the conditions to which the relevant planning permissions relating to that site are to be subject⁹. Any date so specified must¹⁰ be a date:

- 2954 (1) not earlier than the date upon which expires the period of 12 months from the date on which the second list is first advertised¹¹; and

2955 (2) not later than the date upon which expired the period of six years from 1 November 1995¹²,

but the Secretary of State¹³ or, in relation to Wales, the National Assembly for Wales¹⁴ may by order provide that head (2) above is to have effect as if for the period of six years referred to in that head there were substituted such longer period specified in the order¹⁵.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 As to when a site is active see PARA 728 note 5 ante.

3 For the meaning of 'Phase II site' see PARA 727 ante.

4 Environment Act 1995 s 96(1), Sch 13 paras 1(1), 4(1).

5 See *ibid* Sch 13 para 4(7), which provides that the preparation of the second list must be completed before the day upon which it is first advertised in accordance with Sch 13 para 5 (see PARA 730 post), ie before the day upon which expires the period of three years, or such longer period as the Secretary of State may by order specify, from the date upon which Sch 13 (as amended) came into force (Sch 13 para 5(4)(a)). Schedule 13 (as amended) came into force on 1 November 1995: see the Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765.

6 For the meaning of 'mineral site' see PARA 726 ante.

7 Environment Act 1995 Sch 13 para 4(2).

8 *Ie* under *ibid* Sch 13 para 9 (as amended): see PARA 734 post.

9 *Ibid* Sch 13 para 4(3).

10 *Ie* subject to *ibid* Sch 13 para 4(5).

11 *Ie* in accordance with *ibid* Sch 13 para 5: see PARA 730 post. See also note 5 *supra*.

12 *Ibid* Sch 13 para 4(4).

13 As to the Secretary of State see PARA 19 ante.

14 As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

15 Environment Act 1995 Sch 13 para 4(5). The power to make such an order is exercisable by statutory instrument; and any statutory instrument containing such an order is subject, if made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: Sch 13 para 4(6). At the date at which this title states the law, no such order had been made. As to parliamentary procedure in the case of orders made by the Assembly see PARA 20 ante.

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730. Advertisement of the first and second lists.

Provision for the advertisement of the first and second lists¹ prepared by a mineral planning authority² is made as follows³. The mineral planning authority must advertise each of the first

and second lists by causing to be published, in each of two successive weeks, in one or more newspapers circulating in its area, notice of the list having been prepared⁴. In respect of each of those lists, such notice must:

- 2956 (1) state that the list has been prepared by the authority; and
- 2957 (2) specify one or more places within the area of the authority at which the list may be inspected, and in respect of each such place specify the times, which must be reasonable times, during which facilities for inspection of the list will be afforded⁵.

In respect of the first list, such notice:

- 2958 (a) was to be first published no later than the day upon which expired the period of three months from 1 November 1995⁶;
 - 2959 (b) must explain the general effect of a mineral site being classified as a dormant site⁷ or, as the case may be, as an active⁸ Phase I site or an active Phase II site⁹;
 - 2960 (c) must explain the consequences which will occur if no application is made¹⁰ in respect of an active Phase I site included in the list by the date specified in the list for that site;
 - 2961 (d) must explain the effects for any dormant or active Phase I or Phase II site not included in the list of its not being included in the list and:
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- 246. (i) set out the right to make an application to the authority for that site to be included in the list;
 - 247. (ii) set out the date by which such an application must be made; and
 - 248. (iii) state that the owner¹¹ of such a site has a right of appeal against any decision of the authority upon such an application; and
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- 2962 (e) explain that the owner of an active Phase I site has a right to apply for postponement of the date specified in the list for the making of an application¹² and set out the date by which an application for such postponement must be made¹³.

In respect of the second list, such notice:

- 2963 (A) was to be first published no later than the day upon which expired the period of three years, or such longer period as the Secretary of State¹⁴ or, now, in relation to Wales, the National Assembly for Wales¹⁵, may by order specify, from 1 November 1995; and
- 2964 (B) must explain the consequences which will occur if no application is made¹⁶ in respect of an active Phase II site included in the list by the date specified in the list for that site¹⁷.

1 As to the first and second lists see PARAS 728-729 ante.

2 For the meaning of 'mineral planning authority' see PARA 29 ante.

3 Environment Act 1995 s 96(1), Sch 13 para 5(1).

4 Ibid Sch 13 para 5(2).

5 Ibid Sch 13 para 5(3).

6 Ie from the date upon which the provisions of ibid Sch 13 (as amended) came into force: see the Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765.

- 7 For the meaning of 'dormant site' see PARA 727 ante.
- 8 As to when a site is active see PARA 728 note 5 ante.
- 9 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.
- 10 le under the Environment Act 1995 Sch 13 para 9 (as amended): see PARA 734 post.
- 11 For these purposes, 'owner', in relation to any land, means any person who (1) is the estate owner in respect of the fee simple; or (2) is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remains unexpired: *ibid* Sch 13 para 1(1) (definition amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).
- 12 See note 10 *supra*.
- 13 Environment Act 1995 Sch 13 para 5(4).
- 14 As to the Secretary of State see PARA 19 ante.
- 15 As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 16 See note 10 *supra*.
- 17 Environment Act 1995 Sch 13 para 5(5). The power to make such an order under the Environment Act 1995 Sch 13 para 5(5) is exercisable by statutory instrument; and any statutory instrument containing such an order is subject, if made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: Sch 13 para 5(6). At the date at which this title states the law, no such order had been made. As to parliamentary procedure in the case of orders made by the Assembly see PARA 20 ante.

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731. Applications for inclusion in first list of sites not originally included.

Any person who is the owner¹ of any land², or is entitled to an interest in a mineral, may, if that land or interest is not a mineral site³ included in the first list⁴ and does not form part of any mineral site included in that list, apply to the mineral planning authority⁵ for that land or interest to be included in that list⁶. Such an application was, however, to be made no later than the day upon which expired the period of three months from the day when the first list was first advertised⁷.

Where the mineral planning authority considers that the land or interest is, or forms part of, any dormant⁸ or active⁹ Phase I or Phase II site¹⁰, it must accede to the application¹¹. Where it considers that part only of the land or interest is, or forms part of, any dormant or active Phase I or Phase II site, it must accede to the application so far as it relates to that part of the land or interest¹². Otherwise it must refuse the application¹³.

On acceding, whether in whole or in part, to an application so made, the mineral planning authority must amend the first list as follows:

- 2965 (1) where it considers that the land or interest, or any part of the land or interest, is a dormant site or an active Phase I or II site, it must add the mineral site

consisting of the land or interest or, as the case may be, that part, to the first list and must cause the list to indicate whether the site is an active Phase I site, an active Phase II site or a dormant site;

- 2966 (2) where it considers that the land or interest, or any part of the land or interest, forms part of any mineral site included in the first list, it must amend the entry in the first list for that site accordingly¹⁴.

Where the mineral planning authority amends the first list in accordance with heads (1) and (2) above, it must also:

- 2967 (a) in a case where an active Phase I site is added to the first list pursuant to head (1) above, cause that list to specify, in respect of that site, the date by which an application¹⁵ is to be made to the mineral planning authority¹⁶;
- 2968 (b) in a case where the entry for an active Phase I site included in the first list is amended pursuant to head (2) above, and the date specified in that list in respect of that site as the date by which an application is to be made to the mineral planning authority¹⁷ is a date falling less than 12 months after the date upon which the authority makes its decision upon the application in question, cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified¹⁸ of the authority's decision upon his application¹⁹.

On acceding, whether in whole or in part, to an application made under the above provisions, the mineral planning authority must, if the second list has been first advertised²⁰ prior to the time at which it makes its decision on the application, amend the second list as follows²¹. Where it considers that the land or interest, or any part of the land or interest, is an active Phase II site, it must add the mineral site consisting of the land or interest or, as the case may be, that part, to the second list²². Where it considers that the land or interest, or any part of the land or interest, forms part of any active Phase II site included in the second list, it must amend the entry in that list for that site accordingly²³. Where the mineral planning authority amends the second list in accordance with these provisions, it must also:

- 2969 (i) in a case where an active Phase II site is added to the second list²⁴, cause that list to specify, in respect of that site, the date by which an application is to be made²⁵ to the authority²⁶;
- 2970 (ii) in a case where the entry for an active Phase II site included in the second list is amended²⁷ and the date specified in that list in respect of that site as the date by which an application is to be made to the authority²⁸ is a date falling less than 12 months after the date upon which the authority makes its decision upon the application in question, cause that date to be amended so as to specify instead the date upon which expires the period of 12 months from the date on which the applicant is notified²⁹ of the authority's decision upon his application³⁰.

When a mineral planning authority determines an application made under these provisions it must notify the applicant in writing of its decision and, in a case where it has acceded to the application, whether in whole or in part, must supply the applicant with details of any amendment to be made³¹ to the first or second list³².

Where a mineral planning authority refuses an application so made or accedes to such an application only so far as it relates to part of the land or interest in respect of which it was made, the applicant may by notice appeal to the Secretary of State³³ or, in relation to Wales, to the National Assembly for Wales³⁴. A person who has made such an application may also appeal to the Secretary of State or the Assembly if the mineral planning authority has not given notice

to the applicant of its decision on the application within eight weeks of its having received the application or within such extended period as may at any time be agreed upon in writing between the applicant and the authority³⁵.

1 For the meaning of 'owner' see PARA 730 note 11 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'mineral site' see PARA 726 ante.

4 As to the first list see PARA 728 ante.

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 Environment Act 1995 s 96(1), Sch 13 para 6(1). Note, however, that there is no similar statutory mechanism for challenging the inclusion of a site as a 'dormant' rather than an 'active' site; any such challenge must be made by way of judicial review and a later attempt to mount such a challenge in a private law claim for declaratory relief amounts, in effect, to an abuse of process: see *Stancliffe Stone Co Ltd v Peak District National Park Authority* [2005] EWCA Civ 747, [2005] All ER (D) 172 (Jun).

Where an electronic communication is used to make an application to a mineral planning authority under any of the Environment Act 1995 Sch 13 para 6, 7 or 9 (see the text and notes 1-5 supra, 7-35 infra; and PARAS 732-734 post) the applicant is taken to have agreed (1) to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the mineral planning authority in accordance with Sch 13 para 1(9) (as added); and (2) that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority): Sch 13 para 1(8) (Sch 13 para 1(8)-(10) added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 10(1), (2) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 10(1), (2)(b)). An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in head (1) supra: Environment Act 1995 Sch 13 para 1(9) (as so added). Any such notice takes effect from the date specified in it being not less than seven days from the date on which it is given: Sch 13 para 1(10) (as so added). For the meaning of 'electronic communication' see PARA 54 note 2 ante (definition applied by virtue of s 96(2) (as amended)).

7 Ibid Sch 13 para 6(2). As to first advertisement of the list see Sch 13 para 5; and PARA 730 ante.

8 For the meaning of 'dormant site' see PARA 727 ante.

9 As to when a site is active see PARA 728 note 5 ante.

10 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.

11 Environment Act 1995 Sch 13 para 6(3)(a).

12 Ibid Sch 13 para 6(3)(b).

13 Ibid Sch 13 para 6(3).

14 Ibid Sch 13 para 6(4).

15 Ie an application under ibid Sch 13 para 9 (as amended): see PARA 734 post.

16 Ibid Sch 13 para 6(5)(a). Any date so specified must be a date: (1) not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under Sch 13 para 6(10) (see the text and notes 31-32 infra) of the mineral planning authority's decision upon his application, and (2) not later than the later of (a) the date upon which expired the period of three years from 1 November 1995; and (b) the date mentioned in head (1) supra: Sch 13 para 6(6); Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765.

17 See note 15 supra.

18 Ie under the Environment Act 1995 Sch 13 para 6(10): see the text and notes 31-32 infra.

19 Ibid Sch 13 para 6(5)(b).

- 20 le in accordance with *ibid* Sch 13 para 5: see *PARA 730 ante*.
- 21 *Ibid* Sch 13 para 6(7).
- 22 *Ibid* Sch 13 para 6(7)(a).
- 23 *Ibid* Sch 13 para 6(7)(b).
- 24 le pursuant to *ibid* Sch 13 para 6(7)(a): see the text to note 22 *supra*.
- 25 See note 15 *supra*.
- 26 Environment Act 1995 Sch 13 para 6(8)(a). Any date so specified must be a date: (1) not earlier than the date upon which expires the period of 12 months from the date on which the applicant is notified under Sch 13 para 6(10) of the mineral planning authority's decision upon his application, and (2) not later than the later of (a) the date upon which expired the period of six years from 1 November 1995; and (b) the date mentioned in head (1) *supra*: Sch 13 para 6(9); Environment Act 1995 (Commencement No 3) Order 1995, SI 1995/2765.
- 27 le pursuant to the Environment Act 1995 Sch 13 para 6(7)(b): see the text to note 23 *supra*.
- 28 See note 15 *supra*.
- 29 See note 18 *supra*.
- 30 Environment Act 1995 Sch 13 para 6(8)(b).
- 31 le in accordance with *ibid* Sch 13 para 6(4) or (8).
- 32 *Ibid* Sch 13 para 6(10).
- 33 As to the Secretary of State see *PARA 19 ante*.
- 34 Environment Act 1995 Sch 13 para 6(11). As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see *PARA 20 ante*.
- 35 Environment Act 1995 Sch 13 para 6(12). An appeal under Sch 13 para 6(11) or (12) must be made by giving notice of appeal to the Secretary of State or the Assembly before the end of the period of six months beginning with: (1) in the case of an appeal under Sch 13 para 6(11), the determination; or (2) in the case of an appeal under Sch 13 para 6(12), the end of the period of eight weeks mentioned in Sch 13 para 6(12) or, as the case may be, the end of the extended period there mentioned: Sch 13 para 6(13). As to the use of electronic communications see note 6 *supra*; and as to appeals see further *PARA 740 post*.

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732. Postponement of date specified for review of permissions relating to Phase I or Phase II site where existing conditions satisfactory.

Any person who is the owner¹ of any land², or of any interest in any mineral, comprised in an active Phase I site³ included in the first list⁴ or an active Phase II site⁵ included in the second list⁶ may apply to the mineral planning authority⁷ for the postponement of the date specified in that list in respect of that site as the date by which an application for the approval of conditions is to be made⁸ to the authority ('the specified date')⁹. Such an application was, however, to be made no later than the day upon which expired the period of three months from the day when the relevant list¹⁰ was first¹¹ advertised¹²; but in the case of:

- 2971 (1) an active Phase I site added to the first list¹³ or in respect of which the entry in the first list was amended¹⁴; or
- 2972 (2) an active Phase II site added to the second list¹⁵ or in respect of which the entry in the second list was amended¹⁶,

such an application must be made no later than the day upon which expires the period of three months from the day on which notice was given¹⁷ of the mineral planning authority's decision to add the site to or, as the case may be, so to amend the list in question¹⁸.

An application under these provisions must be in writing¹⁹ and must:

- 2973 (a) set out the conditions to which each relevant planning permission²⁰ relating to the site is subject;
- 2974 (b) set out the applicant's reasons for considering those conditions to be satisfactory;
- 2975 (c) set out the date which the applicant wishes to be substituted for the specified date; and
- 2976 (d) be accompanied by the appropriate certificate²¹.

Where the mineral planning authority receives an application so made, if it considers the conditions referred to in head (a) above to be satisfactory it must agree to the specified date being postponed in which event it must determine the date to be substituted for that date²². In any other case it must refuse the application²³. Where the mineral planning authority agrees to the specified date being postponed it must cause the first or, as the case may be, the second list to be amended accordingly²⁴.

When a mineral planning authority determines an application so made, it must notify the applicant in writing of its decision and, in a case where it has agreed to the postponement of the specified date, must notify the applicant of the date which it has determined should be substituted for the specified date²⁵. Where, within three months of the mineral planning authority having received such an application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority has not so given notice to the applicant of its decision upon the application, the authority is treated as having agreed to the specified date being postponed and having determined that the date referred to in head (c) above be substituted for the specified date²⁶.

1 For the meaning of 'owner' see PARA 730 note 11 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'Phase I site' see PARA 727 ante; and as to when a site is active see PARA 728 note 5 ante.

4 As to the first list see PARA 728 ante.

5 For the meaning of 'Phase II site' see PARA 727 ante.

6 As to the second list see PARA 729 ante.

7 For the meaning of 'mineral planning authority' see PARA 29 ante.

8 Ie under the Environment Act 1995 s 96(1), Sch 13 para 9 (as amended): see PARA 734 post.

9 Ibid Sch 13 para 7(1).

10 Ie in the case of an active Phase I site, the first list or, in the case of an active Phase II site, the second list.

11 le was first advertised in accordance with the Environment Act 1995 Sch 13 para 5: see PARA 730 ante.

12 Ibid Sch 13 para 7(2).

13 le in accordance with ibid Sch 13 para 6(4)(a): see PARA 731 ante.

14 le in accordance with ibid Sch 13 para 6(4)(b): see PARA 731 ante.

15 le in accordance with ibid Sch 13 para 6(7)(a): see PARA 731 ante.

16 le in accordance with ibid Sch 13 para 6(7)(a): see PARA 731 ante.

17 le under ibid Sch 13 para 6(10): see PARA 731 ante.

18 Ibid Sch 13 para 7(3).

19 As to the use of electronic communications see PARA 731 note 6 ante.

20 For the meaning of 'relevant planning permission' see PARA 726 note 4 ante.

21 Environment Act 1995 Sch 13 para 7(4) (Sch 13 para 7(4), (5) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III). For these purposes, the appropriate certificate is such a certificate: (1) as would be required, under the Town and Country Planning Act 1990 s 65 (as substituted and amended) (notice etc of applications for planning permission: see PARA 468 ante) and any provision of a development order made by virtue of s 65 (as substituted and amended), to accompany the application if it were an application for planning permission for minerals development; but (2) with such modifications as are required for these purposes; and s 65(6) (as substituted) (offences) also has effect in relation to any certificate purporting to be the appropriate certificate: Environment Act 1995 Sch 13 para 7(5) (as so amended).

22 Ibid Sch 13 para 7(7)(a).

23 Ibid Sch 13 para 7(7)(b).

24 Ibid Sch 13 para 7(8).

25 Ibid Sch 13 para 7(9).

26 Ibid Sch 13 para 7(10). Schedule 13 para 7(8) (see the text to note 24 supra) applies accordingly: Sch 13 para 7(10).

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733. Service on owners etc of notice of preparation of the first and second lists.

Subject to a statutory exception where the person whose identity or address for service is not known and cannot reasonably be ascertained¹, the mineral planning authority² must, no later than the date upon which the first list³ is first advertised⁴, serve notice in writing of the first list having been prepared on each person appearing to the authority to be the owner⁵ of any land⁶, or entitled to an interest in any mineral, included within a mineral site⁷ included in the first list⁸. A notice so required to be served must:

2977 (1) indicate whether the mineral site in question is a dormant site⁹ or an active¹⁰ Phase I or Phase II site¹¹; and

2978 (2) where that site is an active Phase I site:

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249. (a) indicate the date specified in the first list in relation to that site as the date by which an application is to be made¹² to the mineral planning authority;

250. (b) explain the consequences which will occur if such an application is not made by the date so specified; and

251. (c) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made¹³.

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Where, in relation to any land or mineral included in an active Phase I site, the mineral planning authority has served notice on any person under the above provisions and has received no application¹⁴ from that person by the date falling eight weeks before the date specified in the first list as the date by which such applications should be made in respect of the site in question, the authority must serve a written reminder on that person¹⁵.

Subject to the statutory exception previously mentioned¹⁶, the mineral planning authority must, no later than the date upon which the second list¹⁷ is first advertised¹⁸, serve notice in writing of the second list having been prepared on each person appearing to the authority to be the owner of any land, or entitled to an interest in any mineral, included within an active Phase II site included in the second list¹⁹. A notice so required to be served must:

2979 (i) indicate that the mineral site in question is an active Phase II site; and

2980 (ii) indicate the date specified in the second list in relation to that site as the date by which an application is to be made²⁰ to the mineral planning authority;

2981 (iii) explain the consequences which will occur if such an application is not made by the date so specified; and

2982 (iv) explain the right to apply to have that date postponed, and indicate the date by which such an application must be made²¹.

Where, in relation to any land or mineral included in an active Phase II site, the mineral planning authority has so served notice on any person and has received no application²² from that person by the date falling eight weeks before the date specified in the second list as the date by which such applications should be made in respect of the site in question, the authority must serve a written reminder on that person²³.

Where the mineral planning authority, being required either to serve a written reminder²⁴ on any person or to cause a copy of such a reminder to be displayed²⁵, fails to comply with that requirement by the date specified for the purpose, it may at any later time serve or, as the case may be, cause to be displayed, such a written reminder and, in any such case, the date by which an application in relation to the mineral site in question is to be made²⁶ is the date upon which expires the period of three months from the date when the reminder was served or posted in accordance with these²⁷ provisions²⁸.

1 The Environment Act 1995 s 96(1), Sch 13 para 8(1) or (4) (see the text and notes 2-8, 16-19 *infra*) does not require the mineral planning authority to serve notice under that provision upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by the authority, but in any such case the authority must cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the notice it would otherwise have had to serve under that provision on the owner of that land or interest: Sch 13 para 8(7). If, in a case where Sch 13 para 8(7) applies, no person makes an application to the authority under Sch 13 para 8(9) in respect of the active Phase I or II site which includes the land or interest in question by the date falling eight weeks before the date specified in the first or, as the case may be, the second list as the date by which such applications should be made in respect of that site, the authority must cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would, in a case not

falling within Sch 13 para 8(7), have been served under Sch 13 para 8(3) or (6) (see the text and notes 14-15, 22-23 *infra*): Sch 13 para 8(8). Where by Sch 13 para 8(7) or (8) a copy of any notice is required to be affixed to an object on any land that copy must (1) be displayed in such a way as to be easily visible and legible; (2) be first displayed (a) in a case where the requirement arises under Sch 13 para 8(7), no later than the date upon which the first or, as the case may be, the second list is first advertised in accordance with Sch 13 para 5 (see PARA 730 *ante*); or (b) in a case where the requirement arises under Sch 13 para 8(8), no later than the date falling four weeks before the date specified in the first or, as the case may be, the second list in respect of the site in question as the date by which an application is to be made to the authority under Sch 13 para 9 (see PARA 734 *post*); and (3) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the authority, removed, obscured or defaced before that period has elapsed, that requirement is treated as having been complied with if the authority has taken reasonable steps for protection of the notice and, if need be, its replacement: Sch 13 para 8(9). For these purposes, any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it the notice in question: Sch 13 para 8(10).

2 For the meaning of 'mineral planning authority' see PARA 29 *ante*.

3 As to the first list see PARA 728 *ante*.

4 *Ie* in accordance with the Environment Act 1995 Sch 13 para 5: see PARA 730 *ante*.

5 For the meaning of 'owner' for these purposes see PARA 730 note 11 *ante*.

6 For the meaning of 'land' see PARA 2 note 10 *ante*.

7 For the meaning of 'mineral site' see PARA 726 *ante*.

8 Environment Act 1995 Sch 13 para 8(1).

9 For the meaning of 'dormant site' see PARA 727 *ante*.

10 As to when a site is active see PARA 728 note 5 *ante*.

11 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 *ante*.

12 *Ie* under the Environment Act 1995 Sch 13 para 9 (as amended): see PARA 734 *post*.

13 *Ibid* Sch 13 para 8(2). As to such application for postponement see Sch 13 para 7 (as amended); and PARA 732 *ante*.

14 See note 12 *supra*.

15 Environment Act 1995 Sch 13 para 8(3)(a), (b). Such a reminder must (1) indicate that the land or mineral in question is included in an active Phase I site; (2) comply with the requirements of Sch 13 para 8(2)(b) (i), (ii) (see heads (2)(a), (2)(b) in the text); and (3) be served on that person on or before the date falling four weeks before the date specified in the first list in respect of that site as the date by which an application is to be made to the authority under Sch 13 para 9 (as amended): Sch 13 para 8(3)(i)-(iii).

16 See note 1 *supra*.

17 As to the second list see PARA 729 *ante*.

18 See note 4 *supra*.

19 Environment Act 1995 Sch 13 para 8(4).

20 See note 12 *supra*.

21 Environment Act 1995 Sch 13 para 8(5). As to such application for postponement see Sch 13 para 7 (as amended); and PARA 732 *ante*.

22 See note 12 *supra*.

23 Environment Act 1995 Sch 13 para 8(6)(a), (b). Such a reminder must: (1) comply with the requirements of Sch 13 para 8(5)(a)-(c) (see heads (i)-(iii) in the text); and (2) be served on that person on or before the date

falling four weeks before the date specified in the second list in respect of that site as the date by which an application is to be made to the authority under Sch 13 para 9 (as amended): Sch 13 para 8(6)(i), (ii).

24 le required by ibid Sch 13 para 8(3) (see the text and notes 14-15 supra) or Sch 13 para 8(6) (see the text and notes 22-23 supra).

25 le required by ibid Sch 13 para 8(8): see note 1 supra.

26 See note 12 supra.

27 le in accordance with the Environment Act 1995 Sch 13 para 8(11): see the text and notes 24-26 supra, 28 infra.

28 Ibid Sch 13 para 8(11).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/734. Applications for approval of conditions.

734. Applications for approval of conditions.

Any person who is the owner¹ of any land², or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a dormant site³ or an active⁴ Phase I or II Phase site⁵, apply to the mineral planning authority⁶ to determine the conditions to which the relevant planning permissions⁷ relating to that site are to be subject⁸. Such an application must be in writing⁹ and must

- 2983 (1) identify the mineral site¹⁰ to which the application relates;
- 2984 (2) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- 2985 (3) identify any relevant planning permissions relating to the site;
- 2986 (4) identify, and give an address (which must be a postal address)¹¹ for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- 2987 (5) set out the conditions to which the applicant proposes the permissions referred to in head (3) above should be subject; and
- 2988 (6) be accompanied by the appropriate certificate¹².

Where the mineral planning authority receives an application under these provisions in relation to a dormant site or an active Phase I or Phase II site it must determine the conditions to which each relevant planning permission relating to the site is to be subject; and any such permission has effect, from the date when the conditions to which it is to be subject are finally determined¹³, subject to the conditions which are determined¹⁴ as being the conditions to which it is to be subject¹⁵. The conditions imposed by virtue of such a determination may include any conditions which may be imposed on a grant of planning permission¹⁶ for minerals development¹⁷ and may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject¹⁸. In determining that a relevant planning permission is to be subject to any condition relating to development for which planning permission is granted by a development order¹⁹, the mineral planning authority must have regard to any guidance issued for the purpose by the Secretary of State²⁰ or, in relation to Wales, by the National Assembly for Wales²¹.

Where, within the period of three months from the mineral planning authority having received an application under these provisions, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority, the authority has not given notice to the applicant of its decision upon the application, the authority is treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any relevant planning permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission has effect from that time subject to those conditions²². Where, however, a mineral planning authority, having received an application under these provisions, is of the opinion that it is unable to determine the application unless further details are supplied to the authority, it must within the period of one month from having received the application give notice to the applicant stating that it is of such opinion and specifying the further details which it requires²³. Where the authority so serves such a notice the period of three months referred to above runs not from the authority having received the application but from the time when the authority has received all the further details specified in the notice²⁴.

Where the mineral planning authority determines, on an application under the above provisions, conditions that differ in any respect from the proposed conditions set out in the application, the person who made the application may appeal to the Secretary of State or the Assembly²⁵. Such an appeal must be made by giving notice of appeal to him or to the Assembly before the end of the period of six months beginning with the date on which the authority gives notice to the applicant of its determination²⁶.

If an assessment of environmental impact may be required²⁷ the deeming provision set out above²⁸ does not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the mineral planning authority has adopted a screening opinion²⁹ or the Secretary of State or the Assembly has made a screening direction³⁰ to the effect that the ROMP development³¹ in question is not EIA development³².

1 For the meaning of 'owner' see PARA 730 note 11 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'dormant site' see PARA 727 ante.

4 As to when a site is active see PARA 728 note 5 ante.

5 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.

6 For the meaning of 'mineral planning authority' see PARA 29 ante.

7 For the meaning of 'relevant planning permission' see PARA 726 note 4 ante.

8 Environment Act 1995 s 96(1), Sch 13 para 9(1).

9 As to the use of electronic communications see PARA 731 note 6 ante.

10 For the meaning of 'mineral site' see PARA 726 ante.

11 Ie in a case in where electronic communications are used.

12 Environment Act 1995 Sch 13 para 9(2) (amended in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 10(1), (2)(b) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 10(1), (2)(b)). For these purposes, the appropriate certificate is such a certificate (1) as would be required, under the Town and Country Planning Act 1990 s 65 (as substituted and amended) (notice etc of applications for planning permission: see PARA 468 ante) and any provision of a development order made by virtue of s 65 (as substituted and amended), to accompany the application if it were an application for planning permission for minerals development; but (2) with such modifications as are required for these purposes; and s 65(6) (as substituted) (offences) also has effect in relation to any certificate purporting to be the appropriate

certificate: Environment Act 1995 Sch 13 para 9(3) (Sch 13 para 9(3), (5) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III). The Town and Country Planning Act 1990 s 65 (as substituted and amended) (by virtue of which a development order may provide for publicising applications for planning permission) has effect, with any necessary modifications, as if s 65(1) (as substituted) also authorised a development order to provide for publicising applications under these provisions: Environment Act 1995 Sch 13 para 9(5) (as so amended).

13 For these purposes, where an application is made under *ibid* Sch 13 para 9 (as amended) for the determination of the conditions to which the relevant planning permissions relating to the mineral site to which the application relates are to be subject, those conditions are finally determined when (1) the proceedings on the application, including any proceedings on or in consequence of an application under the Town and Country Planning Act 1990 s 288 (as amended) (see *PARA 47 ante*) have been determined; and (2) any time for appealing under the Environment Act 1995 Sch 13 para 11(1) (see *PARA 735 post*), or applying or further applying under Sch 13 para 9 (as amended) (where there is a right to do so) has expired: Sch 13 para 1(7).

14 *Ie* under *ibid* Sch 13 (as amended): see *PARA 726 et seq ante*, *735 et seq post*.

15 *Ibid* Sch 13 para 9(6).

16 For the meaning of 'planning permission' see *PARA 43 note 6 ante*.

17 For the meaning of 'development' see *PARA 217 ante*.

18 Environment Act 1995 Sch 13 para 9(7).

19 For the meaning of 'development order' see *PARA 252 ante*.

20 As to the Secretary of State see *PARA 19 ante*.

21 Environment Act 1995 Sch 13 para 9(8). As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see *PARA 20 ante*.

22 Environment Act 1995 Sch 13 para 9(9). Sch 13 para 9(9) is subject to Sch 13 para 9(10) (see the text and notes 23-24 *infra*): Sch 13 para 9(9). As to Sch 13 para 9(9) see *Payne v Caerphilly County Borough Council* [2002] EWHC 866 (Admin), [2003] JPL 106; *affd* [2003] All ER (D) 75 (Jan), CA; *Brock plc v Wirral Borough Council* [2004] EWCA Civ 1611, 149 Sol Jo LB 24, [2004] All ER (D) 63 (Dec).

23 Environment Act 1995 Sch 13 para 9(10). Without prejudice to the generality of Sch 13 para 9(10), the further details which may be specified in such a notice include any information, plans or drawings or evidence verifying any particulars of details supplied to the authority in respect of the application in question, which it is reasonable for the authority to request for the purpose of enabling it to determine the application: Sch 13 para 9(11).

24 *Ibid* Sch 13 para 9(10).

25 *Ibid* Sch 13 para 11(1)(a).

26 *Ibid* Sch 13 para 11(2). See further *PARA 740 post*.

27 *Ie* if the application is a Schedule 1 or Schedule 2 application within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) (see *PARA 495 notes 3-4 ante*) and is made on or after 15 November 2000.

28 *Ie* the Environment Act 1995 Sch 13 para 9(9): see the text and note 22 *supra*.

29 For the meaning of 'screening opinion' see *PARA 492 note 10 ante*.

30 For the meaning of 'screening direction' see *PARA 492 note 20 ante*.

31 For the meaning of 'ROMP development' see *PARA 741 post*.

32 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(a) (as added); and *PARA 744 post*; cf *R v Oldham Metropolitan Borough Council, ex p Foster* [2000] Env LR 395. For the meaning of 'EIA development' see *PARA 488 ante*.

UPDATE

734 Applications for approval of conditions

TEXT AND NOTES--As to undetermined reviews of old mineral permissions, see the Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009, SI 2009/3342.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/735. Notice of determination of conditions to be accompanied by additional information in certain cases.

735. Notice of determination of conditions to be accompanied by additional information in certain cases.

The following provisions apply in a case where:

- 2989 (1) on an application made¹ to the mineral planning authority² in respect of an active³ Phase I or Phase II site⁴ the authority determines⁵ the conditions to which the relevant planning permissions⁶ relating to the site are to be subject;
- 2990 (2) those conditions differ in any respect from the proposed conditions set out in the application; and
- 2991 (3) the effect of the conditions, other than any restoration or aftercare conditions, so determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions⁷, to which the relevant planning permissions in question were subject immediately prior to the authority making the determination, is to restrict working rights⁸ in respect of the site⁹.

In such a case, the mineral planning authority must, upon giving to the applicant¹⁰ notice of the conditions determined by the authority¹¹, also give to the applicant notice:

- 2992 (a) stating that the conditions determined by the authority differ in some respect from the proposed conditions set out in the application;
- 2993 (b) stating that the effect of the conditions, other than any restoration or aftercare conditions, determined by the authority, as compared with the effect of the conditions, other than any restoration or aftercare conditions, to which the relevant planning permissions relating to the site in question were subject immediately prior to the making of the authority's determination, is to restrict working rights in respect of the site;
- 2994 (c) identifying the working rights so restricted; and
- 2995 (d) stating whether, in the opinion of the authority, the effect of that restriction of working rights would be such as to prejudice adversely to an unreasonable degree:

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252. (i) the economic viability of operating the site; or

253. (ii) the asset value of the site¹².

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Where the mineral planning authority gives notice under head (d) above stating that in its opinion the restriction of working rights in question would not be such as to prejudice adversely to an unreasonable degree either of the matters referred to in heads (i) and (ii) of head (d) above, the person who made the application may appeal to the Secretary of State or, in relation to Wales, to the National Assembly for Wales¹³. Such an appeal must be made by giving notice of appeal to the Secretary of State or the Assembly before the end of the period of six months beginning with the date on which the authority gives notice to the applicant stating its opinion¹⁴.

1 le under the Environment Act 1995 s 96(1), Sch 13 para 9 (as amended): see PARA 734 ante.

2 For the meaning of 'mineral planning authority' see PARA 29 ante.

3 As to when a site is active see PARA 728 note 5 ante.

4 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.

5 See note 1 supra.

6 For the meaning of 'relevant planning permission' see PARA 726 note 4 ante.

7 For the meaning of 'restoration condition' and 'aftercare condition' see PARA 712 ante (definitions applied by virtue of the Environment Act 1995 s 96(2) (as amended)).

8 For these purposes, working rights are restricted in respect of a mineral site if any of: (1) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste; (2) the depth to which operations for the winning and working of minerals may extend; (3) the height of any deposit of mineral waste; (4) the rate at which any particular mineral may be extracted; (5) the rate at which any particular mineral waste may be deposited; (6) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or (7) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site, is restricted or reduced in respect of the mineral site in question: *ibid* Sch 13 para 1(6). For the meaning of 'winning and working of minerals' and 'depositing of mineral waste' see PARA 16 notes 2-3 ante (definitions as applied: see note 7 supra). For the meaning of 'mineral site' see PARA 726 ante.

9 *Ibid* Sch 13 para 10(1).

10 For these purposes, 'the applicant' means the person who made the application in question under *ibid* Sch 13 para 9 (as amended): Sch 13 para 10(4).

11 See note 1 supra.

12 Environment Act 1995 Sch 13 para 10(2). In determining whether, in its opinion, the effect of that restriction of working rights would be such as is mentioned in Sch 13 para 10(2)(d) (see head (d) in the text), a mineral planning authority must have regard to any guidance issued for the purpose by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: Sch 13 para 10(3). As to Secretary of State see PARA 19 ante; as the transfer of functions under Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Environment Act 1995 Sch 13 para 11(1)(b).

14 *Ibid* Sch 13 para 11(2). As to appeals see further PARA 740 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/736. Permissions ceasing to have effect.

736. Permissions ceasing to have effect.

Subject to the provisions for late service or display of a written reminder¹, where no application² in respect of an active³ Phase I or Phase II site⁴ has been served on the mineral planning authority⁵ by the date specified in the first or, as the case may be, the second list⁶ as the date by which such applications in respect of that site are to be made⁷, or by such later date as may at any time be agreed upon in writing⁸ between the applicant and the authority, each relevant planning permission⁹ relating to the site ceases to have effect, except in so far as it imposes any restoration or aftercare condition¹⁰, on the day following the last date on which such an application may be made¹¹.

Subject to the following provision, no relevant planning permission which relates to a dormant site¹² has effect to authorise the carrying out of minerals development¹³ unless an application has been made¹⁴ in respect of that site and that permission has effect¹⁵ accordingly¹⁶. A relevant planning permission which relates to a Phase I or Phase II site not included in the first list ceases to have effect, except in so far as it imposes any restoration or aftercare condition, on the day following the last date on which an application for inclusion in that list¹⁷ may be made in respect of that site unless such an application has been made by that date in which event, unless the site is added to that list, such a permission ceases to have effect when the following conditions are met:

- 2996 (1) the proceedings on that application¹⁸ have been determined; and
- 2997 (2) any time for appealing¹⁹ or for applying or further applying²⁰, where there is a right to do so, has expired²¹.

1 le subject to the Environment Act 1995 s 96(1), Sch 13 para 8(11): see PARA 733 ante.

2 le under ibid Sch 13 para 9 (as amended): see PARA 734 ante.

3 As to when a site is active see PARA 728 note 5 ante.

4 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 As to the first and second lists see PARAS 728-729 ante.

7 The reference in the text to the date specified in the first or, as the case may be, the second list as the date by which applications under the Environment Act 1995 Sch 13 para 9 (as amended) are to be made in respect of any Phase I or Phase II site is a reference to the date specified for that purpose in respect of that site in that list as prepared by the mineral planning authority or, where that date has been varied by virtue of any provision of Sch 13 (as amended), to that date as so varied: Sch 13 para 12(2).

8 As to the use of electronic communications see PARA 731 note 6 ante.

9 For the meaning of 'relevant planning permission' see PARA 726 note 4 ante.

10 For the meanings of 'restoration condition' and 'aftercare condition' see PARA 712 ante (definitions applied by the Environment Act 1995 s 96(2) (as amended)).

11 Ibid Sch 13 para 12(1).

12 For the meaning of 'dormant site' see PARA 727 ante.

13 For the meaning of 'development' see PARA 217 ante.

14 See note 2 supra.

15 le in accordance with the Environment Act 1995 Sch 13 para 9(6): see PARA 734 ante.

16 Ibid Sch 13 para 12(3).

- 17 le an application under ibid Sch 13 para 6(1): see PARA 731 ante.
- 18 le including any proceedings on or in consequence of the application under the Town and Country Planning Act 1990 s 288 (as amended): see PARA 47 ante.
- 19 le under the Environment Act 1995 Sch 13 para 6(11) or (12): see PARA 731 ante.
- 20 le under ibid Sch 13 para 6(1): see PARA 731 ante.
- 21 Ibid Sch 13 para 12(4) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/737. Reference of applications to the Secretary of State or the Assembly.

737. Reference of applications to the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications with regard to old mineral planning permissions³ to any mineral planning authority⁴ to be referred to him or to the Assembly for determination instead of being dealt with by the authority⁵. Any such direction may relate either to a particular application or to applications of a class specified in the direction⁶.

Where an application is referred to the Secretary of State or the Assembly in accordance with such a direction, the specified statutory provisions⁷ apply, with any necessary modifications, as they apply to applications which fall to be determined by the mineral planning authority⁸. Before, however, determining the application the Secretary of State or the Assembly must, if either the applicant or the mineral planning authority so wishes, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State or the Assembly for the purpose⁹. The decision of the Secretary of State or the Assembly on the application is final¹⁰.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 le applications under the Environment Act 1995 s 96(1), Sch 13 para 9 (as amended): see PARA 734 ante.
- 4 For the meaning of 'mineral planning authority' see PARA 29 ante.
- 5 Environment Act 1995 Sch 13 para 13(1).
- 6 Ibid Sch 13 para 13(2).
- 7 le ibid Sch 13 para 9(6), (7) (see PARA 734 ante) Sch 13 para 10 (see PARA 735 ante) and Sch 13 para 14 (see PARA 738 post) so far as relating to applications under Sch 13 para 9 (as amended).
- 8 Ibid Sch 13 para 13(3)(a).
- 9 Ibid Sch 13 para 13(3)(b).
- 10 Ibid Sch 13 para 13(3)(c). However, the Town and Country Planning Act 1990 s 284 (as amended) (see PARA 43 ante) and s 288 (as amended) (see PARA 47 ante) have effect as if the action mentioned in s 284(3) (as

amended) included any decision of the Secretary of State or the Assembly on an application so referred to him or to it: Environment Act 1995 Sch 13 para 9(4)(b). As to calling in planning applications generally see the Town and Country Planning Act 1990 s 77 (as amended); and PARA 483 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/738. Two or more applicants.

738. Two or more applicants.

Where a mineral planning authority¹ has received from any person a duly made application for postponement of the specified date for review of old mineral planning permissions or for the determination of conditions², that person may not make any further application under the provision in question in respect of the same site and, if the application has been determined, whether or not in the case of an application for the determination of conditions³ it has been finally determined⁴, no other person may make an application under the provision in question in respect of the same site⁵.

Where a mineral planning authority has received from any person in respect of a mineral site⁶ a duly made application such as is mentioned above⁷ and the authority receives from another person a duly made application under the provision in question in respect of the same site, then for the purpose of the determination of the applications and any appeal against such a determination, the relevant statutory provisions⁸ have effect as if the applications were a single application received by the authority on the date on which the later application was received by the authority and references to the applicant are to be read as references to either or any of the applicants⁹.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 I.e. an application under the Environment Act 1995 s 96(1), Sch 13 para 7(1) or Sch 13 para 9 (as amended): see PARAS 732, 734 ante.

3 I.e. an application under *ibid* Sch 13 para 9 (as amended).

4 As to when such an application is finally determined see PARA 734 note 13 ante.

5 Environment Act 1995 Sch 13 para 14(1).

6 For the meaning of 'mineral site' see PARA 726 ante.

7 See note 2 *supra*.

8 I.e. the Environment Act 1995 Sch 13 (as amended): see PARA 726 et seq ante, PARAS 739-740 post.

9 *Ibid* Sch 13 para 14(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/739. Compensation.

739. Compensation.

These provisions apply in a case where an application made¹ in respect of an active² Phase I or Phase II site³ is finally determined⁴ and either the first or the second requirements set out below are satisfied⁵. The first requirements are that:

- 2998 (1) the conditions to which the relevant planning permissions⁶ relating to the site are to be subject were determined by the mineral planning authority⁷;
- 2999 (2) no appeal was made⁸ in respect of that determination or any such appeal was withdrawn or dismissed; and
- 3000 (3) the authority gave notice containing additional information⁹ and either:
 - 273 254. (a) that notice stated that, in the authority's opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either the economic value of operating the site or the asset value of the site¹⁰; or
 - 255. (b) that notice stated that, in the authority's opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal¹¹ in respect of the giving of the notice has been allowed¹².

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The second requirements are that the conditions to which the relevant planning permissions are to be subject were determined¹³ by the Secretary of State¹⁴ or by the National Assembly for Wales¹⁵ and:

- 3001 (i) in a case where those conditions were determined upon an appeal¹⁶ either:
 - 275 256. (A) the mineral planning authority gave notice¹⁷ stating that, in its opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either the economic value of operating the site or the asset value of the site¹⁸; or
 - 257. (B) the authority gave a notice¹⁹ stating that, in its opinion, the restriction in question would not be such as would so prejudice either of those matters but an appeal²⁰ in respect of the giving of that notice has been allowed; or

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- 3002 (ii) in a case where those conditions were determined upon a reference²¹ to the Secretary of State or the Assembly, he or it gave notice²² stating that, in his or its opinion, the restriction of working rights in question would be such as to prejudice adversely to an unreasonable degree either the economic value of operating the site or the asset value of the site²³.

In such a case, the provisions of the Town and Country Planning Act 1990 relating to compensation²⁴ and statutory undertakers²⁵ have effect as if an order revoking or modifying planning permission²⁶ had been confirmed²⁷ by the Secretary of State or the Assembly at the time when the application in question was finally determined and, as so confirmed, had effect to modify those permissions to the specified²⁸ extent²⁹. For these purposes, the order which is so treated as having been made under the 1990 Act³⁰ is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights³¹ in respect of the site to the same extent as the relevant restriction³².

- 1 le under the Environment Act 1995 s 96(1), Sch 13 para 9 (as amended): see PARA 734 ante.
- 2 As to when a site is active see PARA 728 note 5 ante.
- 3 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante.
- 4 As to when such an application is finally determined see PARA 734 note 13 ante.
- 5 Environment Act 1995 Sch 13 para 15(1).
- 6 For the meaning of 'relevant planning permissions' see PARA 726 note 4 ante.
- 7 For the meaning of 'mineral planning authority' see PARA 29 ante.
- 8 le under the Environment Act 1995 Sch 13 para 11(1)(a): see PARA 734 ante, PARA 740 post.
- 9 le notice under ibid Sch 13 para 10(2): see PARA 735 ante.
- 10 le either of the matters referred to in ibid Sch 13 para 10(2)(d)(i), (ii): see PARA 735 ante.
- 11 le under ibid Sch 13 para 11(1): see PARA 734 ante, PARA 740 post.
- 12 Ibid Sch 13 para 15(2).
- 13 le whether upon an appeal under ibid Sch 13 para 11(1)(a) (see PARA 734 ante, PARA 740 post) or upon a reference under Sch 13 para 13 (see PARA 737 ante).
- 14 As to the Secretary of State see PARA 19 ante.
- 15 As to the transfer of functions under the Environment Act 1995 Sch 13 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 16 See note 8 supra.
- 17 See note 9 supra.
- 18 See note 10 supra.
- 19 le under the Environment Act 1995 Sch 13 para 10(2)(d): see PARA 735 ante.
- 20 le under ibid Sch 13 para 11(1)(b): see PARA 735 ante, PARA 740 post.
- 21 le under ibid Sch 13 para 13 (as modified): see PARA 737 ante.
- 22 See note 19 supra.
- 23 Environment Act 1995 Sch 13 para 15(3).
- 24 le the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended): see PARA 914 et seq post.
- 25 le ibid Pt XI (ss 262-283) (as amended): see PARA 1009 et seq post.
- 26 le an order under ibid s 97 (as amended): see PARA 541 ante.
- 27 le under ibid s 98 (as modified): see PARA 542 ante.
- 28 le to the extent specified in the Environment Act 1995 Sch 13 para 15(5) (as amended): see the text and notes 30-32 infra.
- 29 Ibid Sch 13 para 15(4) (Sch 13 para 15(4)-(6) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 ss 3, 4, Sch 1 Pt III, Sch 2 para 60(1)(b)).
- 30 See note 26 supra.
- 31 As to when working rights are restricted see PARA 735 note 8 ante.

32 Environment Act 1995 Sch 13 para 15(5) (as amended: see note 29 supra). For the purposes of the Town and Country Planning Act 1990 s 116 (as substituted) (modification of compensation provisions in respect of mineral working etc: see PARA 925 post) and of any regulations made under s 116 (as substituted), the permissions treated as being modified by the order mentioned in the Environment Act 1995 Sch 13 para 15(4) (as amended) are to be treated as if they were planning permissions for development which neither consists of nor includes any minerals development: Sch 13 para 15(6) (as so amended).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/B. OLD MINERAL PLANNING PERMISSIONS GRANTED BETWEEN 1948 AND 1982/740. Rights of appeal and determination of appeals.

740. Rights of appeal and determination of appeals.

Under the Environment Act 1995, there is a right of appeal to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales²:

- 3003 (1) against the refusal by a mineral planning authority³ of an application for inclusion in the first list of mineral sites in its area⁴;
- 3004 (2) against a mineral planning authority's determination of conditions to which the relevant planning permissions relating to certain mineral sites are to be subject⁵;
- 3005 (3) against a mineral planning authority's determination of the conditions to which the mineral permissions⁶ relating to a mining site⁷ are to be subject, as discussed below⁸.

Notice of appeal in respect of any such appeal must be given on a form supplied by or on behalf of the Secretary of State or the Assembly for use for that purpose, and giving, so far as reasonably practicable, the information required by that form⁹.

The appeal is to be determined in accordance with the provisions of the Planning and Compensation Act 1991 governing appeals in connection with old mining permissions¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the provisions referred to in the text, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'mineral planning authority' see PARA 29 ante.

4 See the Environment Act 1995 s 96(1), Sch 13 para 6(11)-(3); and PARA 731 the text and notes 33-35 ante.

5 See *ibid* Sch 13 para 11(2), (2); and PARAS 734 the text and notes 25-26, 735 the text and notes 13-14 ante.

6 For the meaning of 'mineral permission' see PARA 746 note 3 post; and as to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 post.

7 For the meaning of 'mining site' see PARA 746 post.

8 See the Environment Act 1995 s 96(1), Sch 14 para 9(1); and PARA 750 the text and notes 18-19 post.

9 *Ibid* Sch 13 para 16(1), (2), Sch 14 para 9(2).

10 le the Planning and Compensation Act 1991 s 22, Sch 2 para 6 (see PARA 725 ante) applies to such an appeal as it applies to an appeal under Sch 2 para 5 (see PARA 724 ante): Environment Act 1995 Sch 13 para 16(1), (3), Sch 14 para 9(3). The Town and Country Planning Act 1990 ss 284-288 (as amended) (see PARA 43 et seq ante) have effect as if the action mentioned in s 284(3) (as amended) (see PARA 43 ante) included any decision of the Secretary of State or the Assembly on such an appeal: see the Environment Act 1995 Sch 13 para 16(1), (4), Sch 14 para 9(4). See also PARA 601 the text and notes 19-22 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/C. ASSESSMENT OF ENVIRONMENTAL IMPACT/741. In general.

C. ASSESSMENT OF ENVIRONMENTAL IMPACT

741. In general.

For the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹, a 'ROMP application' means an application to a relevant mineral planning authority² to determine the conditions to which a planning permission³ is to be subject under:

- 3006 (1) the provisions of the Planning and Compensation Act 1991 relating to registration of old mining permissions⁴, which have already been discussed⁵;
- 3007 (2) the provisions of the Environment Act 1995 relating to review of old mineral planning permissions⁶, which have already been discussed⁷; or
- 3008 (3) the provisions of the 1995 Act relating to periodic review of mineral planning permissions⁸, which are included in the discussion of the control of existing uses⁹ below¹⁰;

and 'ROMP development' means development¹¹ which has yet to be carried out and which is authorised by a planning permission in respect of which a ROMP application has been or is to be made¹².

The 1999 Regulations apply to:

- 3009 (a) a ROMP application as they apply to an application for planning permission;
- 3010 (b) ROMP development as they apply to development in respect of which an application for planning permission is, has been or is to be made;
- 3011 (c) a relevant mineral planning authority as they apply to a relevant planning authority¹³;
- 3012 (d) a person making a ROMP application as they apply to an applicant for planning permission; and
- 3013 (e) the determination of a ROMP application as they apply to the granting of a planning permission,

subject to prescribed modifications and additions¹⁴.

¹ le the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 487 et seq ante, PARA 742 et seq post.

2 For these purposes, 'relevant mineral planning authority' means the body to whom it falls, fell, or would, but for a direction under the Planning and Compensation Act 1991 s 22, Sch 2 para 7 (see PARA 722 ante), the Environment Act 1995 s 96(1), Sch 13 para 13 (see PARA 737 ante) or Sch 14 para 8 (see PARA 752 post) fall to determine the ROMP application in question: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1) (definition added by SI 2000/2867).

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 Ie an application under the Planning and Compensation Act 1991 Sch 2 para 2(2): see PARA 720 ante.

5 See PARAS 719-722 ante.

6 Ie an application under the Environment Act 1995 Sch 13 para 9(1): see PARA 734 ante.

7 See PARAS 726-739 ante.

8 Ie an application under the Environment Act 1995 Sch 14 para 6(1): see PARA 750 post.

9 See PARA 746 et seq post.

10 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 2(1) (definition added by SI 2000/2867).

11 For the meaning of 'development' see PARA 217 ante.

12 See note 10 supra. The direction-making power substituted by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 35(8) (ie the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 14(2) (as so substituted) (see PARA 480 ante) applies to ROMP development as it applies to development in respect of which a planning application is made: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(15) (added by SI 2000/2867).

13 For the meaning of 'relevant planning authority' see PARA 491 note 1 ante.

14 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(1) (added by SI 2000/2867). See PARA 742 et seq post.

UPDATE

741 In general

NOTE 12--SI 1999/293 reg 26A(15) substituted in relation to England: SI 2008/2093.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/C. ASSESSMENT OF ENVIRONMENTAL IMPACT/742. Prohibition on granting planning permission without consideration of environmental information.

742. Prohibition on granting planning permission without consideration of environmental information.

The relevant mineral planning authority¹, or the Secretary of State² (or, in relation to Wales, the National Assembly for Wales³), or an inspector⁴ must not grant planning permission⁵ pursuant to a ROMP application⁶ to which this provision applies unless it or he has first taken the environmental information⁷ into consideration, and must state in his or its decision that he or it has done so⁸.

This provision applies:

- 3014 (1) to every EIA application⁹ received¹⁰ by the authority with which it is lodged¹¹; and
 3015 (2) to every EIA application lodged¹² by an interested planning authority¹³.

Where the Secretary of State or the Assembly determines a ROMP application in contravention of this provision, the validity of that decision may be challenged on an appeal to the High Court¹⁴.

1 For the meaning of 'relevant mineral planning authority' see PARA 741 note 2 ante.

2 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

4 For the meaning of 'inspector' see PARA 488 note 5 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For the meaning of 'ROMP application' see PARA 741 ante.

7 For the meaning of 'environmental information' see PARA 491 note 6 ante.

8 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3(2) (modified in relation to ROMP applications by virtue of reg 26A(1) (reg 26A added by SI 2000/2867)).

9 For the meaning of 'EIA application' see PARA 491 note 8 ante.

10 For these purposes, the date of receipt of an application by an authority is the date on which a ROMP application has been made which complies with the provisions of the Planning and Compensation Act 1991 s 22, Sch 2 paras 2(3)-(5), 4(1) (see PARAS 719 note 6, 720 ante), the Environment Act 1995 s 96(1) Sch 13 para 9(2) (as amended) (see PARA 734 ante) or Sch 14 para 6(2) (as amended) (see PARA 750 post): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3(1) (modified by reg 26A(2)(c) (as added: see note 8 supra)).

11 Ie lodged on or after 15 November 2000: *ibid* 3(1) (modified by reg 26A(2)(a) (as added: see note 8 supra)).

12 Ie lodged on or after 15 November 2000 under the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11 (as amended) (other consents: see PARAS 870, 897 post): Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3(1) (modified by reg 26A(2)(b) (as added: see note 8 supra)).

13 *Ibid* reg 3(1) (as modified: see notes 10-12 supra). For the meaning of 'interested planning authority' see PARA 891 note 5 post.

14 For the purposes of the Town and Country Planning Act 1990 Pt XII (ss 284-292) (as amended) (validity of certain decisions: see PARA 43 et seq ante), the reference in s 288 (as amended) (see PARA 47 ante), as applied by the Planning and Compensation Act 1991 Sch 2 para 9(3), the Environment Act 1995 Sch 13 para 16(4) (as amended) or Sch 14 para 9(4) (as amended) (see PARA 43 note 27 ante), to action of the Secretary of State or the Assembly which is not within the powers of the Act is to be taken to extend to the determination of a ROMP application by the Secretary of State or the Assembly in contravention of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 3 (as modified): reg 30 (substituted for these purposes by reg 26A(14) (added by SI 2000/2867)).

UPDATE

742 Prohibition on granting planning permission without consideration of environmental information

NOTE 8--SI 1999/293 reg 26A(1) substituted in relation to England: SI 2008/2093.

NOTES 10-12--SI 1999/293 reg 26A(2) substituted in relation to England: SI 2008/2093.

NOTE 14--SI 1999/293 reg 26A(14) substituted in relation to England: SI 2008/2093.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/C. ASSESSMENT OF ENVIRONMENTAL IMPACT/743. Suspension of minerals development.

743. Suspension of minerals development.

Where the relevant mineral planning authority¹, the Secretary of State² (or, in relation to Wales, the National Assembly for Wales³) or an inspector⁴ notifies the applicant or appellant, as the case may be, that:

- 3016 (1) the submission of an environmental statement⁵ is required⁶ then such notification must specify the period within which the environmental statement and compliance with the provisions relating to publicity⁷ is required; or
- 3017 (2) a statement should contain additional information⁸ then such notification must specify the period within which that information is to be provided⁹.

The planning permission¹⁰ to which the ROMP application¹¹ relates may not authorise any minerals development¹², unless the Secretary of State or the Assembly has made a screening direction¹³ to the effect that the ROMP development¹⁴ is not EIA development¹⁵, if the applicant or the appellant does not:

- 3018 (a) write to the authority or Secretary of State or Assembly within the six-week or other period agreed¹⁶;
- 3019 (b) submit an environmental statement and comply with the publicity requirements¹⁷ within the period specified by the authority or the Secretary of State or Assembly in accordance with the above provisions or within such extended period as is agreed in writing; or
- 3020 (c) provide additional information within the period specified by the authority, the Secretary of State or Assembly or an inspector in accordance with the above provisions or within such extended period as is agreed in writing¹⁸;

and where heads (a) to (c) above apply, the planning permission may not authorise any minerals development from the end of:

- 3021 (i) the relevant six-week or other period agreed in writing as referred to in head (a) above;
- 3022 (ii) the period specified or agreed in writing as referred to in heads (b) and (c) above,

('suspension of minerals development') until the applicant has complied with all of the provisions referred to in heads (a) to (c) above which are relevant to the application or appeal in question¹⁹.

Particulars of the suspension of minerals development and the date when that suspension ends must be entered in the appropriate part of the register²⁰ as soon as reasonably practicable²¹. The suspension of minerals development provided for in heads (a) to (c) above does not, however, affect any minerals development carried out under the planning permission before the date of suspension of minerals development²².

1 For the meaning of 'relevant mineral planning authority' see PARA 741 note 2 ante.

2 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

3 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

4 For the meaning of 'inspector' see PARA 488 note 5 ante.

5 For the meaning of 'environmental statement' see PARA 497 ante.

6 le under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(2), reg 8(2) or reg 9(4): see PARAS 495-496, 618 ante.

The provisions relating to the preparation, publicity and procedures on the submission of environmental statements are modified as follows by reg 26A(8), (9), (11) (12) (as added: see note 9 infra):

51 (1) in regs 10(9), 11(6) (see PARAS 498-499 ante) for the words 'an application for planning permission for' there are substituted the words 'a ROMP application which relates to another planning permission which authorises' (reg 26A(8) (as so added));

52 (2) where an applicant submits an environmental statement to the authority in accordance with reg 13(1) (see PARA 501 ante), the provisions of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8, Sch 3 (as amended) (publicity for applications for planning permission: see PARA 471 ante) apply to a ROMP application under the Planning and Compensation Act 1991 s 22, Sch 2 para 2(2) (see PARA 720 ante) and the Environment Act 1995 s 96(1), Sch 14 para 6(1) (see PARA 750 post) as they apply to a planning application falling within the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8(2) (as amended) except that for the references in the notice in Sch 3 to 'planning permission' there is substituted 'determination of the conditions to which a planning permission is to be subject' and that notice must refer to the relevant provisions of the 1991 or 1995 Act pursuant to which the application is made (Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 13(3A) (added by reg 26A(9) (as so added)));

53 (3) in reg 15 (provision of copies of environmental statements and further information for the Secretary of State or the Assembly on referral or appeal: see PARA 503 ante), in reg 15(a) for the reference to the Town and Country Planning Act 1990 s 77 (as amended) there is substituted a reference to the Planning and Compensation Act 1991 Sch 2 para 7(1) (see PARA 722 ante), the Environment Act 1995 Sch 13 para 13(1) (see PARA 737 ante) or Sch 14 para 8(1) (see PARA 752 post) (Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(11) (as so added));

54 (4) in reg 17 (availability of copies of environmental statements: see PARA 505 ante) after the reference to the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419, art 8 (as amended) there is inserted 'as applied by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 13(3A) (as added) or by the Environment Act 1995 Sch 13 para 9(5) (Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(12) (as so added)).

See also notes 7-8 infra.

7 le compliance with ibid reg 14(5): see PARA 502 ante. Regulation 14 (see PARA 502 ante) is modified by reg 26A(10) (as added: see note 9 infra) as follows: (1) the applicant must publish in a local newspaper circulating in the locality in which the land is situated a notice stating his name, that he has applied for determination of the conditions to which a planning permission is to be subject, the relevant provisions of the Planning and Compensation Act 1991 or the Environment Act 1995 pursuant to which the application is made and the name and address of the relevant planning authority (Town and Country Planning (Environmental Impact Assessment)

(England and Wales) Regulations 1999, SI 1999/293, reg 14(2)(a) (as so modified)); (2) where an applicant indicates that he proposes to provide such a statement and in such circumstances as are mentioned in reg 14(1), the relevant planning authority, the Secretary of State or the Assembly, or the inspector, as the case may be, must suspend consideration of the application or appeal until the date specified by the authority or the Secretary of State or Assembly for submission of the environmental statement and compliance with reg 14(5) and may not determine it during the period of 21 days beginning with the date of receipt of the statement and the other documents mentioned in reg 14(5) (reg 14(6) (as so modified)).

8 Ie under ibid reg 19(1): see PARA 506 ante. Regulation 19 is modified by reg 26A(13) (as added: see note 9 infra) as follows: (1) the recipient of further information pursuant to reg 19(1) must publish in a local newspaper circulating in the locality in which the land is situated a notice stating the name of the person who has applied for or who has appealed in relation to the determination of the conditions to which the planning permission is to be subject, the relevant provisions of the Planning and Compensation Act 1991 or the Environment Act 1995 pursuant to which the application is made and the name and address of the relevant planning authority (Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 19(3)(a) (as so modified)); (2) where information is so requested, the relevant planning authority, the Secretary of State or the Assembly, or the inspector, as the case may be, must suspend determination of the application or appeal until the date specified by it or by him for submission of the further information, and may not determine it before the expiry of 14 days after the date on which the further information was sent to all persons to whom the statement to which it relates was sent or the expiry of 21 days after the date that notice of it was published in a local newspaper, whichever is the later (reg 19(7) (as so modified)).

9 Ibid reg 26A(16) (reg 26A added by SI 2000/2867).

10 For the meaning of 'planning permission' see PARA 43 note 6 ante.

11 For the meaning of 'ROMP application' see PARA 741 ante.

12 For these purposes, 'minerals development' means development consisting of the winning and working of minerals, or involving the depositing of mineral waste: Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(21) (as added: see note 9 supra). For the meanings of 'winning and working of minerals' and 'depositing of mineral waste' see PARA 16 notes 2-3 ante.

13 For the meaning of 'screening direction' see PARA 492 note 20 ante.

14 For the meaning of 'ROMP development' see PARA 741 ante.

15 For the meaning of 'EIA development' see PARA 488 ante.

16 Ie agreed pursuant to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 7(4), 8(4) or 9(5); see PARAS 495-496, 618 ante. Regulations 7(4), 8(4) and 9(5) are modified for these purposes so that for the period of three weeks beginning with the date of the notification there is substituted six weeks beginning with the date of the notification or within such other period as may be agreed with the authority, or as the case may be, with the Secretary of State or the Assembly, in writing: see reg 26A(3), (5) (as added: see note 9 supra). Regulation 7(5), (6) (deemed refusal and duty to refuse application in certain circumstances: see PARA 495 ante), reg 8(5), (6) (no duty to deal with application and duty to refuse application in certain circumstances: see PARA 496 ante), reg 9(6), (7) (no duty to deal with appeal and duty to refuse appeal in certain circumstances: see PARA 618 ante), reg 22 (development by a local planning authority: see PARA 509 ante) and reg 32 (extension of period for decision in certain circumstances: see PARA 532 ante) do not apply for these purposes: reg 26A(4) (as so added).

17 Ie comply with ibid reg 14(5): see PARA 502 ante. See also note 7 supra.

18 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(17) (as added: see note 9 supra).

19 Ibid reg 26A(18) (as added: see note 9 supra).

20 For the meaning of 'register' see PARA 507 note 1 ante.

21 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(19) (as added: see note 9 supra).

22 Ibid reg 26A(20) (as added: see note 9 supra).

UPDATE

743 Suspension of minerals development

TEXT AND NOTES--SI 1999/923 reg 26A(3)-(21) substituted in relation to England: SI 2008/2093.

NOTE 6--SI 1999/293 reg 26A(8), (9) amended in relation to Wales: SI 2008/2335.

NOTE 7--SI 1999/293 reg 26A(10) amended in relation to Wales: SI 2008/2335.

NOTE 8--SI 1999/293 reg 26A(13) amended in relation to Wales: SI 2008/2335.

TEXT AND NOTES 10-19--SI 1999/293 reg 26B (duty to make prohibition order after two years suspension of permission) added in relation to England: SI 2008/2093.

NOTE 16--SI 1999/293 reg 26A(3), (17) (as amended in relation to Wales by SI 2008/2335) now refer to SI 1999/293 reg 7(5) instead of reg 7(4). SI 1999/293 reg 26A(4) (as amended in relation to Wales by SI 2008/2335) now refers to SI 1999/293 reg 7(7), (9) instead of reg 7(5), (6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/(iv) Old Mining and Mineral Planning Permissions/C. ASSESSMENT OF ENVIRONMENTAL IMPACT/744. Determination of conditions and right of appeal on non-determination.

744. Determination of conditions and right of appeal on non-determination.

Where it falls to a mineral planning authority¹ to determine a Schedule 1² or a Schedule 2 application³, the deeming provisions regarding old mining or old mineral planning permissions⁴ do not have effect to treat the authority as having determined the conditions to which any relevant planning permission⁵ is to be subject unless either the mineral planning authority has adopted a screening opinion⁶ or the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸ has made a screening direction⁹ to the effect that the ROMP development¹⁰ in question is not EIA development¹¹.

Where it falls to a mineral planning authority or to the Secretary of State or the Assembly to determine a Schedule 1 or a Schedule 2 application:

- 3023 (1) the statutory provisions relating to the register of applications etc¹² have effect with any necessary amendments as if references to applications for planning permission¹³ included certain ROMP applications¹⁴; and
- 3024 (2) where the relevant mineral planning authority¹⁵ is not the authority required to keep the register¹⁶, the relevant mineral planning authority must provide the authority required to keep it with such information and documents as that authority requires to comply¹⁷ with the relevant statutory provisions¹⁸.

Where it falls to the mineral planning authority or to the Secretary of State or the Assembly to determine an EIA application¹⁹ which is made under the provisions relating to determination of the conditions to which an old mining provision is to be subject²⁰, the provisions requiring the authority to give written notice of the determination as soon as practicable²¹ do not apply²². Where it falls to the mineral planning authority to determine an EIA application, the authority must give written notice of its determination of the ROMP application within 16 weeks beginning with the date of receipt by the authority of the ROMP application²³ or such extended period as may be agreed in writing between the applicant and the authority²⁴. In determining

for the specified purposes²⁵ the time which has elapsed without the mineral planning authority giving the applicant written notice of its determination in a case where the authority has notified an applicant²⁶ that the submission of an environmental statement²⁷ is required and the Secretary of State or the Assembly has given a screening direction in relation to the ROMP development in question, no account is to be taken of any period before the issue of the direction²⁸.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 For the meaning of 'Schedule 1 application' see PARA 495 note 3 ante.

3 For the meaning of 'Schedule 2 application' see PARA 495 note 4 ante.

4 I.e. the Planning and Compensation Act s 22, Sch 2 para 2(6)(b) (see PARA 720 ante), the Environment Act 1995 s 96(1) Sch 13 para 9(6) (see PARA 734 ante) or Sch 14 para 6(8) (see PARA 750 post).

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

7 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

8 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

9 For the meaning of 'screening direction' see PARA 492 note 20 ante.

10 For the meaning of 'ROMP development' see PARA 741 ante.

11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(a) (reg 26A added by SI 2000/2867). For the meaning of 'EIA development' see PARA 488 ante.

Where the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(a) (as so added and modified) applies: (1) the Planning and Compensation Act 1991 Sch 2 para 5(2) (see PARA 724 ante), the Environment Act 1995 Sch 13 para 11(1) (see PARAS 734-735, 740 ante) and Sch 14 para 9(1) (see PARA 740 ante, PARA 750 post) (rights of appeal) have effect as if there were also a right of appeal to the Secretary of State or the Assembly where the mineral planning authority has not given written notice of its determination of the ROMP application in accordance with the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(24) (as so added) (see the text and notes 23-24 infra); and (2) the Planning and Compensation Act 1991 Sch 2 para 5(5), the Environment Act 1995 Sch 13 para 11(2) and Sch 14 para 9(2) (rights of appeal) have effect as if they also provided for notice of appeal to be made within six months from the expiry of the 16-week or other period agreed pursuant to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(24) (as so added).

In regs 9(1), 15(b) (see PARAS 503, 618 ante), for the references to the Town and Country Planning Act 1990 s 78 (as amended) (right to appeal against planning decisions and failure to take such decisions) there are substituted references to the Planning and Compensation Act 1991 Sch 2 para 5(2), the Environment Act 1995 Sch 13 para 11(1) and Sch 14 para 9(1) (right of appeal); and in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 9(2) (appeal to the Secretary of State or the Assembly without an environmental statement: see PARA 618 ante) the words 'except by refusing planning permission' are omitted: reg 26A(6), (7) (as so added).

12 I.e. the Town and Country Planning Act 1990 s 69 (as amended and prospectively substituted) (register of applications, etc: see PARA 466 ante), and any provisions of the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (as amended), made by virtue of it.

13 As to applications for planning permission see PARA 448 et seq ante.

14 I.e. ROMP applications under the Environment Act 1995 Sch 13 para 9(1) (see PARA 734 ante) and under Sch 14 para 6(1) (see PARA 750 post). For the meaning of 'ROMP application' see PARA 741 ante.

15 For the meaning of 'relevant mineral planning authority' see PARA 741 note 2 ante.

16 For the meaning of 'register' see PARA 507 note 1 ante.

17 In order to comply with the Town and Country Planning Act 1990 s 69 (as amended and prospectively substituted) as applied by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(b)(i) (as added) (see head (1) in the text), with reg 20 (see PARA 507 ante) as applied by reg 26A(1) (as added) (see PARA 741 ante), and with reg 26A(19) (as added) (see PARA 743 ante).

18 Ibid reg 26A(22)(b) (as added and modified: see note 11 supra).

19 For the meaning of 'EIA application' see PARA 491 note 8 ante.

20 In order under the Planning and Compensation Act 1991 Sch 2 para 2(2): see PARA 720 ante.

21 In order ibid Sch 2 para 4(4): see PARA 721 ante.

22 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(23) (as added: see note 11 supra).

23 For these purposes, a ROMP application is not received by the authority until (1) a document referred to by the applicant as an environmental statement for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended); (2) any documents required to accompany that statement; and (3) any additional information which the authority has notified the applicant that the environmental statement should contain, have been received by the authority: reg 26A(25) (as added: see note 11 supra). For the meaning of 'environmental statement' see PARA 497 ante.

24 Ibid reg 26A(24) (as added: see note 11 supra).

25 In order for the purposes of: (1) the Planning and Compensation Act 1991 Sch 2 para 2(6)(b), the Environment Act 1995 Sch 13 para 9(9) and Sch 14 para 6(8) (determination of conditions); or (2) the Planning and Compensation Act 1991 Sch 2 para 5(5), the Environment Act 1995 Sch 13 para 11(2) and Sch 14 para 9(2) (right of appeal) as applied by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(26)(b) (as added) (see note 11 supra).

26 In order in accordance with ibid reg 7(2): see PARA 495 ante.

27 As to the prescribed modifications of provisions relating to the submission of an environmental statement see PARA 743 notes 6-8 ante.

28 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(27) (as added: see note 11 supra).

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745. ROMP application by a mineral planning authority.

Where a mineral planning authority¹ proposes to make or makes a ROMP application² to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ which is a Schedule 1⁵ or a Schedule 2 application⁶ or proposed application, the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999⁷ apply to that application or proposed application as they apply to a ROMP application referred⁸ to the Secretary of State or the Assembly, subject to the prescribed modifications⁹.

A mineral planning authority which is minded to make a ROMP application¹⁰ to the Secretary of State or the Assembly may request him or the Assembly in writing to make a screening direction¹¹. Such a request must be accompanied by:

- 3025 (1) a plan sufficient to identify the land¹²;
- 3026 (2) a brief description of the nature and purpose of the ROMP development¹³ and of its possible effects on the environment; and
- 3027 (3) such other information as the authority may wish to provide or make¹⁴.

An authority making such a request must send to the Secretary of State or the Assembly any additional information he or it may request in writing to enable him or it to make a direction¹⁵.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 le under the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11 (as amended): see PARA 870 post. For the meaning of 'ROMP application' see PARA 741 ante.

3 As to the Secretary of State see PARA 19 ante. See also PARA 488 note 5 ante.

4 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 488 note 5 ante.

5 For the meaning of 'Schedule 1 application' see PARA 495 note 3 ante.

6 For the meaning of 'Schedule 2 application' see PARA 495 note 4 ante.

7 le the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante.

8 le under the Planning and Compensation Act 1991 s 22, Sch 2 para 7(1) (see PARA 722 ante), the Environment Act 1995 Sch 13 para 13(1) (see PARA 737 ante) or Sch 14 para 8(1) (see PARA 752 post) (reference of applications to the Secretary of State or the Assembly).

9 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(28) (reg 26A added by SI 2000/2867). The prescribed modifications are set out in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(28)(a)-(h) (as so added) as follows:

55 (1) subject to reg 26A(29) (as added and modified) (see the text and notes 10-11 infra), regs 5, 6, 7, 9, 10, 11, 13 (save for the purposes of regs 16(3), (4)) and regs 15, 21(1) (see PARAS 494 et seq ante) do not apply;

56 (2) in reg 4 (general provisions relating to screening: see PARA 492 ante), in reg 4(4) the words 'and shall send a copy of such direction to the relevant planning authority' are omitted, as is reg 4(9);

57 (3) in reg 8(2) (application referred to the Secretary of State or the Assembly without an environmental statement: see PARA 496 ante), the words 'and shall send a copy of that notification to the relevant planning authority' are omitted;

58 (4) in reg 12 (procedure to facilitate preparation of environmental statements: see PARA 500 ante), for the words '7(4)(a), or 8(4) or 9(5)' in reg 12(3)(b) there is substituted '8(4)' and in reg 12(4) the words 'the relevant planning authority and' are omitted;

59 (5) in reg 14(2) (publicity where an environmental statement is submitted after the planning application: see PARA 502 ante), in reg 14(2)(a) the words 'and the name and address of the relevant planning authority' are omitted; and for reg 14(2)(b) there is substituted: '(b) the date on which the application was made and that it has been made to the Secretary of State or the Assembly under the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11 (as amended)';

60 (6) in the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 16 (procedure where an environmental statement is submitted to the Secretary of State or the Assembly: see PARA 504 ante), in reg 16(2) the words 'who shall send one copy to the relevant planning authority' are omitted;

- 61 (7) in reg 19(3) (further information and evidence respecting environmental statements: see PARA 506 ante), in reg 19(3)(a) the words 'and the name and address of the relevant planning authority' are omitted and for reg 19(3)(b) there is substituted '(b) the date on which the application was made and that it has been made to the Secretary of State or the Assembly under the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11 (as amended)';
- 62 (8) reg 20 (availability of opinions, directions etc for inspection: see PARA 507 ante) and reg 21(2) (duties to inform the public and the Secretary of State or the Assembly of final decisions: see PARA 508 ante) apply as if the references to a 'relevant planning authority' were references to a mineral planning authority.

10 See note 2 supra.

11 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(29) (as added and modified: see note 9 supra). Regulation 6(3), (4) applies to such a request as it applies to a request made pursuant to reg 5(6) except that in reg 6(3) the words 'and may request the relevant planning authority to provide such information as it can on any of those points' are omitted: reg 26A(29) (as so added). For the meaning of 'screening direction' see PARA 492 note 20 ante.

12 For the meaning of 'the land' see PARA 493 note 4 ante.

13 For the meaning of 'ROMP development' see PARA 741 ante.

14 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(30) (as added: see note 9 supra).

15 Ibid reg 26A(31) (as added and modified: see note 9 supra).

UPDATE

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NOTE 9--SI 1999/293 reg 12(3)(b) amended in relation to England: SI 2008/2093. SI 1999/293 reg 26A(28) amended in relation to Wales: SI 2008/2335.

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(v) Control of Uses relating to Minerals

A. PERIODIC REVIEWS BY MINERAL PLANNING AUTHORITIES

746. Duty to carry out periodic reviews.

The mineral planning authority¹ must² cause periodic reviews to be carried out of the mineral permissions³ relating to a mining site⁴. For these purposes, 'mining site' means:

- 3028 (1) in a case where it appears to the mineral planning authority to be expedient to treat as a single site the aggregate of the land⁵ to which any two or more mineral permissions relate, the aggregate of the land to which those permissions relate⁶; and
- 3029 (2) in any other case, the land to which a mineral permission relates⁷.

1 For the meaning of 'mineral planning authority' see PARA 29 ante (definition applied by the Environment Act 1995 s 96(1), Sch 14 para 2(1) (amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III)).

2 In accordance with the provisions of the Environment Act 1995 s 96(1), Sch 14 (as amended): see PARA 747 et seq post.

3 For these purposes, 'mineral permission' means any planning permission, other than a planning permission granted by a development order, for minerals development: *ibid* Sch 14 para 2(1). For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'development order' see PARA 252 ante.

4 *Ibid* Sch 14 para 1.

5 For the meaning of 'land' see PARA 2 note 10 ante (definition applied by virtue of *ibid* s 96(2) (as amended)).

6 In determining whether it appears to the authority to be expedient to treat as a single site the aggregate of the land to which two or more mineral permissions relate, a mineral planning authority must have regard to any guidance issued for the purpose by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: *ibid* Sch 14 para 2(2). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under the Environment Act 1995 Sch 14 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Any reference (however expressed) in the Environment Act 1995 Sch 14 (as amended) to a mining site being a site to which relates (1) an old mining permission; or (2) a mineral permission, is a reference to the mining site, or some part of it, being the land to which the permission relates: Sch 14 para 2(3). 'Old mining permission' has the meaning given by the Planning and Compensation Act 1991 s 22(1) (see PARA 718 ante): Environment Act 1995 Sch 14 para 2(1) (as amended: see note 1 *supra*).

7 *Ibid* Sch 14 para 2(1). For policy guidance on periodic reviews see *MPG14--Environment Act 1995, Review of Mineral Planning Permissions*; as to the use of modification and discontinuance orders to update the conditions in a mineral permission between periodic reviews see *MPG4--Revocation, Modification, Discontinuance, Prohibition and Suspension Orders*; and as to the status of such guidance see PARA 9 ante. As to discontinuance orders etc see PARA 756 et seq post; and as to compensation see PARA 925 et seq post.

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747. The first review date.

The 'first review date' in relation to a mining site¹ is, subject to the specified exceptions², to be ascertained in accordance with the following provisions³. In a case where the mineral permissions⁴ relating to a mining site include an old mining permission⁵, the first review date means⁶:

- 3030 (1) the date falling 15 years after the date upon which, pursuant to an application made⁷ under the relevant provisions of the Planning and Compensation Act 1991⁸, the conditions to which that old mining permission is to be subject are finally determined⁹; or
- 3031 (2) where there are two or more old mining permissions relating to that site, and the date upon which those conditions are finally determined is not the same date for each of those permissions, the date falling 15 years after the date upon which was made the last such final determination to be so made in respect of any of those permissions¹⁰.

In the case of a mining site which is a Phase I or II Phase II site¹¹, the first review date means¹² the date falling 15 years after the date upon which, pursuant to an application made under the relevant provisions of the Environment Act 1995¹³, there is determined¹⁴ the conditions to which the relevant planning permissions¹⁵ relating to the site are to be subject¹⁶.

Subject to the following provisions¹⁷, in the case of a mining site which is not a Phase I or Phase II site and to which no old mining permission relates, the first review date is the date falling 15 years after the date upon which was granted the most recent mineral permission which relates to the site¹⁸; but where, in the case of such a mining site, the most recent mineral permission relating to that site relates, or the most recent such permissions, whether or not granted on the same date, between them relate, to part only of the site, and in the opinion of the mineral planning authority it is expedient, for the purpose of ascertaining¹⁹ the first review date in respect of that site, to treat that permission or those permissions as having been granted at the same time as the last of the other mineral permissions relating to the site²⁰, the first review date for that site is to be ascertained accordingly²¹.

In the case of a mining site:

- 3032 (a) to which relates a mineral permission in respect of which an order has been made revoking or modifying planning permission²²; or
- 3033 (b) in respect of which, or any part of which, a discontinuance order²³ has been made,

the first review date is the date falling 15 years after the date upon which the order took effect or, in a case where there is more than one such order, upon which the last of those orders to take effect took effect²⁴.

In the case of a mining site for which the above provisions have effect to specify two or more different dates as the first review date, the first review date is the latest of those dates²⁵.

The Secretary of State or, in relation to Wales, the National Assembly for Wales may by order²⁶ specify a first review date different from the first review date found in pursuance of heads (1) and (2) above²⁷ or in pursuance of the provisions relating to Phase I or II Phase II sites²⁸ set out above²⁹. Further, if no first review date is found in pursuance of those heads or of those provisions³⁰, the Secretary of State or the Assembly may by order³¹ specify a first review date³².

1 For the meaning of 'mining site' see PARA 746 ante.

2 Ie subject to the Environment Act 1995 s 96(1), Sch 14 para 3A (as added) (see the text and notes 26-34 infra) and Sch 14 para 5 (application for postponement: see PARA 749 post).

3 Ibid Sch 13 para 2(1) (amended by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 7 para 19(1), (3)).

4 For the meaning of 'mineral permission' see PARA 746 note 3 ante.

5 For the meaning of 'old mining permission' see PARAS 718, 746 note 6 ante; and as to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.

6 Ie subject to the Environment Act 1995 Sch 14 para 3(7): see the text and note 25 infra.

7 Ie made under the Planning and Compensation Act 1991 s 22, Sch 2 para 2: see PARA 719 ante.

8 Ie ibid Sch 2 para 2: see PARA 719 ante.

9 Ibid Sch 2 para 10(2) (meaning of 'finally determined': see PARA 718 note 7 ante) applies for these purposes as it applies for the purposes of s 22, Sch 2: Environment Act 1995 Sch 14 para 3(1) (Sch 14 para 3(1), (6) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).

- 10 Environment Act 1995 Sch 13 para 3(1) (as amended: see note 9 supra).
- 11 For the meanings of 'Phase I site' and 'Phase II site' see PARA 727 ante (definitions applied by the Environment Act 1995 Sch 14 para 3(2)).
- 12 See note 6 supra.
- 13 Ie under the Environment Act 1995 s 96(1), Sch 13 para 9 (as amended): see PARA 734 ante.
- 14 See note 13 supra.
- 15 For the meaning of 'relevant planning permission' see PARA 726 note 4 ante (definition applied by the Environment Act 1995 Sch 14 para 3(2)).
- 16 Ibid Sch 14 para 3(2).
- 17 Ie subject to ibid Sch 14 para 3(4) (see the text and notes 19-21 infra) and Sch 14 para 3(7) (see the text and note 15 infra).
- 18 Ibid Sch 14 para 3(3).
- 19 Ie under ibid Sch 14 para 3(3): see the text and notes 17-18 supra.
- 20 A mineral planning authority must, in deciding whether it is of such an opinion as is mentioned in the text, have regard to any guidance issued by the Secretary of State or, in relation to Wales, by the National Assembly for Wales for the purpose: ibid Sch 14 para 3(5). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 14 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to policy guidance generally see PARA 9 ante.
- 21 Environment Act 1995 Sch 14 para 3(4).
- 22 Ie under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.
- 23 Ie under ibid s 102(8), Sch 9 para 1 (as amended): see PARA 757 post.
- 24 Environment Act 1995 Sch 14 para 3(6) (as amended: see note 9 supra).
- 25 Ibid Sch 14 para 3(7).
- 26 An order under ibid Sch 14 para 3A (as added) must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 14 para 3A(5) (Sch 14 para 3A(1)-(5) added by the Planning and Compulsory Purchase Act 2004 Sch 7 para 19(1), (4)). As to orders in relation to Wales made by the Assembly, however, see PARA 20 ante.
- 27 Ie found in pursuance of the Environment Act 1995 Sch 14 para 3(1) (as amended): see heads (1)-(2) in the text.
- 28 Ie found in pursuance of ibid Sch 14 para 3(2): see the text and notes 11-16 supra.
- 29 Ibid Sch 14 para 3A(1) (as added: see note 28 supra).
- 30 See notes 27-28 supra.
- 31 An order so made may make different provision for different cases or different classes of case: Environment Act 1995 Sch 14 para 3A(4) (as added: see note 26 supra).
- 32 Ibid Sch 14 para 3A(2), (3) (as added: see note 26 supra).

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748. Service of notice of first periodic review.

The mineral planning authority¹ must, in connection with the first periodic review of the mineral permissions² relating to a mining site³, no later than 12 months before the first review date⁴, serve notice upon each person appearing to the authority to be the owner⁵ of any land⁶, or entitled to an interest in any mineral, included in that site⁷. A notice so required to be served must:

- 3034 (1) specify the mining site to which it relates;
- 3035 (2) identify the mineral permissions relating to that site;
- 3036 (3) state the first review date;
- 3037 (4) state that the first review date is the date by which an application must be made for approval of the conditions to which the mineral permissions relating to the site are to be subject and explain the consequences which will occur if no such application is made by that date; and
- 3038 (5) explain the right to apply for postponement of the first review date and give the date by which such an application has to be made⁸.

Where, in relation to any land or mineral included in a mining site, the mineral planning authority has so served notice on any person and has received no application⁹ from that person by the date falling eight weeks before the first review date, the authority must serve a written reminder on that person¹⁰. A reminder so required to be served must:

- 3039 (a) indicate that the land or mineral in question is included in a mining site;
- 3040 (b) comply with the requirements of heads (1) to (4) above; and
- 3041 (c) be served on the person in question on or before the date falling four weeks before the first review date¹¹.

The requirement to service notice set out above does not require the mineral planning authority to serve such notice upon any person whose identity or address for service is not known to and cannot practicably, after reasonable inquiry, be ascertained by the authority, but in any such case the authority must cause to be firmly affixed, to each of one or more conspicuous objects on the land¹² or, as the case may be, on the surface of the land above the interest in question, a copy of the notice which it would otherwise have had to serve on the owner of that land or interest¹³. If, in such a case, no person makes an application¹⁴ to the authority in respect of the mining site which includes the land or interest in question by the date falling eight weeks before the first review date, the authority must cause to be firmly affixed, to each of one or more conspicuous objects on the land or, as the case may be, on the surface of the land above the interest in question, a copy of the written reminder that would otherwise have been served¹⁵.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 For the meaning of 'mineral permission' see PARA 746 note 3 ante.

3 For the meaning of 'mining site' see PARA 746 ante; and as to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.

4 For the meaning of 'first review date' see PARA 747 ante.

5 For these purposes, 'owner', in relation to any land, means any person who is the estate owner in respect of the fee simple, or is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remains unexpired: Environment Act 1995 s 96(1), Sch 14 para 2(1) (definition amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 Environment Act 1995 Sch 14 para 4(1).

8 Ibid Sch 14 para 4(2). As to postponement of the first review date see PARA 749 post.

9 Ie under ibid Sch 14 para 6 (as amended): see PARA 750 post.

10 Ibid Sch 14 para 4(3).

11 Ibid Sch 14 para 4(4).

12 In ibid Sch 14 para 4(5), (6), any reference to a conspicuous object on any land includes, in a case where the person serving a notice considers that there are no or insufficient such objects on the land, a reference to a post driven into or erected upon the land by the person serving the notice for the purpose of having affixed to it a copy of the notice in question: Sch 14 para 4(8).

13 Ibid Sch 14 para 4(5). Where by Sch 14 para 4(5) or (6) a copy of any notice is required to be affixed to an object on any land that copy must: (1) be displayed in such a way as to be easily visible and legible; (2) be first displayed (a) in a case where the requirement arises under Sch 14 para 4(5), no later than 12 months before the first review date; or (b) in a case where the requirement arises under Sch 14 para 4(6), no later than the date falling four weeks before the first review date; and (3) be left in position for at least the period of 21 days from the date when it is first displayed, but where the notice is, without fault or intention of the authority, removed, obscured or defaced before that period has elapsed, that requirement is to be treated as having been complied with if the authority has taken reasonable steps for protection of the notice and, if need be, its replacement: Sch 14 para 4(7).

14 See note 9 supra.

15 Environment Act 1995 Sch 14 para 4(6).

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749. Application for postponement of the first review date.

Any person who is the owner¹ of any land², or of any interest in any mineral, comprised in a mining site³ may, no later than the day upon which expires the period of three months from the day upon which notice was served upon him of the first periodic review⁴, apply to the mineral planning authority⁵ for the postponement of the first review date⁶. Such an application must be in writing⁷ and must set out:

3042 (1) the conditions to which each mineral permission⁸ relating to the site⁹ is subject;

3043 (2) the applicant's reasons for considering those conditions to be satisfactory; and

3044 (3) the date which the applicant wishes to have substituted for the first review date¹⁰.

Where the mineral planning authority receives an application so made it must, if it considers the conditions referred to in head (1) above to be satisfactory, agree to the first review date being postponed in which event it must determine the date to be substituted for that date¹¹. In any other case it must refuse the application¹².

When a mineral planning authority determines such an application, it must notify the applicant in writing¹³ of its decision and, in a case where it has agreed to the postponement of the first review date, must notify the applicant of the date which it has determined should be substituted for the first review date¹⁴. Where, within the period of three months of the mineral planning authority having received such an application, or within such extended period as may at any time be agreed upon in writing¹⁵ between the applicant and the authority, the authority has not given notice under the above provision to the applicant of its decision upon the application, the authority is treated as having, at the end of that period or, as the case may be, that extended period:

- 3045 (a) agreed to the first review date being postponed; and
- 3046 (b) determined that the date referred to in head (3) above be substituted for the first review date¹⁶.

1 For the meaning of 'owner' see PARA 748 note 5 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'mining site' see PARA 746 ante.

4 I.e. notice under the Environment Act 1995 s 96(1), Sch 14 para 4 (as amended): see PARA 748 ante.

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 Ibid Sch 14 para 5(1). For the meaning of 'first review date' see PARA 747 ante.

7 Where an electronic communication is used to make an application to a mineral planning authority under ibid Sch 14 para 5 or under Sch 14 para 6 (as amended) (see PARA 750 post), the applicant is taken to have agreed (1) to the use of electronic communications for all purposes relating to his application which are capable of being effected using such communications, unless he gives notice in writing to the mineral planning authority in accordance with Sch 14 para 2(6) (as added); and (2) that his address for the purposes of such communications is the address incorporated into, or otherwise logically associated with, his application (or such other address as he may notify in writing to the mineral planning authority): Sch 14 para 2(5) (Sch 14 para 2(5)-(7) added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 10(1), (3)(a) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 10(1), (3)(a)). An applicant may give notice that he is no longer to be taken to have agreed to the use of electronic communications for the purposes mentioned in head (1) supra: Environment Act 1995 Sch 14 para 2(6) (as so added). Any such notice takes effect from the date specified in it being not less than seven days from the date on which it is given: Sch 14 para 2(7) (as so added).

8 For the meaning of 'mineral permission' see PARA 746 note 3 ante.

9 As to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.

10 Environment Act 1995 Sch 14 para 5(2).

11 Ibid Sch 14 para 5(3)(a).

12 Ibid Sch 14 para 5(3)(b).

13 See note 7 supra.

14 Environment Act 1995 Sch 14 para 5(4).

15 See note 7 supra.

16 Environment Act 1995 Sch 14 para 5(5).

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750. Application to determine conditions to which mineral permissions relating to a mining site are to be subject.

Any person who is the owner¹ of any land², or who is entitled to an interest in a mineral, may, if that land or mineral is or forms part of a mining site³, apply to the mineral planning authority⁴ to determine the conditions to which the mineral permissions relating to that site⁵ are to be subject⁶. Such an application must be in writing⁷ and must:

- 3047 (1) identify the mining site in respect of which the application is made and state that the application is made in connection with the first periodic review of the mineral permissions relating to that site;
- 3048 (2) specify the land or minerals comprised in the site of which the applicant is the owner or, as the case may be, in which the applicant is entitled to an interest;
- 3049 (3) identify the mineral permissions relating to the site;
- 3050 (4) identify, and give an address (which must be a postal address)⁸ for, each other person that the applicant knows or, after reasonable inquiry, has cause to believe to be an owner of any land, or entitled to any interest in any mineral, comprised in the site;
- 3051 (5) set out the conditions to which the applicant proposes the permissions referred to in head (3) above should be subject; and
- 3052 (6) be accompanied by the appropriate certificate⁹.

Where the mineral planning authority receives such an application in relation to a mining site it must determine the conditions to which each mineral permission relating to the site is to be subject¹⁰. The conditions imposed by virtue of such a determination:

- 3053 (a) may include any conditions which may be imposed on a grant of planning permission¹¹ for minerals development¹²;
- 3054 (b) may be in addition to, or in substitution for, any existing conditions to which the permission in question is subject¹³.

Where, within the period of three months of the mineral planning authority having received an application under these provisions, or within such extended period as may at any time be agreed upon in writing¹⁴ between the applicant and the authority, the authority has not given notice to the applicant of its decision upon the application, the authority is to be treated as having at the end of that period or, as the case may be, that extended period, determined that the conditions to which any mineral permission to which the application relates is to be subject are those specified in the application as being proposed in relation to that permission; and any such permission has effect, from that time, effect subject to those conditions¹⁵. Where, however, a mineral planning authority, having received such an application, is of the opinion that it is unable to determine the application unless further details are supplied to it, it must within the period of one month from having received the application give notice to the applicant stating that it is of such opinion and specifying the further details which it requires¹⁶. Where the authority so serves such a notice the period of three months referred to above runs not from the authority having received the application but from the time when the authority has received all the further details specified in the notice¹⁷.

Where on an application under the above provisions the mineral planning authority determines conditions that differ in any respect from the proposed conditions set out in the application, the applicant may appeal to the Secretary of State or, in relation to Wales, to the National Assembly for Wales¹⁸. Such an appeal must be made by giving notice of appeal to the Secretary of State or the Assembly, before the end of the period of six months beginning with the determination, on a form supplied by or on behalf of him or of it for use for that purpose, and giving, so far as reasonably practicable, the information required by that form¹⁹.

If an assessment of environmental impact may be required²⁰ the deeming provision set out above²¹ does not have effect to treat the authority as having determined the conditions to which any relevant planning permission is to be subject unless either the mineral planning authority has adopted a screening opinion²² or the Secretary of State or the Assembly has made a screening direction²³ to the effect that the ROMP development²⁴ in question is not EIA development²⁵.

Where an application has been made under the above provisions in respect of a mining site, each of the mineral permissions relating to the site has effect, from the time when the application is finally determined²⁶, subject to the conditions to which it is determined²⁷ that that permission is to be subject²⁸.

1 For the meaning of 'owner' see PARA 748 note 5 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'mining site' see PARA 746 ante.

4 For the meaning of 'mineral planning authority' see PARA 29 ante.

5 For the meaning of 'mineral permission' see PARA 746 note 3 ante; and as to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.

6 Environment Act 1995 s 96(1), Sch 14 para 6(1).

7 As to the use of electronic communications see PARA 749 note 7 ante.

8 Ie where electronic communications are used for the application.

9 Environment Act 1995 Sch 14 para 6(2) (Sch 14 para 6(2), (3) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III; the Environment Act 1995 Sch 14 para 6(2) amended in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 10(1), (3)(b) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 10(1), (3)(b)). For these purposes, the appropriate certificate is such a certificate (1) as would be required, under the Town and Country Planning Act 1990 s 65 (as substituted and amended) (see PARA 468 ante) and any provision of a development order made by virtue of s 65 (as substituted and amended), to accompany the application if it were an application for planning permission for minerals development; but (2) with such modifications as are required for these purposes; and s 65(6) (as substituted) (offences) also has effect in relation to any certificate purporting to be the appropriate certificate: Environment Act 1995 Sch 14 para 6(3) (as so amended).

10 Environment Act 1995 Sch 14 para 6(5).

11 For the meaning of 'planning permission' see PARA 43 note 6 ante. In determining that a mineral permission is to be subject to any condition relating to development for which planning permission is granted by a development order, the mineral planning authority must have regard to any guidance issued for the purpose by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: *ibid* Sch 14 para 6(7). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 14 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

12 For the meaning of 'development' see PARA 217 ante.

13 Environment Act 1995 Sch 14 para 6(6).

14 See note 7 *supra*.

15 Environment Act 1995 Sch 14 para 6(8).

16 *Ibid* Sch 14 para 6(9). Without prejudice to the generality of Sch 14 para 6(9), the further details which may be specified in a notice under that provision include any (1) information, plans or drawings; or (2) evidence verifying any particulars of details supplied to the authority in respect of the application in question, which it is reasonable for the authority to request for the purpose of enabling it to determine the application: Sch 14 para 6(10).

17 *Ibid* Sch 14 para 6(9).

18 *Ibid* Sch 14 para 9(1).

19 *Ibid* Sch 14 para 9(2). As to appeals see further PARA 740 *ante*.

20 *Ie* if the application is a Schedule 1 or Schedule 2 application within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended) (see PARA 495 notes 3-4 *ante*) and is made on or after 15 November 2000.

21 *Ie* the Environment Act 1995 Sch 14 para 6(8): see the text and notes 14-15 *supra*.

22 For the meaning of 'screening opinion' see PARA 492 note 10 *ante*.

23 For the meaning of 'screening direction' see PARA 492 note 20 *ante*.

24 For the meaning of 'ROMP development' see PARA 741 *ante*.

25 See the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 26A(22)(a) (as added); and PARA 744 *ante*. For the meaning of 'EIA development' see PARA 488 *ante*.

26 For these purposes, an application made under the Environment Act 1995 Sch 14 para 6 (as amended) is finally determined when (1) the proceedings on the application, including any proceedings on or in consequence of an application under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 *ante*) have been determined; and (2) any time for appealing under the Environment Act 1995 Sch 14 para 9(1), or applying or further applying under Sch 14 para 6 (as amended), where there is a right to do so, has expired: Sch 14 para 2(4) (amended by the Planning (Consequential Provisions) (Scotland) Act 1997 s 3, Sch 1 Pt III).

27 *Ie* under the Environment Act 1995 Sch 14 (as amended): see PARA 746 *et seq ante*, PARA 751 *et seq post*.

28 *Ibid* Sch 14 para 10(1). Schedule 14 para 10(1) is without prejudice to Sch 14 para 6(8): Sch 14 para 10(2).

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751. Permissions ceasing to have effect.

Where no application¹ in respect of a mining site² has been served on the mineral planning authority³ by the first review date⁴, or by such later date as may at any time be agreed upon in writing⁵ between the applicant and the authority, each mineral permission⁶ relating to the site⁷ and identified in the notice of first periodic review served⁸ in relation to the site ceases to have effect, except in so far as it imposes any restoration or aftercare condition⁹, on the day following the first review date or, as the case may be, such later agreed date¹⁰.

- 1 le under the Environment Act 1995 s 96(1), Sch 14 para 6 (as amended): see PARA 750 ante.
- 2 For the meaning of 'mining site' see PARA 746 ante.
- 3 For the meaning of 'mineral planning authority' see PARA 29 ante.
- 4 For the meaning of 'first review date' see PARA 747 ante.
- 5 As to the use of electronic communications see PARA 749 note 7 ante.
- 6 For the meaning of 'mineral permission' see PARA 746 note 3 ante.
- 7 As to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.
- 8 le served under the Environment Act 1995 Sch 14 para 4: see PARA 748 ante.
- 9 For the meaning of 'restoration condition' and 'aftercare condition' see PARA 712 ante (definitions applied by virtue of *ibid* s 96(2) (as amended)).
- 10 *Ibid* Sch 14 para 7.

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752. Reference of applications to the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications to determine the conditions to which mineral permissions relating to a mining site are to be subject³ made to any mineral planning authority⁴ to be referred to him or to the Assembly for determination instead of being dealt with by the authority⁵. Such a direction may relate either to a particular application or to applications of a class specified in the direction⁶.

Where an application is referred to the Secretary of State or the Assembly in accordance with such a direction, the relevant statutory provisions⁷ apply, with any necessary modifications, to his or its determination of the application as they apply to the determination of applications by the mineral planning authority⁸; but before determining the application the Secretary of State or the Assembly must, if either the applicant or the mineral planning authority so wishes, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State or the Assembly for the purpose⁹. The decision of the Secretary of State or the Assembly on the application is final¹⁰.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Environment Act 1995 Sch 14 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 le applications made under the Environment Act 1995 s 96(1), Sch 14 para 6 (as amended): see PARA 750 ante.
- 4 For the meaning of 'mineral planning authority' see PARA 29 ante.

5 Environment Act 1995 Sch 14 para 8(1).

6 Ibid Sch 14 para 8(2).

7 Ie, subject to ibid Sch 14 para 8(3)(b), Sch 14 para 6(5), (6) (see PARA 750 ante) and Sch 14 para 11 (see PARA 753 post) so far as relating to applications under Sch 14 para 6 (as amended): Sch 14 para 8(3)(a).

8 Ibid Sch 14 para 8(3)(a).

9 Ibid Sch 14 para 8(3)(b).

10 Ibid Sch 14 para 8(3)(c). However, the Town and Country Planning Act 1990 ss 284, 288 (as amended) (see PARAS 43, 47 ante) apply as if the action mentioned in s 284(3) (as amended) included any decision of the Secretary of State or the Assembly on such an application: see the Environment Act 1995 Sch 14 para 9(4)(b).

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753. Two or more applicants.

Where a mineral planning authority¹ has received from any person a duly made application for postponement of the first review date or for determination of the conditions to which mineral permissions relating to a mining site are to be subject², that person may not make any further application under the provision in question in respect of the same site and, if the application has been determined, whether or not in the case of an application for determination of conditions it has been finally determined³, no other person may make an application under the provision in question in respect of the same site⁴.

Where a mineral planning authority has received from any person in respect of a mineral site a duly made application such as is referred to above⁵ and the authority receives from another person a duly made application under the provision in question in respect of the same site, then for the purpose of the determination of the applications and any appeal against such a determination, the relevant statutory provisions⁶ have effect as if the applications were a single application received by the authority on the date on which the later application was received by the authority and references to the applicant are to be read as references to either or any of the applicants⁷.

1 For the meaning of 'mineral planning authority' see PARA 29 ante.

2 Ie an application under the Environment Act 1995 s 96(1), Sch 14 para 5 (see PARA 749 ante) or under Sch 14 para 6 (as amended) (see PARA 750 ante).

3 As to when an application under ibid Sch 14 para 6 (as amended) is finally determined see PARA 750 note 24 ante.

4 Ibid Sch 14 para 11(1).

5 See note 2 supra.

6 Ie the Environment Act 1995 Sch 14 (as amended): see PARA 746 et seq ante, PARA 754 et seq post.

7 Ibid Sch 14 para 11(2).

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754. Second and subsequent periodic reviews.

The relevant statutory provisions¹ apply in respect of the second or any subsequent periodic review of the mineral permissions² relating to a mining site³ as they apply to the first such periodic review, but as if any reference in those provisions to the 'first review date'⁴ were a reference to the review date⁵ and the references⁶ to the first periodic review were references to the periodic review in question⁷. For these purposes, in relation to a mining site, but subject to the right to apply for its postponement⁸, 'review date' means:

- 3055 (1) in the case of the second periodic review, the date falling 15 years after the date upon which an application for the determination of conditions⁹ was finally determined¹⁰ in respect of the site; and
- 3056 (2) in the case of subsequent periodic reviews, the date falling 15 years after the date upon which there was last finally determined¹¹ such an application made in respect of that site¹² as is referred to above¹³.

1 Ie the Environment Act 1995 s 96(1), Sch 14 paras 4-11 (as amended): see PARA 748 et seq ante, PARA 755 post.

2 For the meaning of 'mineral permission' see PARA 746 note 3 ante.

3 For the meaning of 'mining site' see PARA 746 ante.

4 For the meaning of 'first review date' see PARA 747 ante.

5 Environment Act 1995 Sch 14 para 12(2)(a).

6 Ie the references in ibid Sch 14 paras 4(1), 6(2)(a): see PARAS 748, 750 ante.

7 Ibid Sch 14 para 12(2)(b).

8 Ie subject to ibid Sch 14 para 5 (see PARA 749 ante) as applied by Sch 14 para 12(2).

9 Ie an application under ibid Sch 14 para 6 (as amended): see PARA 750 ante.

10 As to when an application under ibid Sch 14 para 6 (as amended) is finally determined see PARA 750 note 24 ante.

11 Ie under ibid Sch 14 (as amended).

12 Ie an application under ibid Sch 14 para 6 (as amended) as applied by Sch 14 para 12(2).

13 Ibid Sch 14 para 12(1).

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755. Compensation.

The following provisions apply where:

- 3057 (1) an application made¹ in respect of a mining site² is finally determined³; and
- 3058 (2) the conditions to which the mineral permissions⁴ relating to the site⁵ are to be subject, as determined under the relevant statutory provisions⁶, differ in any respect from the proposed conditions set out in the application; and
- 3059 (3) the effect of the new conditions⁷, except in so far as they are restoration or aftercare conditions⁸, as compared with the effect of the existing conditions⁹, except in so far as they were restoration or aftercare conditions, is to restrict working rights in respect of the site¹⁰.

In such a case, the provisions of the Town and Country Planning Act 1990 relating to compensation¹¹ and statutory undertakers¹² have effect¹³ as if an order revoking or modifying planning permission¹⁴ had been confirmed¹⁵ by the Secretary of State¹⁶ or, in relation to Wales, by the National Assembly for Wales¹⁷ at the time when the application in question was finally determined and, as so confirmed, had effect to modify those permissions to the specified¹⁸ extent¹⁹. For these purposes, the order which is so treated as having been made under the 1990 Act²⁰ is one whose only effect adverse to the interests of any person having an interest in the land or minerals comprised in the mineral site is to restrict working rights in respect of the site to the same extent as the relevant restriction²¹.

1 Ie an application made under the Environment Act 1995 s 96(1), Sch 14 para 6 (as amended): see PARA 750 ante.

2 For the meaning of 'mining site' see PARA 746 ante.

3 As to when an application under the Environment Act 1995 Sch 15 para 6 (as amended) is finally determined see PARA 750 note 24 ante.

4 For the meaning of 'mineral permission' see PARA 746 note 3 ante.

5 As to the construction of references to a mining site being a site to which an old mining permission or a mineral permission relates see PARA 746 note 6 ante.

6 Ie as determined under the Environment Act 1995 Sch 14 (as amended): see PARA 746 et seq ante.

7 For these purposes, 'the new conditions', in relation to a mining site, means the conditions, determined under *ibid* Sch 14 (as amended), to which the mineral permissions relating to the site are to be subject: Sch 14 para 13(2).

8 For the meaning of 'restoration conditions' and 'aftercare conditions' see PARA 712 ante (definitions applied by virtue of *ibid* s 96(2) (as amended)).

9 For these purposes, 'the existing conditions', in relation to a mining site, means the conditions to which the mineral permissions relating to the site were subject immediately prior to the final determination of the application made under *ibid* Sch 14 para 6 (as amended) in respect of that site: Sch 14 para 13(2).

10 *Ibid* Sch 14 para 13(1). For these purposes, working rights are restricted in respect of a mining site if any of: (1) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste; (2) the depth to which operations for the winning and working of minerals may extend; (3) the height of any deposit of mineral waste; (4) the rate at which any particular mineral may be extracted; (5) the rate at which any particular mineral waste may be deposited; (6) the period at the expiry of which any winning or working of minerals or depositing of mineral waste is to cease; or (7) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the site, is restricted or reduced in respect of the mining site in question: Sch 14 para 13(3). For the meaning of 'winning and working of minerals' see PARA 16 note 2 ante; and for the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante (definitions applied by s 96(2) (as amended)).

11 Ie the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended): see PARA 914 et seq post.

- 12 Ie *ibid* Pt XI (ss 262-283) (as amended): see PARA 1009 *et seq post*.
- 13 Ie subject to the Environment Act 1995 Sch 14 para 13(6) (as amended): see note 21 *infra*.
- 14 Ie an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 *ante*.
- 15 Ie under *ibid* s 98 (as modified): see PARA 542 *ante*.
- 16 As to the Secretary of State see PARA 19 *ante*.
- 17 As to the transfer of functions under the Environment Act 1995 Sch 14 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.
- 18 Ie to the extent specified in the Environment Act 1995 Sch 14 para 13(6) (as amended): see note 21 *infra*.
- 19 Ibid Sch 14 para 13(4) (Sch 14 para 13(4), (6) amended by the Planning (Consequential Provisions) (Scotland) Act 1997 ss 3, 4, Sch 1 Pt III, Sch 2 para 60(2)).
- 20 See note 14 *supra*.
- 21 Environment Act 1995 Sch 14 para 13(5). For the purposes of the Town and Country Planning Act 1990 s 116 (as amended) (modification of compensation provisions in respect of mineral working etc: see PARA 925 *post*) and of any regulations made under s 116 (as amended), the permissions treated as being modified by the order mentioned in the Environment Act 1995 Sch 14 para 13(4) (as amended and modified) are to be treated as if they were planning permissions for development which neither consists of nor includes any minerals development: Sch 14 para 13(6) (as amended: see note 19 *supra*).

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B. DISCONTINUANCE ORDERS

756. Modification of provisions relating to discontinuance orders.

The statutory provisions relating to discontinuance orders¹ do not apply to the use² of any land³ for development⁴ consisting of the winning and working of minerals⁵ or involving the depositing of refuse or waste materials⁶ except as specially⁷ provided⁸.

- 1 Ie the Town and Country Planning Act 1990 s 102(1)-(7) (as amended): see PARAS 546-547 *ante*.
- 2 For the meaning of 'use' see PARA 221 note 4 *ante*.
- 3 For the meaning of 'land' see PARA 2 note 10 *ante*.
- 4 For the meaning of 'development' see PARA 217 *ante*.
- 5 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 *ante*.
- 6 For the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 *ante*.
- 7 Ie except as provided in the Town and Country Planning Act 1990 s 102(8), Sch 9 (as amended): see Sch 9 para 1(3) (as substituted); and PARA 757 note 9 *post*.
- 8 Ibid s 102(8) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 6). The Town and Country Planning Act 1990 Sch 9 (as amended) has effect for the purposes of making provision as respects land which is or has been so used: s 102(8).

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757. Orders requiring discontinuance of mineral working etc.

If, having regard to the development plan¹ and to any other material considerations, it appears to a mineral planning authority² that it is expedient in the interests of the proper planning of its area, including the interests of amenity³:

- 3060 (1) that any use⁴ of land⁵ for development⁶ consisting of the winning and working of minerals⁷ or the depositing of refuse or waste materials should be discontinued or that any conditions should be imposed on the continuance of the winning and working or the depositing;
- 3061 (2) that any building or works⁸ on land so used should be altered or removed; or
- 3062 (3) that any plant or machinery used for the winning and working or the depositing should be altered or removed,

the mineral planning authority may by order require the discontinuance of that use, or impose such conditions as may be specified in the order on the continuance of it or, as the case may be, require such steps as may be so specified to be taken for the alteration or removal of the buildings or works or plant or machinery⁹.

Such an order may impose a restoration condition¹⁰; and, if such an order includes a restoration condition, or a restoration condition has previously been imposed in relation to the land¹¹, the order may also include any such aftercare condition¹² as the mineral planning authority thinks fit¹³.

In a case where:

- 3063 (a) the use specified in the aftercare condition is a use for agriculture¹⁴;
- 3064 (b) the land was in use for agriculture before the development began, or had previously been used for agriculture and had not been used for any authorised purpose since its use for agriculture ceased; and
- 3065 (c) the Secretary of State¹⁵ or, in relation to Wales, the National Assembly for Wales¹⁶ has notified the mineral planning authority of the physical characteristics of the land when it was last used for agriculture,

the land is brought to the required standard when its physical characteristics are restored, so far as it is practicable to do so, to what they were when it was last used for agriculture¹⁷; and, in any other case, where the use specified in the aftercare condition is a use for agriculture, the land is brought to the required standard when it is reasonably fit for that use¹⁸.

1 For the meaning of 'development plan' see PARA 91 ante.

2 For these purposes, any reference to a mineral planning authority is to be construed, in relation to the exercise of functions with respect to the depositing of refuse or waste materials, other than mineral waste, as a reference to the authority entitled to discharge such functions: Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 12 (added by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(14)).

For the meaning of 'mineral planning authority' generally see PARA 29 ante; for the meaning of 'functions' see PARA 2 note 1 ante; and for the meaning of 'depositing of refuse or waste materials' see PARA 522 note 8 ante.

3 As to the meaning of 'amenity' see PARA 158 note 8 ante.

4 For the meaning of 'use' see PARA 221 note 4 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

8 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

9 Town and Country Planning Act 1990 Sch 9 para 1(1) (amended by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(1), (2)). The Town and Country Planning Act 1990 s 102(3)-(5), (7) (as amended) (see PARAS 546-547 ante) and s 103 (see PARAS 548-549 ante) apply to orders under Sch 9 para 1 (as amended), but as if (1) references to the local planning authority were references to the mineral planning authority; and (2) the reference in s 103(2)(a) to s 102(2) were a reference to Sch 9 para 1(2) (as substituted) (see PARA 758 post): Sch 9 para 1(3) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(3)).

10 Town and Country Planning Act 1990 Sch 9 para 2(1) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(4)). For the meaning of 'restoration condition' see PARA 712 ante.

11 Ie by virtue of any provision of the Town and Country Planning Act 1990.

12 For the meaning of 'aftercare condition' see PARA 712 ante.

13 Town and Country Planning Act 1990 Sch 9 para 2(2). Section 72(5), Sch 5 paras 2(3)-(9), 3-6 (as amended) (see PARAS 712-716 ante) apply in relation to an aftercare condition imposed under Sch 9 para 2 (as amended) as they apply in relation to such a condition imposed under Sch 5 para 2 (as amended), but with the substitution for Sch 5 para 3(1), (2) of Sch 9 para 2(4), (5) (as amended): Sch 9 para 2(3).

14 For the meaning of 'agriculture' see PARA 16 note 6 ante.

15 Ie the Secretary of State for Environment, Food and Rural Affairs. The statutory wording is 'the minister' (ie the Minister of Agriculture, Fisheries and Food: see PARA 714 note 4 ante); but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.

16 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

17 Town and Country Planning Act 1990 Sch 9 para 2(4) (amended by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(5)).

18 Town and Country Planning Act 1990 Sch 9 para 2(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/B. DISCONTINUANCE ORDERS/758. Planning permission granted by discontinuance order.

758. Planning permission granted by discontinuance order.

A discontinuance order¹ may grant planning permission² for any development³ of the land⁴ to which the order relates, subject to such conditions as may be required by the relevant statutory provisions⁵ or specified in the order⁶.

1 le an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 1 (as amended): see PARA 757 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 le by the Town and Country Planning Act 1990 s 72(5), Sch 5 para 1 (as amended): see PARA 711 ante.

6 Ibid Sch 9 para 1(2) (substituted by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(3)). See also PARA 757 note 9 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/C. PROHIBITION ORDERS/759. Prohibition of resumption of mineral working etc.

C. PROHIBITION ORDERS

759. Prohibition of resumption of mineral working etc.

Where it appears to the mineral planning authority¹ that development² of land³ consisting of the winning and working of minerals⁴ or involving the depositing of mineral waste⁵ has occurred, but the winning and working or depositing has permanently ceased⁶, the mineral planning authority may by order:

- 3066 (1) prohibit the resumption of the winning and working or the depositing; and
- 3067 (2) impose, in relation to the site, any specified⁷ requirement⁸.

The specified requirements are:

- 3068 (a) a requirement to alter or remove plant or machinery which was used for the purpose of the winning and working or the depositing or for any purpose ancillary to that purpose;
- 3069 (b) a requirement to take such steps as may be specified in the order, within such period as may be so specified, for the purpose of removing or alleviating any injury to amenity⁹ which has been caused by the winning and working or depositing, other than injury due to subsidence caused by underground mining operations;
- 3070 (c) a requirement that any condition subject to which planning permission¹⁰ for the development was granted or which has been imposed¹¹ shall be complied with; and
- 3071 (d) a restoration condition¹².

If such an order includes a restoration condition, or a restoration condition has previously been imposed¹³ in relation to the site, the order may include any such aftercare condition¹⁴ as the mineral planning authority thinks fit¹⁵.

1 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

- 2 For the meaning of 'development' see PARA 217 ante.
- 3 For the meaning of 'land' see PARA 2 note 10 ante.
- 4 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.
- 5 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.
- 6 The mineral planning authority may assume that the winning and working or the depositing has permanently ceased only when (1) no winning and working or depositing has occurred, to any substantial extent, at the site for a period of at least two years; and (2) it appears to the mineral planning authority, on the evidence available to it at the time when it makes the order, that resumption of the winning and working or depositing to any substantial extent at the site is unlikely: Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 3(2) (substituted by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(6)).
- 7 Ie any such requirement as is specified in the Town and Country Planning Act 1990 Sch 9 para 3(3) (as substituted).
- 8 Ibid Sch 9 para 3(1) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(6)).
- 9 As to the meaning of 'amenity' see PARA 158 note 8 ante.
- 10 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 11 Ie by virtue of any provision of the Town and Country Planning Act 1990.
- 12 Ibid Sch 9 para 3(3) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(6)). For the meaning of 'restoration condition' see PARA 712 ante.
- 13 See note 11 supra.
- 14 For the meaning of 'aftercare condition' see PARA 712 ante.
- 15 Town and Country Planning Act 1990 Sch 9 para 3(4). Section 72(5), Sch 5 paras 2(3)-(9), 3-6 (as amended) (see PARAS 712-716 ante) apply in relation to an aftercare condition imposed under Sch 9 para 3 (as amended) as they apply to such a condition imposed under Sch 9 para 2 (as amended): Sch 9 para 3(5). See also PARA 757 note 13 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/C. PROHIBITION ORDERS/760. Procedure for making orders; objections.

760. Procedure for making orders; objections.

Where a mineral planning authority¹ submits a prohibition order² to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ for his or its confirmation⁵, it must serve notice of the order on:

- 3072 (1) any person who is an owner⁶ or occupier of any of the land⁷ to which the order relates; and
- 3073 (2) any other person who in the opinion of the authority will be affected by the order⁸.

The notice must specify the period, not being less than 28 days from the service of the order, within which any person on whom it is served may require the Secretary of State or the Assembly to give him an opportunity of appearing before, and being heard by, a person

appointed by the Secretary of State or the Assembly for the purpose⁹; and, if within that period such a person so requires, before the Secretary of State or the Assembly confirms the order he or it must give such an opportunity both to that person and to the mineral planning authority¹⁰.

1 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

2 I.e. an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 3 (as amended); see PARA 759 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 I.e. under the Town and Country Planning Act 1990 Sch 9 para 4 (as amended): see the text and notes 6-10 infra; and PARA 761 post.

6 For the meaning of 'owner' see PARA 17 note 1 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 Sch 9 para 4(2).

9 Ibid Sch 9 para 4(3), (5). As to the service of notices see PARA 54 ante.

10 Ibid Sch 9 para 4(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/C. PROHIBITION ORDERS/761. Confirmation of orders by the Secretary of State or the Assembly.

761. Confirmation of orders by the Secretary of State or the Assembly.

A prohibition order¹ does not take effect unless it is confirmed by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ either without modification or subject to such modifications as he or it considers expedient⁴. Where such an order has been confirmed by the Secretary of State or the Assembly, the mineral planning authority⁵ must serve a copy of the order on every person who was entitled⁶ to be served with notice of its submission to the Secretary of State or the Assembly⁷.

Where such an order takes effect, any planning permission⁸ for the development⁹ to which the order relates ceases to have effect¹⁰; but this provision is without prejudice to the power of the mineral planning authority, on revoking the order, to make a further grant of planning permission for development consisting of the winning and working of minerals¹¹ or involving the depositing of mineral waste¹².

1 I.e. an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 3 (as amended); see PARA 759 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 Sch 9 para 4(1). As to refusal to confirm an order see *R v Secretary of State for Wales, ex p Mid-Glamorgan County Council* [1995] JPL 1146, CA.

5 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

6 le under the Town and Country Planning Act 1990 Sch 9 para 4(2): see PARA 760 ante.

7 Ibid Sch 9 para 4(6).

8 For the meaning of 'planning permission' see PARA 43 note 6 ante.

9 For the meaning of 'development' see PARA 217 ante.

10 Town and Country Planning Act 1990 Sch 9 para 4(7).

11 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

12 Town and Country Planning Act 1990 Sch 9 para 4(8) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(7)). For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/D. SUSPENSION ORDERS/762. Suspension orders.

D. SUSPENSION ORDERS

762. Suspension orders.

Where it appears to the mineral planning authority¹ that development² of land³ consisting of the winning and working of minerals⁴ or involving the depositing of mineral waste⁵ has occurred, but the winning and working or depositing has been temporarily suspended⁶, the mineral planning authority may by order (a 'suspension order') require that steps be taken for the protection of the environment⁷.

A suspension order must specify a period, commencing with the date on which it is to take effect, within which any required step for the protection of the environment is to be taken and may specify different periods for the taking of different steps⁸.

1 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

2 For the meaning of 'development' see PARA 217 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

5 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

6 The mineral planning authority may assume that the winning and working or the depositing has been temporarily suspended only when (1) no such winning and working or depositing has occurred, to any substantial extent, at the site for a period of at least 12 months; but (2) it appears to the mineral planning authority, on the evidence available to it at the time when it makes the order, that a resumption of such winning and working or depositing to a substantial extent is likely: Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 5(3) (substituted by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(9)). As to the resumption of working after a suspension order see PARA 766 post.

7 Town and Country Planning Act 1990 s 336(1), Sch 9 para 5(1), (2) (Sch 9 para 5(1) substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(8)). For these purposes, 'steps for the protection of the environment' means steps for the purpose (1) of preserving the amenities of the area in which the land in, on or under which the development was carried out is situated during the period while the winning and working or the depositing is suspended; (2) of protecting that area from damage during that period; or (3) of preventing any deterioration in the condition of the land during that period: Town and Country Planning Act 1990 Sch 9 para 5(4) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(9)). As to the meaning of 'amenity' see PARA 158 note 8 ante.

8 Town and Country Planning Act 1990 Sch 9 para 5(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/D. SUSPENSION ORDERS/763. Supplementary suspension orders.

763. Supplementary suspension orders.

At any time when a suspension order¹ is in operation the mineral planning authority² may by order (a 'supplementary suspension order') direct:

3074 (1) that steps for the protection of the environment³ shall be taken in addition to, or in substitution for, any of the steps which the suspension order or a previous order⁴ specified as required to be taken; or

3075 (2) that the suspension order or any supplementary order⁵ shall cease to have effect⁶.

1 For the meaning of 'suspension order' see PARA 762 ante.

2 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

3 For the meaning of 'steps for the protection of the environment' see PARA 762 note 7 ante.

4 Ie under the Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 6(1).

5 See note 4 supra.

6 Town and Country Planning Act 1990 s 336(1), Sch 9 para 6(1), (2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/D. SUSPENSION ORDERS/764. Confirmation, coming into effect and registration of orders.

764. Confirmation, coming into effect and registration of orders.

A suspension order¹ or a supplementary suspension order² does not take effect unless it is confirmed by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴ either without modification or subject to such modifications as he or it considers expedient⁵; and the statutory provisions relating to notice and objections⁶ have effect in relation to such an order submitted to the Secretary of State or the Assembly for confirmation

as they have effect in relation to a prohibition order⁷ so submitted⁸ to him or to it⁹. A supplementary suspension order revoking a suspension order or a previous supplementary suspension order and not requiring that any fresh step be taken for the protection of the environment¹⁰ takes effect without confirmation¹¹.

Where a suspension order or supplementary suspension order has been confirmed by the Secretary of State or the Assembly, the mineral planning authority¹² must serve a copy of the order on every person who was entitled¹³ to be served with notice of the order¹⁴.

A suspension order or a supplementary suspension order is a local land charge¹⁵.

1 For the meaning of 'suspension order' see PARA 762 ante.

2 For the meaning of 'supplementary suspension order' see PARA 763 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 7(1). Schedule 9 para 7(1) is subject to Sch 9 para 7(2) (see the text and notes 9-10 infra): Sch 9 para 7(1).

6 *Ibid* Sch 9 para 4(2)-(5): see PARA 760 ante.

7 *Ie* a notice under *ibid* Sch 9 para 3 (as amended): see PARA 759 ante.

8 *Ie* under *ibid* Sch 9 para 4 (as amended): see PARAS 760-761 ante.

9 *Ibid* Sch 9 para 7(3).

10 For the meaning of 'steps for the protection of the environment' see PARA 762 note 7 ante.

11 Town and Country Planning Act 1990 Sch 9 para 7(2).

12 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

13 *Ie* by virtue of the Town and Country Planning Act 1990 Sch 9 para 7(3).

14 *Ibid* Sch 9 para 7(4).

15 *Ibid* Sch 7 para 8. As to registration see LAND CHARGES.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/D. SUSPENSION ORDERS/765. Review of suspension orders and supplementary suspension orders.

765. Review of suspension orders and supplementary suspension orders.

It is the duty of a mineral planning authority¹:

- 3076 (1) to undertake, in accordance with the following provisions, reviews of suspension orders² and supplementary suspension orders³ which are in operation in its area; and

3077 (2) to determine whether the authority should make, in relation to any land⁴ to which a suspension order or supplementary suspension order applies, a prohibition order⁵ or a supplementary suspension order⁶.

The first review of a suspension order must be undertaken not more than five years from the date on which the order takes effect⁷; and each subsequent review must be undertaken not more than five years after the previous review⁸. If a supplementary suspension order is in operation for any part of the area for which a suspension order is in operation, they must be reviewed together⁹.

If a mineral planning authority has made a supplementary suspension order which requires the taking of steps for the protection of the environment¹⁰ in substitution for all the steps required to be taken by a previous suspension order or supplementary suspension order, the authority must undertake reviews of the supplementary suspension order in accordance with the following provisions¹¹:

3078 (a) the first review must be undertaken not more than five years from the date on which the order takes effect¹²; and

3079 (b) each subsequent review must be undertaken not more than five years after the previous review¹³.

The duties so imposed to undertake reviews are in addition to, and not in substitution for, the duties otherwise¹⁴ imposed¹⁵.

1 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

2 For the meaning of 'suspension order' see PARA 762 ante.

3 For the meaning of 'supplementary suspension order' see PARA 763 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Ie an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 3 (as amended): see PARA 759 ante.

6 Ibid Sch 9 para 9(1).

7 Ibid Sch 9 para 9(2).

8 Ibid Sch 9 para 9(3).

9 Ibid Sch 9 para 9(4).

10 For the meaning of 'steps for the protection of the environment' see PARA 762 note 7 ante.

11 Town and Country Planning Act 1990 Sch 9 para 9(5).

12 Ibid Sch 9 para 9(6).

13 Ibid Sch 9 para 9(7).

14 Ie imposed by the Environment Act 1995 s 96(1), Sch 14 (as amended): see PARA 746 et seq ante.

15 Town and Country Planning Act 1990 Sch 9 para 9(8); Interpretation Act 1978 s 17(2).

PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/D. SUSPENSION ORDERS/766. Resumption of mineral working after suspension order.

766. Resumption of mineral working after suspension order.

Nothing in a suspension order¹ or a supplementary suspension order² prevents the recommencement of development³ consisting of the winning and working of minerals⁴ or involving the depositing of mineral waste⁵ at the site in relation to which the order has effect⁶; but no person may recommence such development without first giving the mineral planning authority⁷ notice of his intention to do so⁸. A notice so given must specify the date on which the person giving the notice intends to recommence the development⁹.

The mineral planning authority must revoke the order if the winning and working of minerals or the depositing of mineral waste has recommenced to a substantial extent at the site in relation to which the order has effect¹⁰; and, if the authority does not revoke the order before the end of the period of two months from the date specified in the notice¹¹, the person who gave that notice may apply to the Secretary of State¹² or, in relation to Wales, to the National Assembly for Wales¹³ for the revocation of the order¹⁴.

If he or it is required to do so by the person who gave the notice or by the mineral planning authority, the Secretary of State or the Assembly must, before deciding whether to revoke the order, give him and the mineral planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose¹⁵.

If the Secretary of State or the Assembly is satisfied that the winning and working of minerals or the depositing of mineral waste has recommenced to a substantial extent at the site in relation to which the order has effect, he or it must revoke the order¹⁶; and, if he or the Assembly so revokes an order, he or the Assembly must give notice of its revocation to the person who applied to him or to the Assembly for the revocation and to the mineral planning authority¹⁷.

1 For the meaning of 'suspension order' see PARA 762 ante.

2 For the meaning of 'supplementary suspension order' see PARA 763 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

5 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

6 Town and Country Planning Act 1990 s 102(8) (as amended), Sch 9 para 10(1) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 15(10)).

7 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.

8 Town and Country Planning Act 1990 Sch 9 para 10(2).

9 Ibid Sch 9 para 10(3) (amended by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(11)).

10 Town and Country Planning Act 1990 Sch 9 para 10(4) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(12)).

11 I.e. the notice under the Town and Country Planning Act 1990 Sch 9 para 10(2): see the text and notes 7-8 supra.

12 As to the Secretary of State see PARA 19 ante.

13 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 Town and Country Planning Act 1990 Sch 9 para 10(5). Notice of such an application must be given by the applicant to the mineral planning authority: Sch 9 para 10(6).

15 Ibid Sch 9 para 10(7).

16 Ibid Sch 9 para 10(8) (substituted by the Planning and Compensation Act 1991 Sch 1 paras 1, 15(13)).

17 Town and Country Planning Act 1990 Sch 9 para 10(9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/E. DEFAULT POWERS/767. Default powers of the Secretary of State or the Assembly in relation to discontinuance, prohibition and suspension orders.

E. DEFAULT POWERS

767. Default powers of the Secretary of State or the Assembly in relation to discontinuance, prohibition and suspension orders.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² to be expedient that any discontinuance order³, prohibition order⁴, suspension order⁵ or supplementary suspension order⁶ should be made, he or it may himself or itself make such an order⁷; and such an order which is so made has the same effect as if it had been made by the mineral planning authority⁸ and confirmed by the Secretary of State or the Assembly⁹. The Secretary of State or Assembly may not, however, make such an order without consulting¹⁰ the mineral planning authority¹¹.

Where the Secretary of State or the Assembly proposes to make a discontinuance order¹², he or it must serve a notice of the proposal on the mineral planning authority¹³. The notice must specify the period, not being less than 28 days from the date of its service, within which the authority may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose¹⁴; and, if within that period the authority so requires, before the Secretary of State or the Assembly makes the order, he or it must give the authority such an opportunity¹⁵.

The statutory provisions¹⁶ relating to the procedure to be followed in connection with the submission by the mineral planning authority of any order¹⁷, its confirmation by the Secretary of State or the Assembly and the service of copies of it as confirmed have effect, subject to any necessary modifications, in relation to any proposal by the Secretary of State or the Assembly to make such an order, its making and the service of copies of it¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 9 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 I.e. any order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 1 (as amended): see PARA 757 ante.

4 I.e. any order under ibid Sch 9 para 3 (as amended): see PARA 758 ante.

- 5 le any order under *ibid* Sch 9 para 5 (as amended): see PARA 762 ante.
- 6 le any order under *ibid* Sch 9 para 6: see PARA 763 ante.
- 7 *Ibid* Sch 9 para 11(1).
- 8 For the meaning of 'mineral planning authority' for these purposes see PARA 757 note 2 ante.
- 9 Town and Country Planning Act 1990 Sch 9 para 11(2).
- 10 For the meaning of 'consult' see PARA 2 note 1 ante.
- 11 Town and Country Planning Act 1990 Sch 9 para 11(3).
- 12 See note 3 *supra*.
- 13 Town and Country Planning Act 1990 Sch 9 para 11(4).
- 14 *Ibid* Sch 9 para 11(5). As to the service of notices see PARA 54 ante.
- 15 *Ibid* Sch 9 para 11(6).
- 16 le the provisions of *ibid* Sch 9 (as amended) (see PARA 757 et seq ante) and of any regulations made under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante.
- 17 le any order to which *ibid* Sch 9 para 11(1) applies.
- 18 *Ibid* Sch 9 para 11(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(1) MINERAL WORKING/ (v) Control of Uses relating to Minerals/F. ENFORCEMENT/768. Enforcement of discontinuance, prohibition and suspension orders; in general.

F. ENFORCEMENT

768. Enforcement of discontinuance, prohibition and suspension orders; in general.

A person who contravenes a discontinuance, prohibition or suspension order¹ is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding the statutory maximum².

Where steps required by such an order have not been taken within the specified period, the mineral planning authority³ may enter the land⁴ and take the required step⁵.

These provisions have already been discussed in more detail in the general context of enforcement⁶.

- 1 As to discontinuance, prohibition and suspension orders see PARA 756 et seq ante.
- 2 See the Town and Country Planning Act 1990 s 189(1)-(3); and PARA 596 ante. As to the statutory defences see s 189(4), (5); and PARA 596 ante.
- 3 For the meaning of 'mineral planning authority' see PARA 29 ante.
- 4 For the meaning of 'land' see PARA 2 note 10 ante.
- 5 See the Town and Country Planning Act 1990 s 190(1), (2); and PARA 597 ante.

6 See PARAS 596-597 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(i) In general/769. Regulations controlling display of advertisements.

(2) CONTROL OF ADVERTISEMENTS

(i) In general

769. Regulations controlling display of advertisements.

Regulations¹ must make provision for restricting or regulating the display of advertisements² so far as it appears to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ to be expedient in the interests of amenity⁵ or public safety⁶. Without prejudice to the generality of the above, any such regulations may provide for:

- 3080 (1) regulating the dimensions, appearance and position of advertisements which may be displayed, the sites on which advertisements may be displayed and the manner in which they are to be affixed to the land⁷;
- 3081 (2) requiring the consent of the local planning authority to be obtained for the display of advertisements, or of advertisements of any class specified in the regulations;
- 3082 (3) applying, in relation to any such consent and to applications for such consent, any of the specified provisions⁸, subject to such adaptations and modifications as may be specified in the regulations;
- 3083 (4) the constitution, for the purposes of the regulations, of such advisory committees as may be prescribed⁹ by the regulations, and for determining the manner in which the expenses of any such committee are to be defrayed¹⁰.

The regulations may also make provision as to:

- 3084 (a) the form and manner in which an application for consent must be made;
- 3085 (b) particulars of such matters as are to be included in the application;
- 3086 (c) any documents or other materials which must accompany the application¹¹.

Regulations made for these purposes may¹² provide that any appeal from the decision of the local planning authority, on an application for its consent under the regulations, shall be to an independent tribunal constituted in accordance with the regulations, instead of being an appeal to the Secretary of State or the Assembly¹³. If any tribunal is so constituted, the Secretary of State or the Assembly may pay to the chairman and members of the tribunal such remuneration, whether by way of salaries or by way of fees, and such reasonable allowances in respect of expenses properly incurred in the performance of their duties, as he may with the consent of the Treasury, or as the Assembly may, determine¹⁴.

¹ ie under the Town and Country Planning Act 1990. As to the making of regulations see generally para 3 ante.

² For the meaning of 'advertisement' see PARA 770 post.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 220 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For guidance as to the consideration of 'amenity' in connection with outdoor advertisement control see *PPG19--Outdoor advertisement control*; and as to the general status of such guidance see PARA 9 ante. As to the meaning of 'amenity' generally see PARA 158 note 8 ante.

6 Town and Country Planning Act 1990 s 220(1). In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly, the Secretary of State made the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended) (see PARA 770 et seq post), which came into force on 6 April 1992: reg 1. Despite the existence of a parallel regulatory regime for granting consent for the display of advertisements under the 1992 Regulations, signage of premises is also a relevant consideration in determining an application for planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see *Entertainu Ltd v First Secretary of State (No 2)* [2004] EWHC 2566 (Admin), [2004] All ER (D) 362 (Oct).

In England, the functions of local planning authorities under the Town and Country Planning Act 1990 s 220 (as amended) are exercisable by district planning authorities: s 1(5)(c) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). Nor does it apply if the application relates to land in a National Park: see Sch 1 para 4(2) (as amended); and PARA 39 ante. For the meaning of 'functions' see PARA 2 note 1 ante; as to local planning authorities see PARA 28 et seq ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to district planning authorities (of which there are none in Wales) see PARA 28 ante; and as to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

As to the powers of local authorities and statutory undertakers to contribute towards any expenses incurred by a local planning authority in or in connection with the performance of any of its functions under Pt VIII Ch III (ss 220-225) (as amended) (see the text and notes 7-15 infra; and PARA 770 et seq post) see s 306(2)(b) (as amended); and PARA 50 ante at head (c) in the text; and as to the application of Pt VIII Ch III (ss 220-225) (as amended) to Crown land see ss 293, 296 (as amended; s 296 prospectively repealed); and PARA 11 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 The provisions so specified are: (1) the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) relating to planning permission and to applications for planning permission, except s 56 (as amended) (see PARA 221 ante), s 65 (as substituted and amended) (see PARA 468 ante), s 69(3), (4) (as substituted) (see PARA 466 ante), s 71 (as amended) (see PARA 473 ante), ss 91-96 (as amended) (see PARAS 519, 537 et seq ante), s 100 (as amended) (see PARA 544 ante), s 101 (as amended) (see PARA 704 ante) and s 101(4), Sch 8 (as amended) (see PARA 705 et seq post); (2) ss 137-141 (as amended) (see PARA 966 et seq post), s 143 (see PARA 974 post), s 144 (as amended) (see PARA 977 post), except so far as they relate to purchase notices served in consequence of such orders as are mentioned in s 137(1)(b), (c) (see PARA 966 post); (3) s 316 (as substituted) (see PARA 891 post): s 220(3) (amended by the Planning and Compensation Act 1991 ss 31, 32, 84(6), Sch 6 paras 8, 21, Sch 7 paras 8, 37, Sch 19 Pts I, II). Until a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121, the Town and Country Planning Act 1990 s 62 (as prospectively substituted) (see PARA 448 ante) is also included in the exceptions listed in head (1) supra: s 220(3)(a) (as so amended; further amended by the Planning and Compulsory Purchase Act 2004 s 120, Sch 9, partly as from a day to be appointed: see PARA 4 ante). For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'purchase notice' see PARA 966 post.

9 For the meaning of 'prescribed' see PARA 16 note 5 ante. At the date at which this title states the law, no such advisory committees had been so constituted.

10 Town and Country Planning Act 1990 s 220(2). Any expenses incurred by the Secretary of State or the Assembly under s 220(5) (see the text and note 14 infra) or in the payment of any committee established under s 220 (as amended) must be paid out of money provided by Parliament: see s 311(1)(a); and PARA 51 ante at head (1) in the text.

11 Ibid s 220(2A) (added by the Planning and Compulsory Purchase Act 2004 s 42(4)).

12 Ie without prejudice to the generality of the powers conferred by the Town and Country Planning Act 1990 s 220 (as amended).

13 Ibid s 220(4).

14 Ibid s 220(5). See also note 10 supra.

UPDATE**769-846 Control of Advertisements**

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(i) In general/770. Meaning of 'advertisement'.

770. Meaning of 'advertisement'.

'Advertisement' means¹, except in so far as the context otherwise requires, any word², letter, model, sign³, placard, board, notice, awning, blind, device or representation, whether illuminated or not, in the nature of, and employed wholly or partly for the purposes of, advertisement, announcement or direction⁴. This includes⁵ any hoarding or similar structure⁶ used or designed, or adapted for use and anything else principally used, or designed or adapted principally for use, for the display of advertisements, and references to the display of advertisements are to be construed accordingly⁷. For the purposes of the relevant regulations⁸, however, 'advertisement' does not include anything employed wholly as a memorial or as a railway signal⁹.

1 Ie in the Town and Country Planning Act 1990.

2 A mere name may be an advertisement: *R v Vaughan, ex p LCC* (1896) 12 TLR 193, DC; *Westminster Gazette v Bell* (1925) 69 Sol Jo 590 at 591, DC. See also *LCC v Savoy Hotel Co Ltd* (1896) 60 JP 457, DC.

3 A high-powered beam of light can be a 'sign', and therefore an advertisement, within the meaning of the statutory definition: *Newport Borough Council v Secretary of State for Wales, Great Yarmouth Borough Council v Secretary of State for the Environment* [1997] JPL 650.

4 Town and Country Planning Act 1990 s 336(1) (definition amended by the Planning and Compensation Act 1991 s 24(a)-(c)).

5 Ie without prejudice to the previous provisions of this definition.

6 A wall or a building with advertisement panels attached is not a similar structure (*Royle v Orme* (1932) 96 JP 468, DC; *Borough Billposting Co Ltd v Manchester Corp'n* [1948] 1 All ER 807, DC; but cf *Horlicks Ltd v Garvie* [1939] 1 All ER 335, DC); nor is a gable end (*Gloucester Billposting Co Ltd v Hopkins* (1932) 96 JP 462, DC).

7 Town and Country Planning Act 1990 s 336(1) (as amended: see note 4 supra).

8 Ie for the purposes of the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 774 et seq post.

9 Ibid reg 2(1).

UPDATE**769-846 Control of Advertisements**

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

770 Meaning of 'advertisement'

NOTE 4--See *Butler v Derby City Council* [2005] EWHC 2835 (Admin), [2006] 1 WLR 1346, DC ('advertisement' included protest banner).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(i) In general/771. Power to make different advertisement regulations for different areas.

771. Power to make different advertisement regulations for different areas.

Regulations controlling the display of advertisements¹ may make different provision with respect to different areas, and in particular may make special provision with respect to:

- 3087 (1) conservation areas²;
- 3088 (2) areas defined for the purposes of the regulations as experimental areas³,
and
- 3089 (3) areas defined for the purposes of the regulations as areas of special control⁴.

The regulations may⁵ prohibit the display in an area of special control of all advertisements except advertisements of such classes, if any, as may be prescribed⁶.

1 The regulations made for the purposes of the Town and Country Planning Act 1990 s 220 (as amended): see PARA 769 ante. For the meaning of 'advertisement' see PARA 770 ante.

2 For the meaning of 'conservation area' see PARA 1169 post. For general restrictions in respect of advertisements in conservation areas see PARAS 779, 802, 803, 808 post; for guidance on these restrictions see *PPG19--Outdoor advertisement control*; and as to the general status of such guidance see PARA 9 ante.

3 An area may be so defined as an experimental area for a prescribed period for the purpose of assessing the effect on amenity or public safety of advertisements of a prescribed description: Town and Country Planning Act 1990 s 221(2). For the meaning of 'prescribed' see PARA 16 note 5 ante; and as to the meaning of 'amenity' for these purposes see PARA 769 note 5 ante.

4 Ibid s 221(1). An area may be so defined as an area of special control if it is (1) a rural area; or (2) an area which appears to the Secretary of State or, in relation to Wales, to the National Assembly for Wales to require special protection on grounds of amenity: s 221(3). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under s 221 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly, the Secretary of State made the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, regs 18, 19, Sch 5: see PARAS 826-828 post. As to the making of regulations generally see PARA 3 ante.

In England, the functions of local planning authorities under the Town and Country Planning Act 1990 s 221 (as amended) are exercisable by district planning authorities: see s 1(5)(c) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 ante; as to local planning authorities see PARA 28 et seq ante; and as to Greater London see LONDON

GOVERNMENT vol 29(2) (Reissue) PARA 29. As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

5 le without prejudice to the generality of *ibid* s 221(1): see the text and notes 1-4 *supra*.

6 *Ibid* s 221(4). Areas of special control for the purposes of regulations under s 221 (as amended) may be defined by means of orders made or approved by the Secretary of State or the Assembly in accordance with the provisions of the regulations: s 221(5). Except in so far as may be provided by s 288 (as amended) (see PARA 47 ante), the validity of any order made in pursuance of s 221(5) may not be questioned in any legal proceedings whatsoever: see s 284(1)(e), (2)(d); and PARA 43 ante.

Where the Secretary of State or the Assembly is authorised by the regulations to make or approve any such order, the regulations must provide for (1) the publication of notice of the proposed order in such manner as may be prescribed; (2) the consideration of objections duly made to it; and (3) the holding of such inquiries or other hearings as may be prescribed, before the order is made or approved: s 221(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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772. Other statutory controls on advertisements.

A number of local Acts prohibit the erection of hoardings and similar structures in or abutting on or adjoining¹ any street without the consent of the local authority, and byelaws for good rule and government and the suppression of nuisances² commonly contain provisions respecting advertising matter in streets.

No person may use for any purpose a hoarding or similar structure that is in or adjoins any street unless it is securely fixed to the satisfaction of the council which, in relation to that street, is the appropriate authority³; and various special enactments control the exhibition of advertisements and placards in streets in London⁴.

A person who, without either the consent of the highway authority for the highway in question or an authorisation given by or under an enactment or a reasonable excuse, paints or otherwise inscribes or affixes any picture, letter, sign or other mark upon the surface of a highway or upon any tree, structure or works on or in a highway is guilty of an offence⁵.

1 For the meaning of 'in or abutting on or adjoining' see *Barnett v Covell* (1903) 68 JP 93, DC; *Rockleys Ltd v Pritchard* (1909) 101 LT 575, DC; *Stockport Corp v Rollinson* (1910) 102 LT 567, DC.

2 le under the Local Government Act 1972 s 235 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 555.

3 See the Highways Act 1980 s 173 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 377.

4 See eg the London County Council (General Powers) Act 1954 s 20 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 848.

⁵ See the Highways Act 1980 s 132 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 380.

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769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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773. Planning permission not needed for advertisements complying with the regulations.

Where the display of advertisements in accordance with regulations made¹ for the control of advertisements² involves development³ of land⁴:

- 3090 (1) planning permission⁵ for that development is deemed⁶ to be granted; and
- 3091 (2) no application is necessary⁷ for that development⁸.

¹ ie under the Town and Country Planning Act 1990 s 220 (as amended); see PARA 769 ante.

² For the meaning of 'advertisement' see PARA 770 ante.

³ For the meaning of 'development' see PARA 217 ante.

⁴ For the meaning of 'land' see PARA 2 note 10 ante.

⁵ For the meaning of 'planning permission' see PARA 43 note 6 ante.

⁶ ie by virtue of the Town and Country Planning Act 1990 s 222.

⁷ ie under ibid Pt III (ss 55-106B) (as amended); see PARA 217 et seq ante.

⁸ Ibid s 222. As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/A. IN GENERAL/774. Application of control regulations.

(ii) Control of Display

A. IN GENERAL

774. Application of control regulations.

The Town and Country Planning (Control of Advertisements) Regulations 1992¹ apply to the display on any site² in England or Wales of any advertisement³.

The provisions relating to deemed consent⁴ and express consent⁵ respectively do not apply to any advertisement falling within Class A to Class J⁶ provided the advertisement complies with any specified conditions and limitations⁷ and:

- 3092 (1) in the case of an advertisement falling within Class G⁸ it complies with certain⁹ of the standard conditions; and
- 3093 (2) in any other case, it complies with all the standard conditions¹⁰.

1 Ie the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 770 ante; the text and notes 2-10 infra; and PARA 775 et seq post.

2 For these purposes, 'site' means any land or building, other than an advertisement, on which an advertisement is displayed: *ibid* reg 2(1). 'Site' means the parcel of land upon which an advertisement is displayed, rather than the specific position within that parcel of land: *Barking and Dagenham London Borough Council v Mills & Allen Ltd* [1997] 3 PLR 1, DC. For the meaning of 'advertisement' see PARA 770 ante.

3 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(1). For general guidance on the control of advertisements *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante. As to aerial advertising and propaganda see AIR LAW vol 2 (2008) PARA 541.

4 Ie the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Pt II (regs 6-8): see PARA 789 et seq post.

5 Ie *ibid* Pt III (regs 9-17) (as amended): see PARA 817 et seq post.

6 Ie any advertisement falling within a description set out in *ibid* reg 3(2), Sch 2 (as amended): see PARA 779 et seq post.

7 Ie any conditions and limitations specified in *ibid* reg 3(2), Sch 2 (as amended).

8 Ie any advertisement falling within *ibid* Sch 2, Class G: see PARA 785 post.

9 Ie the standard conditions set out in *ibid* reg 2(1), Sch 1 paras 1, 2, 3 and 5: see PARA 775 post at heads (1), (2), (3), (5) in the text. For these purposes, 'standard conditions' means the conditions specified in Sch 1 (see PARA 775 post): reg 2(1).

10 *Ibid* reg 3(2).

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SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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775. Standard conditions.

The standard conditions are that:

- 3094 (1) any advertisements¹ displayed, and any site² used for the display of advertisements, must be maintained in a clean and tidy condition to the reasonable satisfaction of the local planning authority³;
- 3095 (2) any structure or hoarding erected or used principally for the purpose of displaying advertisements must be maintained in a safe condition⁴;
- 3096 (3) where an advertisement is required⁵ to be removed, the removal must be carried out to the reasonable satisfaction of the local planning authority⁶;
- 3097 (4) no advertisement may be displayed without the permission of the owner of the site or any other person with an interest in the site entitled to grant permission⁷;
- 3098 (5) no advertisement may be sited or displayed so as to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal or aid to navigation by water or air, or so as otherwise to render hazardous the use of any highway, railway, waterway⁸, or aerodrome, civil or military⁹.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For the meaning of 'site' see PARA 774 note 2 ante.

3 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1), Sch 1 para 1. In the application of the 1992 Regulations to England, 'local planning authority' means (1) for land in the area of an urban development corporation, except in reg 18 (see PARA 826 post), that corporation where it is the local planning authority for the purposes of the Town and Country Planning Act 1990 s 220 (as amended) (see PARA 769 ante) and s 224 (as amended) (see PARA 830 post); (2) for land in a National Park which is land that is not in a metropolitan county, the county planning authority for the area where the land is situated; and (3) in any other case, the relevant district planning authority or metropolitan district or London borough council; and in their application in Wales 'local planning authority' means (a) subject to head (b) infra, the local planning authority for the area in which the land in question is situated; (b) for land in the area of any urban development corporation, except in reg 18, that corporation where it is the local planning authority for the purposes of the Town and Country Planning Act 1990 ss 220, 224 (as amended): Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1), (2), (2A) (reg 2(2) amended, and reg 2(2A) added, by SI 1996/525). As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636; for the meaning of 'London borough' see PARA 28 note 7 ante; as to urban development corporations see PARA 1428 et seq post; and as to local planning authorities generally see PARA 28 et seq ante.

4 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 1 para 2.

5 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARAS 770, 774 ante, PARA 776 et seq post.

6 Ibid Sch 1 para 3.

7 Ibid Sch 1 para 4.

8 For these purposes, 'waterway' includes coastal waters: *ibid* reg 2(1).

9 *Ibid* Sch 1 para 5.

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769-846 Control of Advertisements

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776. Powers to be exercised in the interests of amenity and public safety.

A local planning authority¹ must exercise its powers² only in the interests of amenity³ and public safety⁴, taking account of any material factors, and in particular:

3099 (1) in the case of amenity, of the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest, disregarding, if the authority thinks fit, any advertisement⁵ being displayed there;

3100 (2) in the case of public safety:

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258. (a) the safety of any person who may use any road, railway, waterway⁶, dock, harbour or aerodrome;

259. (b) whether any display of advertisements is likely to obscure, or hinder the ready interpretation of, any road traffic sign, railway signal, or aid to navigation by water or air⁷.

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In determining an application for consent for the display of advertisements⁸, or considering whether to make an order revoking or modifying a consent⁹, the local planning authority may have regard to any material change in circumstances likely to occur within the period for which the consent is required or granted¹⁰.

Unless it appears to a local planning authority to be required in the interests of amenity or public safety, an express consent¹¹ for the display of advertisements may not contain any limitation or restriction relating to the subject matter, content or design of what is to be displayed¹².

A consent for the display of advertisements takes effect as consent for the use of the site¹³ for the purposes of the display, whether by the erection of structures or otherwise, and for the benefit of any person interested in the site¹⁴.

1 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

- 2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARAS 770-775 ante, PARA 777 et seq post.
- 3 As to the meaning of 'amenity' for these purposes see PARA 769 note 5 ante.
- 4 For guidance as to the consideration of, and consultation regarding, the possible effect of advertisements on public safety see *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante. See also [1985] JPL 819.
- 5 For the meaning of 'advertisement' see PARA 770 ante. See also *More O'Ferrall Ltd v Harrow UDC* [1947] KB 66, [1946] 2 All ER 489, DC.
- 6 For the meaning of 'waterway' see PARA 775 note 8 ante.
- 7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(1). A decision to prosecute for breach of the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended) is not, however, subject to the duties set out in reg 4; and the local authority is not confined to prosecuting breaches only when it is in the interest of public safety or amenity to do so: *Kingsley v Hammersmith and Fulham London Borough Council* (1991) 62 P & CR 589, DC.
- 8 As to the power to deal with applications see PARA 820 post.
- 9 As to the revocation or modification of express consent see PARA 823 post.
- 10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(2).
- 11 For the meaning of 'express consent' see PARA 777 note 3 post.
- 12 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(3). The planning policies of a local planning authority are, however, capable, as a matter of law, of being factors material to the grant of express consent provided those policies are concerned with amenity: *Decaux Ltd v First Secretary of State* [2003] EWHC 407 (Admin), [2003] All ER (D) 134 (Feb).
- 13 For the meaning of 'site' see PARA 774 note 2 ante.
- 14 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4(4).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/A. IN GENERAL/777. Requirement for consent.

777. Requirement for consent.

No advertisement¹ may be displayed² without express³ consent or deemed⁴ consent⁵. This requirement for consent does not, however, apply to the display:

- 3101 (1) outside any area of special control⁶, of an advertisement falling within Class A to Class J⁷; or
- 3102 (2) within an area of special control, of such an advertisement as is mentioned in head (1) above, other than one falling within Class A⁸.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 Ie except an advertisement displayed in accordance with the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 5(2): see the text and notes 6-8 infra.

3 For these purposes, 'express consent' means consent granted by the local planning authority or by the Secretary of State or, in relation to Wales, by the National Assembly for Wales on an application in that behalf (see PARA 817 post): *ibid* regs 2(1), 5(1). For the meaning of 'local planning authority' see PARA 775 note 3 ante; as to the Secretary of State see PARA 19 ante; as to transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For these purposes, 'deemed consent' means consent granted by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6 (see PARA 789 et seq post): regs 2(1), 5(1).

5 *Ibid* reg 5(1). As to the penalties for displaying advertisements in contravention of the regulations see PARA 830 post; and as to the provisions enabling a local planning authority to require the removal of advertisements so displayed see PARA 831 post. A person convicted of displaying an advertisement contrary to the 1992 Regulations may not continue to display the advertisement notwithstanding that he has appealed against his conviction: *O'Brien v Hertsmer Borough Council* (1998) 76 P & CR 441.

6 For these purposes, 'area of special control' means an area designated by an order under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 18 (see PARA 826 post): reg 2(1).

7 Ie such an advertisement as is mentioned in *ibid* reg 3(2): see PARA 774 ante.

8 *Ibid* reg 5(2). As to advertisements falling within Sch 2, Class A see PARA 779 post.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/A. IN GENERAL/778. Extension of time limits.

778. Extension of time limits.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may, in any particular case, extend the time within which anything is required to be done under the regulations controlling the display of advertisements³ or within which any objection, representation or claim for compensation may be made⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 770 et seq ante, PARA 779 et seq post.

4 Ibid reg 25.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/779. Class A: balloons.

B. EXCEPTIONS

779. Class A: balloons.

The display of an advertisement¹ on or consisting of a balloon² not more than 60 metres above ground level does not require³ express consent⁴ or deemed consent⁵ provided that the following conditions and limitations are satisfied:

- 3103 (1) the site⁶ of the advertisement is not within an area of outstanding natural beauty⁷, a conservation area⁸, a National Park⁹, the Broads¹⁰ or an area of special control¹¹;
- 3104 (2) not more than one such advertisement may be displayed on the site at any one time;
- 3105 (3) the site may not be used for the display of advertisements on more than ten days in total in any calendar year¹².

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For these purposes, 'balloon' means a tethered balloon or similar object: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1).

3 le provided that it complies with any conditions and limitations specified in ibid reg 3(2), Sch 2 (as amended) (see the text and notes 4-12 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

6 For these purposes 'the site' means (1) in a case where the advertisement is being displayed by a person, other than the occupier of the land, who is using, or proposing to use, the land to which the balloon is attached for a particular activity, other than the display of advertisements, for a temporary period, the whole of the land used, or to be used, for that activity; or (2) in any other case, the land to which the balloon is attached and all land normally occupied together therewith: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Class A para 4. For the normal meaning of 'site' see PARA 774 note 2 ante.

Any reference to a person displaying an advertisement includes (a) the owner and occupier of the land on which the advertisement is displayed; (b) any person to whose goods, trade, business or other concerns publicity is

given by the advertisement; and (c) the person who undertakes or maintains the display of an advertisement: reg 2(3). The normal meaning of references to the land, the building, the site or premises on which the advertisement is displayed does not apply for these purposes: see reg 2(4); and PARA 780 note 2 post.

7 For these purposes, 'area of outstanding natural beauty' means an area designated as such by an order made under the National Parks and Access to the Countryside Act 1949 s 87 (repealed) or the Countryside and Rights of Way Act 2000 s 82 (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 658): Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1) (definition amended by virtue of the Countryside and Rights of Way Act 2000 s 93, Sch 15 Pt II).

8 As to conservation areas see PARA 1169 et seq post.

9 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

10 As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735.

11 For the meaning of 'area of special control' see PARA 777 note 6 ante.

12 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class A paras 1-3.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/780. Class B: advertisements displayed on inclosed land.

780. Class B: advertisements displayed on inclosed land.

An advertisement¹ displayed² on inclosed land³ does not require⁴ express consent⁵ or deemed consent⁶ provided that the advertisement is not readily visible from outside the inclosed land or from any place to which the public has a right of access⁷.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 Any reference in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, except in reg 3(2), Sch 2, Class A (see PARA 779 ante), to the land, the building, the site or the premises on which an advertisement is displayed includes, in the case of an advertisement which is displayed on, or which consists of, a balloon, a reference to the land, the building, the site or other premises to which the balloon is attached and to all the land, buildings or other premises normally occupied therewith: reg 2(4). For the meaning of 'balloon' see PARA 779 note 2 ante. As to whether a balloon tied to a vehicle can be attached to the site see *Wadham Stringer (Fareham) Ltd v Borough of Fareham* (1986) 53 P & CR 336, DC.

3 For these purposes, 'inclosed land' includes any railway station, and its yards, or bus station, together with its forecourt, whether inclosed or not; but does not include any public park, public garden or other land held for use or enjoyment of the public, or, save as herein specified, any inclosed railway land normally used for the carriage of passengers or goods by rail: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class B para 2.

4 It is provided that it complies with any conditions and limitations specified in *ibid* Sch 2 (as amended) (see the text and notes 5-7 *infra*) and all the standard conditions. As to the standard conditions see PARA 775 ante.

5 For the meaning of 'express consent' see PARA 777 note 3 ante.

6 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class B para 1.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/781. Class C: advertisements displayed on or in a vehicle.

781. Class C: advertisements displayed on or in a vehicle.

An advertisement¹ displayed on or in a vehicle² does not require³ express consent⁴ or deemed consent⁵ provided that the vehicle is not normally employed except as a moving vehicle or used principally for the display of advertisements⁶.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For these purposes, 'vehicle' includes a vessel on any inland waterway: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1). For the meaning of 'waterway' see PARA 775 note 8 ante.

3 It is provided that it complies with any conditions and limitations specified in *ibid* reg 3(2), Sch 2 (as amended) (see the text and notes 4-6 *infra*) and all the standard conditions. As to the standard conditions see PARA 775 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

6 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class C para 1.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/782. Class D: advertisements incorporated in the fabric of a building.

782. Class D: advertisements incorporated in the fabric of a building.

An advertisement¹ incorporated in the fabric of a building² does not require³ express consent⁴ or deemed consent⁵ provided that the building or any external face of it is not used principally for the display of advertisements⁶.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For these purposes, an advertisement fixed to, or painted on, a building is not to be regarded as incorporated in its fabric: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Class D para 2(a). A scaffold is not incorporated into the fabric of the building and an advertisement attached to a scaffold does not have deemed consent: *Kensington and Chelsea London Borough Council v Harvey Nichols & Co Ltd* [2001] EWCA Civ 702, [2002] 1 P & CR 29.

3 It is provided that it complies with any conditions and limitations specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2 (as amended) (see the text and notes 4-6 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

6 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class D para 1. For these purposes, a hoarding or similar structure is to be regarded as a building used principally for the display of advertisements: Sch 2, Class D para 2(b).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/783. Class E: advertisements displayed on articles for sale or containers in or from which articles are sold.

783. Class E: advertisements displayed on articles for sale or containers in or from which articles are sold.

An advertisement¹ displayed on an article² for sale or on the container in, or from which, an article is sold does not require³ express consent⁴ or deemed consent⁵ provided that the following conditions and limitations are satisfied:

- 3106 (1) the advertisement refers only to the article for sale;

- 3107 (2) the advertisement may not be illuminated⁶; and
 3108 (3) it may not exceed 0.1 square metre in area⁷.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For these purposes, 'article' includes a gas or liquid: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Class E para 4.

3 It is provided that it complies with any conditions and limitations specified in ibid Sch 2 (as amended) (see the text and notes 4-7 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

6 For these purposes, 'illuminated advertisement' means an advertisement which is designed or adapted to be illuminated by artificial lighting, directly or by reflection, and which is so illuminated: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1).

7 Ibid Sch 2, Class E paras 1-3.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/784. Class F: advertisements relating specifically to pending elections.

784. Class F: advertisements relating specifically to pending elections.

An advertisement¹ relating specifically to a pending Parliamentary, European Parliamentary or local government election does not require² express consent³ or deemed consent⁴ provided that the advertisement is removed within 14 days after the close of the poll in the election to which it relates⁵.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 It is provided that it complies with any conditions and limitations specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2 (as amended) (see the text and notes 3-5 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

3 For the meaning of 'express consent' see PARA 777 note 3 ante.

4 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

5 Town and Country Planning (Control of Advertisements) Regulations 1992 Sch 2, Class F para 1 (amended by SI 1994/2351).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/785. Class G: advertisements required to be displayed by Standing Orders etc.

785. Class G: advertisements required to be displayed by Standing Orders etc.

An advertisement¹ required to be displayed by Standing Orders of either House of Parliament or by any enactment or any condition imposed by any enactment on the exercise of any power or function does not require² express consent³ or deemed consent⁴ provided that the following conditions and limitations are satisfied:

- 3109 (1) if the advertisement would otherwise⁵ fall within any Class of advertisements which may be displayed with deemed consent⁶, any conditions imposed on that Class as to size, height or number of advertisements displayed apply to it;
- 3110 (2) in a case to which head (1) above does not apply, the size, height, and number of advertisements displayed may not exceed what is necessary to achieve the purpose for which the advertisement is required; and
- 3111 (3) the advertisement may not be displayed after the expiry of the period during which it is required or authorised to be displayed, or, if there is no such period, the expiry of a reasonable time after its purpose has been satisfied⁷.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 Ie provided that it complies with any conditions and limitations specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2 (as amended) (see the text and notes 3-7 infra) and the standard conditions specified in reg 2(1), Sch 1 paras 1, 2, 3 and 5 (see PARA 775 ante at heads (1), (2), (3), (5) in the text).

3 For the meaning of 'express consent' see PARA 777 note 3 ante.

4 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

5 Ie if it were not within the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class G.

6 Ie any Class in ibid reg 6, Sch 3: see PARAS 791-814 post.

7 Ibid Sch 2, Class G paras 1-3.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/B. EXCEPTIONS/786. Class H: traffic signs.

786. Class H: traffic signs.

A traffic sign¹ does not require² express consent³ or deemed consent⁴.

1 For these purposes, 'a traffic sign' means a traffic sign as defined in the Road Traffic Regulation Act 1984 s 64(1) (see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARA 830 et seq): Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Class H para 1.

2 It is provided that it complies with any conditions and limitations specified in ibid Sch 2 (as amended) (see the text and notes 3-4 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

3 For the meaning of 'express consent' see PARA 777 note 3 ante.

4 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class H. For the meaning of 'deemed consent' see PARA 777 note 4 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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787. Class I: national flags.

The national flag of any country does not require¹ express consent² or deemed consent³ provided that the following conditions and limitations are satisfied:

- 3112 (1) each flag must be displayed on a single vertical flagstaff; and
- 3113 (2) neither the flag nor the flagstaff may display any advertisement or subject matter additional to the design of the flag⁴.

1 It is provided that it complies with any conditions and limitations specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2 (as amended) (see the text and notes 2-4 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

2 For the meaning of 'express consent' see PARA 777 note 3 ante.

3 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

4 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class I paras 1, 2.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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788. Class J: advertisements displayed inside buildings.

An advertisement¹ displayed inside a building² does not require³ express consent⁴ or deemed consent⁵ provided that the following conditions and limitations are satisfied:

- 3114 (1) the advertisement may not be illuminated⁶;
- 3115 (2) the building in which the advertisement is displayed is not used principally for the display of advertisements; and
- 3116 (3) no part of the advertisement may be within one metre of any external door, window or other opening, through which it is visible from outside the building⁷.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 'Displayed inside a building' means displayed inside a structure not on a forecourt (see *Dominant Sites Ltd v Berkshire County Council* (1955) 6 P & CR 10), although 'building' includes a canopy over a forecourt but not the forecourt itself (see *Heron Service Stations Ltd v Coupe* [1973] 2 All ER 110, [1973] 1 WLR 502, HL). Cf paras 790, 804 post.

3 It is provided that it complies with any conditions and limitations specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2 (as amended) (see the text and notes 4-7 infra) and all the standard conditions. As to the standard conditions see PARA 775 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

6 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 2, Class J paras 1-3.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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C. DEEMED CONSENT

(A) IN GENERAL

789. Deemed consent; in general.

Deemed consent¹ is granted² for the display of an advertisement³ falling within Class 1 to Class 14⁴ subject:

- 3117 (1) to any specified conditions and limitations⁵ in relation to that Class; and
- 3118 (2) to the standard conditions⁶.

¹ For the meaning of 'deemed consent' see PARA 777 note 4 ante.

² Ie subject to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 7 (see PARA 815 post), reg 8 (see PARA 816 post) and, in the case of an area of special control, reg 19 (see PARA 828 post). For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

³ For the meaning of 'advertisement' see PARA 770 ante.

⁴ Ie any class specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I (as amended): see PARAS 791-814 post.

⁵ Ie any conditions and limitations specified in ibid Sch 3 Pt I (as amended).

⁶ Ibid reg 6(1). As to the standard conditions see PARA 775 ante; as to the Secretary of State's or the National Assembly for Wales's power to give directions restricting deemed consent see PARA 815 post; as to the local authority's power to serve a notice of discontinuance see PARA 816 post; and as to the Secretary of State's or the Assembly's power to serve a notice of discontinuance see PARA 829 post.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/(A) In general/790. Meaning of 'business premises' for the purposes of deemed consent.

790. Meaning of 'business premises' for the purposes of deemed consent.

'Business premises' means¹ any building or part of a building² normally used for the purpose of any professional, commercial or industrial undertaking, or for providing services to members of the public or of any association, and includes a public restaurant, licensed premises and a place of public entertainment, but not:

- 3119 (1) a building used as an institution of a religious, educational, cultural, recreational, or medical or similar character;
- 3120 (2) a building designed for use as one or more separate dwellings, unless it was normally used, immediately before 1 September 1949, for any such purpose or has been adapted for use for any such purpose by the construction of a shop front or the making of a material alteration of a similar kind to its external appearance;
- 3121 (3) any forecourt³ or other land forming part of the curtilage of a building;
- 3122 (4) any fence, wall or similar screen or structure, unless it forms part of the fabric of a building⁴.

1 le for the purposes of the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), (2), Sch 3 (as amended): see PARA 791 et seq post.

2 A kerb in front of a wall may be part of a building: *Cooper v Bailey* (1956) 6 P & CR 261, DC (petrol filling station). Whether a particular construction is a building is a question of fact: *Cooper v Bailey* supra at 265. See also *Blakemore v Heron Service Stations Ltd* (1971) 22 P & CR 601, DC; affd sub nom *Heron Service Stations Ltd v Coupe* [1973] 2 All ER 110, [1973] 1 WLR 502, HL.

3 For these purposes, 'forecourt' includes any fence, wall or similar screen or structure inclosing a forecourt and not forming part of the fabric of a building constituting business premises: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

4 Ibid Sch 3 Pt II para 1(1).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/791. Class 1A: functional advertisements of local authorities, statutory undertakers and public transport undertakers.

(B) CLASSES OF ADVERTISEMENTS FOR WHICH DEEMED CONSENT GRANTED

791. Class 1A: functional advertisements of local authorities, statutory undertakers and public transport undertakers.

Deemed consent¹ is granted² for an advertisement³ displayed wholly for the purpose of announcement or direction in relation to any of the functions of a local authority, or to the operation of a statutory undertaking⁴ or a public transport undertaking⁵, which:

- 3123 (1) is reasonably required to be displayed for the safe or efficient performance of those functions, or operation of that undertaking; and
- 3124 (2) cannot be displayed by virtue of any other specified Class⁶.

Illumination⁷ is not, however, permitted unless reasonably required for the purpose of the advertisement⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 See under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1); see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For these purposes, 'statutory undertaker' includes, in addition to any person mentioned in the Town and Country Planning Act 1990 s 262(1) (see PARA 1009 post), the Civil Aviation Authority, a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended) (air traffic services: see AIR LAW vol 2 (2008) PARA 139 et seq), the British Airports Authority, the Coal Authority or any licensed operator within the meaning of the Coal Industry Act 1994 s 65(1), any gas transporter within the meaning of the Gas Act 1986 Pt I (ss 4AA-48) (as amended), any electricity supplier or distributor within the meaning of the Electricity Act 1989 Pt I (ss 3A-64) (as amended), any person who is a licence holder, or who has the benefit of a licence exemption, within the meaning of the Railways Act 1993 Pt I (ss 1-83) (as amended), a universal postal service provider in connection with the provision of a universal postal service, the Environment Agency, any water or sewerage undertaker and any electronic communications code operator; and, subject to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1A) (as added), statutory undertaking is to be interpreted accordingly: reg 2(1) (definition amended by the Environment Act 1995 s 120, Sch 22 para 233(1); by SI 1994/2351; SI 2001/1149; SI 2001/4050; SI 2003/2155; and by virtue of the Utilities Act 2000 ss 31(1), 76(7)). The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for these purposes and references to his undertaking are to be construed accordingly: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(1A) (added by SI 2001/1149). For these purposes, a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended) is not to be considered to be a statutory undertaker unless the person is carrying out activities authorised by the licence and the person's undertaking is not to be considered to be a statutory undertaking except to the extent that it is the person's undertaking as licence holder: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 2(2B) (added by SI 2001/4050).

5 For these purposes, 'public transport undertaking' means an undertaking engaged in the carriage of passengers in a manner similar to that of a statutory undertaking: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

6 Ibid reg 6(1), Sch 3 Pt I, Class 1A.

7 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 1A para (1).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

791 Class 1A: functional advertisements of local authorities, statutory undertakers and public transport undertakers

NOTE 4--A 'statutory undertaker' also includes any person who holds a European licence granted pursuant to the Railway (Licensing of Railway Undertakings) Regulations 2005, SI 2005/3050, or pursuant to any action taken by an EEA State (ie a member state, Norway, Iceland or Liechtenstein) for the purpose of implementing EC Council Directive 1995/18: SI 1992/666 reg 2(1) (amended by SI 2005/3050).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/792. Class 1B: advertisements displayed by local planning authorities on land in their areas.

792. Class 1B: advertisements displayed by local planning authorities on land in their areas.

Deemed consent¹ is granted² for an advertisement³ displayed by a local planning authority⁴ on land in its area⁵; but in an area of special control⁶ such an advertisement may be displayed only if the authority could have granted express consent⁷ for its display⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

5 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 1B. For the meaning of references to the land on which an advertisement is displayed see PARA 780 note 2 ante.

6 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

7 For the meaning of 'express consent' see PARA 777 note 3 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 1B para (1).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/793. Class 2A: advertisements displayed for the purpose of identification etc.

793. Class 2A: advertisements displayed for the purpose of identification etc.

Deemed consent¹ is granted² for an advertisement³ displayed for the purpose of identification, direction or warning, with respect to the land or building on which it is displayed, provided that the following conditions and limitations are satisfied:

- 3125 (1) no such advertisement may exceed 0.3 square metre in area⁴;
- 3126 (2) illumination⁵ is not permitted;
- 3127 (3) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁶;
- 3128 (4) no part of the advertisement may be more than 4.6 metres above ground level⁷, or 3.6 metres in an area of special control⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 Where a maximum area is specified, in relation to any Class in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I (as amended), in the case of a double-sided board, the area of one side only is to be taken into account: Sch 3 Pt II para 1(2). A restriction as to size is not evaded by dividing an advertisement into smaller pieces: *Horlicks Ltd v Garvie* [1939] 1 All ER 335, DC.

5 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

6 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

7 For these purposes, 'ground level', in relation to the display of advertisements on any building, means the ground-floor level of that building: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

8 Ibid Sch 3 reg 6(1), Pt I, Class 2A paras (1)-(4).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/794. Class 2B: advertisements relating to persons, partnerships or companies.

794. Class 2B: advertisements relating to persons, partnerships or companies.

Deemed consent¹ is granted² for an advertisement³ relating to any person, partnership or company separately carrying on a profession, business or trade at the premises where it is displayed, provided that the following conditions and limitations are satisfied:

- 3129 (1) no such advertisement may exceed 0.3 square metre in area⁴;
- 3130 (2) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁵;
- 3131 (3) no part of the advertisement may be more than 4.6 metres above ground level⁶, or 3.6 metres in an area of special control;
- 3132 (4) not more than one such advertisement is permitted for each person, partnership or company or, in the case of premises with entrances on different road frontages, one such advertisement at each of two such entrances;
- 3133 (5) illumination⁷ is not permitted unless the advertisement states that medical or similar services or supplies are available on the premises and the illumination is in a manner reasonably required to fulfil the purpose of the advertisement⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

6 For the meaning of 'ground level' see PARA 793 note 7 ante.

7 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 2B paras (1)-(5).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/795. Class 2C: advertisements relating to institutions of religious etc character, hotels etc.

795. Class 2C: advertisements relating to institutions of religious etc character, hotels etc.

Deemed consent¹ is granted² for an advertisement³ relating to any institution of a religious, educational, cultural, recreational or medical or similar character, or to any hotel, inn or public house, block of flats, club, boarding house or hostel, at the premises where it is displayed, provided that the following conditions and limitations are satisfied:

- 3134 (1) not more than one such advertisement is permitted in respect of each premises or, in the case of premises with entrances on different road frontages, one such advertisement at each of two such entrances;
- 3135 (2) no such advertisement may exceed 1.2 square metres in area⁴;
- 3136 (3) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁵;
- 3137 (4) no part of the advertisement may be more than 4.6 metres above ground level⁶, or 3.6 metres in an area of special control;
- 3138 (5) illumination⁷ is not permitted unless the advertisement states that medical or similar services or supplies are available at the premises and the illumination is in a manner reasonably required to fulfil the purpose of the advertisement⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

6 For the meaning of 'ground level' see PARA 793 note 7 ante.

7 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 2C paras (1)-(5).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/796. Class 3A: advertisements relating to sale or letting of property.

796. Class 3A: advertisements relating to sale or letting of property.

Deemed consent¹ is granted² for an advertisement³ relating to the sale or letting, for residential, agricultural, industrial or commercial use or for development for such use, of the land or premises on which it is displayed, provided that the following conditions and limitations are satisfied:

3139 (1) not more than one such advertisement, consisting of a single board or two joined boards⁴, is permitted and, where more than one such advertisement is displayed, the first to be displayed is taken to be the one permitted⁵;

3140 (2) no advertisement may be displayed indicating that land or premises have been sold or let, other than by the addition to an existing advertisement of a statement that a sale or letting has been agreed, or that the land or premises have been sold or let, subject to contract;

3141 (3) any such advertisement must be removed within 14 days after the sale is completed or a tenancy is granted;

3142 (4) no such advertisement may exceed in area:

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260. (a) where the advertisement relates to residential use or development, 0.5 square metre or, in the case of two joined boards together, 0.6 square metre in aggregate; and

261. (b) where the advertisement relates to any other use or development, 2 square metres or, in the case of two joined boards together, 2.3 square metres in aggregate⁶;

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3143 (5) where the advertisement is displayed on a building, the maximum projection permitted from the face of the building is 1 metre;

3144 (6) illumination⁷ is not permitted;

3145 (7) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁸;

3146 (8) no part of the advertisement may be higher above ground level⁹ than 4.6 metres, or 3.6 metres in an area of special control or, in the case of a sale or letting of part only of a building, the lowest level of that part of the building on which display is reasonably practicable¹⁰.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For these purposes, 'joined boards' means boards joined at an angle, so that only one surface of each is usable for advertising: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

5 See *Porter v Honey* [1988] 3 All ER 1045, [1988] 1 WLR 1420, HL (where an estate agent who had been instructed to sell or let a residential property displayed a board outside the property at a time when no other

board was displayed, he did not commit an offence if another agent, either to his knowledge or without it, thereafter displayed a second board outside that property).

6 As to restrictions in area see PARA 793 note 4 ante.

7 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

8 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

9 For the meaning of 'ground level' see PARA 793 note 7 ante.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3A paras (1)-(8).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

796 Class 3A: advertisements relating to sale or letting of property

TEXT AND NOTE 6--See *Barbara Rees Ltd v Cardiff CC* [2006] EWHC 1617 (Admin), [2006] All ER (D) 13 (Jul) (words 'let by' on sign were unambiguous confirmation that tenancy had been granted so not an advertisement for letting of premises).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/797. Class 3B: advertisements relating to sale of goods or livestock.

797. Class 3B: advertisements relating to sale of goods or livestock.

Deemed consent¹ is granted² for an advertisement³ announcing the sale of goods or livestock, and displayed on the land where the goods or livestock are situated or where the sale is held, not being land which is normally used, whether at regular intervals or otherwise, for the purpose of holding such sales, provided that the following conditions and limitations are satisfied:

- 3147 (1) not more than one such advertisement may be displayed at any one time on the land concerned and, where more than one such advertisement is displayed, the first to be displayed is taken to be the one permitted⁴;
- 3148 (2) no such advertisement may be displayed earlier than 28 days before the day, or first day, on which the sale is due to take place;
- 3149 (3) any such advertisement must be removed within 14 days after the sale is completed;
- 3150 (4) no such advertisement may exceed 1.2 square metres in area⁵;
- 3151 (5) illumination⁶ is not permitted;

3152 (6) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁷;

3153 (7) no part of the advertisement may be more than 4.6 metres above ground level⁸, or 3.6 metres in an area of special control⁹.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to the first advertisement see *Porter v Honey* [1988] 3 All ER 1045, [1988] 1 WLR 1420, HL, cited in PARA 796 note 5 ante.

5 As to restrictions in area see PARA 793 note 4 ante.

6 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

7 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

8 For the meaning of 'ground level' see PARA 793 note 7 ante.

9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3B paras (1)-(7).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/798. Class 3C: advertisements relating to the carrying out of building or similar work.

798. Class 3C: advertisements relating to the carrying out of building or similar work.

Deemed consent¹ is granted² for an advertisement³ relating to the carrying out of building or similar work on the land on which it is displayed, not being land which is normally used, whether at regular intervals or otherwise, for the purposes of carrying out such work, provided that the following conditions and limitations are satisfied:

3154 (1) not more than one such advertisement may be displayed at any one time, on each road frontage of the land, in respect of each separate development project, except in the case mentioned in head (4) below, and, where more than one such advertisement is displayed, the first to be displayed on any frontage is taken to be the one permitted⁴;

- 3155 (2) no such advertisement may be displayed except while the relevant works are being carried out;
- 3156 (3) no such advertisement may exceed in aggregate:
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262. (a) in the case of an advertisement referring to one person, if the display is more than ten metres from a highway, 3 square metres in area or, in any other case, 2 square metres;
263. (b) in the case of an advertisement referring to more than one person, if the display is more than 10 metres from a highway, 3 square metres plus 0.6 square metre for each additional person or, in any other case, 2 square metres plus 0.4 square metre for each additional person,
- 282
- 3157 together with 0.2 of the area permitted under heads (a) or (b) above for the name, if any, of the development project⁵;
- 3158 (4) where any such advertisement does not refer to any person carrying out such work, that person may display a separate advertisement with a maximum area of 0.5 square metre, which does so refer, on each frontage of the land for a maximum period of three months;
- 3159 (5) illumination⁶ is not permitted;
- 3160 (6) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁷;
- 3161 (7) no part of the advertisement may be more than 4.6 metres above ground level⁸, or 3.6 metres in an area of special control⁹.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to the first advertisement see *Porter v Honey* [1988] 3 All ER 1045, [1988] 1 WLR 1420, HL, cited in PARA 796 note 5 ante.

5 As to restrictions in area see PARA 793 note 4 ante.

6 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

7 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

8 For the meaning of 'ground level' see PARA 793 note 7 ante.

9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3C paras (1)-(7). The building work must have planning permission: see *R (on the application of Cal Brown Advertising Ltd) v Hounslow London Borough Council* [2001] EWHC 864 (Admin), [2002] 2 P & CR 313, [2001] All ER (D) 313 (Oct) (decided under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 8: see PARA 808 post).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/799. Class 3D: advertisements relating to local events.

799. Class 3D: advertisements relating to local events.

Deemed consent¹ is granted² for an advertisement³:

- 3162 (1) announcing any local event of a religious, educational, cultural, political, social or recreational character;
- 3163 (2) relating to any temporary matter in connection with an event or local activity of such a character,

not being an event or activity promoted or carried on for commercial purposes, provided that the following conditions and limitations are satisfied:

- 3164 (a) no such advertisement may exceed 0.6 metre in area⁴;
- 3165 (b) no such advertisement may be displayed earlier than 28 days before the day, or first day, on which the event or activity is due to take place;
- 3166 (c) any such advertisement must be removed within 14 days after the end of the event or activity;
- 3167 (d) illumination⁵ is not permitted;
- 3168 (e) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁶;
- 3169 (f) no part of the advertisement may be more than 4.6 metres above ground level⁷, or 3.6 metres in an area of special control⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

6 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

7 For the meaning of 'ground level' see PARA 793 note 7 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3D paras (1)-(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/800. Class 3E: advertisements relating to demonstrations of agricultural methods or processes.

800. Class 3E: advertisements relating to demonstrations of agricultural methods or processes.

Deemed consent¹ is granted² for an advertisement³ relating to any demonstration of agricultural methods or processes, on the land on which it is displayed, provided that the following conditions and limitations are satisfied:

- 3170 (1) such an advertisement may not be displayed on any land for more than six months in any period of 12 months;
- 3171 (2) the maximum area of display permitted in respect of each demonstration is 1.2 square metres;
- 3172 (3) no single advertisement within such a display may exceed 0.4 square metre in area⁴;
- 3173 (4) no such advertisement may be displayed earlier than 28 days before the day, or first day, on which the demonstration is due to take place and must be removed within 14 days after the end of the demonstration;
- 3174 (5) illumination⁵ is not permitted;
- 3175 (6) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁶; and
- 3176 (7) no part of the advertisement may be more than 4.6 metres above ground level⁷, or 3.6 metres in an area of special control⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 See under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1); see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

6 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

7 For the meaning of 'ground level' see PARA 793 note 7 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3E paras (1)-(7).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/801. Class 3F: advertisement relating to visits of travelling circuses etc.

801. Class 3F: advertisement relating to visits of travelling circuses etc.

Deemed consent¹ is granted² for an advertisement³ relating to the visit of a travelling circus, fair or similar travelling entertainment to any specified place in the district, provided that the following conditions and limitations are satisfied:

- 3177 (1) no such advertisement may exceed 0.6 square metre in area⁴;
- 3178 (2) no such advertisement may be displayed earlier than 14 days before the first performance or opening of the entertainment at the place specified;
- 3179 (3) any such advertisement must be removed within seven days after the last performance or closing of the specified entertainment;
- 3180 (4) at least 14 days before the advertisement is first displayed, the local planning authority⁵ must be notified in writing of the first date on which, and of the site⁶ at which, it is to be displayed;
- 3181 (5) illumination⁷ is not permitted;
- 3182 (6) no part of the advertisement may be more than 3.6 metres above ground level⁸.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

6 For the meaning of 'site' see PARA 774 note 2 ante.

7 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 3F paras (1)-(6). For the meaning of 'ground level' see PARA 793 note 7 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/802. Class 4A: illuminated advertisements on premises within a retail park.

802. Class 4A: illuminated advertisements on premises within a retail park.

Deemed consent¹ is granted² for an illuminated advertisement³ displayed⁴ on the frontage of premises⁵ within a retail park⁶ which overlook or face on to a communal car park wholly bounded by the retail park, where the advertisement refers wholly to any or all of the following matters, namely the business carried on, the goods sold or services provided, or the name or qualifications of the person carrying on the business, or supplying the goods and services, on those premises, provided that the following conditions and limitations are satisfied:

- 3183 (1) no such advertisement is permitted within a conservation area⁷, an area of outstanding natural beauty⁸, a National Park⁹, or the Broads¹⁰, but this does not preclude the continued display of an advertisement being displayed at the date of designation of the relevant area until the expiry of five years from that date¹¹;
- 3184 (2) in the case of a shop, no such advertisement may be displayed except on a wall containing a shop window;
- 3185 (3) not more than one such advertisement parallel to a wall and one projecting at right angles from such a wall is permitted, and in the case of any projecting advertisement:
 - 283 264. (a) no surface may be greater than one square metre in area¹²;
 - 265. (b) the advertisement may not project more than one metre from the wall; and
 - 266. (c) it may not be more than 1.5 metres high;
- 284 3186 (4) illumination may be:
 - 285 267. (a) by halo illumination¹³; or
 - 268. (b) so long as no part of the background of the advertisement is illuminated, by illumination of each character or symbol of the advertisement from within;
- 286 3187 (5) no such advertisement may include any intermittent light source, moving feature, exposed cold cathode tubing or animation;
- 3188 (6) where the method of illumination is that described in head (4)(b) above, the luminance of any such advertisement may not exceed the permitted limits¹⁴;
- 3189 (7) in the case of any advertisement consisting of a built-up box containing the light source, the distance between:
 - 287 269. (a) the face of the advertisement and any wall parallel to which it is displayed, at the point where it is affixed; or
 - 270. (b) the two faces of an advertisement projecting from a wall,
 - 288 3190 may not exceed 0.25 metre;

- 3191 (8) the lowest part of any such advertisement must be at least 2.5 metres above ground level¹⁵;
- 3192 (9) no character or symbol on the advertisement may be more than 0.75 metre in height;
- 3193 (10) no part of the advertisement may be higher above ground level than 4.6 metres or the bottom level of any first floor window in the wall on which the advertisement is displayed, whichever is the lower¹⁶.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 For the meaning of 'business premises' see PARA 790 ante; but note that the statutory wording is 'premises' and not 'business premises'.

6 For these purposes, 'retail park' means a group of three or more retail stores, at least one of which has a minimum internal floor area of 1,000 square metres and which (1) are set apart from existing shopping centres but within an existing or proposed urban area; (2) sell primarily goods other than food; (3) share one or more communal car parks: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

7 As to conservation areas see PARA 1169 et seq post.

8 For the meaning of 'area of outstanding natural beauty' see PARA 779 note 7 ante.

9 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 4A para (1) (Sch 3 Pt I, Class 4A amended by SI 1994/2351). As to the Broads see **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

11 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 4A para (11).

12 As to restrictions in area see PARA 793 note 4 ante.

13 In relation to advertisements within Class 4A or Class 4B (see PARA 803 post), 'halo illumination' means illumination from within built-up boxes comprising characters or symbols where the only source of light is directed through the back of the box onto an otherwise unilluminated backing panel: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt II para 3 (added by SI 1994/2351).

14 For these purposes, the permitted limits of luminance are for an illuminated area measuring not more than (1) 0.5 square metre, 1,000 candela per square metre; (2) 2 square metres, 800 candela per square metre; (3) 10 square metres, 600 candela per square metre; and (4) for any greater area, 400 candela per square metre; and, for the purposes of calculating the relevant area for the permitted limits (a) each advertisement, or in the case of a double-sided projecting advertisement, each side of the advertisement is to be taken separately; and (b) no unilluminated part of the advertisement is to be taken into account: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt II para 2(1), (2).

15 For the meaning of 'ground level' see PARA 793 note 7 ante.

16 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 4A paras (2)-(10) (as amended: see note 10 supra).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/803. Class 4B: illuminated advertisements on business premises other than those on premises within a retail park.

803. Class 4B: illuminated advertisements on business premises other than those on premises within a retail park.

Deemed consent¹ is granted² for an illuminated advertisement³ displayed⁴ on business premises⁵ wholly with reference to any or all of the following matters, namely the business carried on, the goods sold or services provided, or the name or qualifications of the person carrying on the business, or supplying the goods or services, on those premises, provided that the following conditions and limitations are satisfied:

- 3194 (1) no such advertisement is permitted within a conservation area⁶, an area of outstanding natural beauty⁷, a National Park⁸, or the Broads⁹, but this does not preclude the continued display of an advertisement being displayed at the date of designation of the relevant area until the expiry of five years from that date¹⁰;
- 3195 (2) in the case of a shop, no such advertisement may be displayed except on a wall containing a shop window;
- 3196 (3) not more than one such advertisement parallel to a wall and one projecting at right angles from such a wall is permitted, and in the case of any projecting advertisement:
 - 289 271. (a) no surface may be greater than 0.75 square metre in area¹¹;
 - 272. (b) the advertisement may not project more than one metre from the wall or two thirds of the width of any footway or pavement below, whichever is the less;
 - 273. (c) it may not be more than 1 metre high; and
 - 274. (d) it may not project over any carriageway;
- 290 3197 (4) illumination may be:
 - 291 275. (a) by halo illumination¹²; or
 - 276. (b) so long as no part of the background of the advertisement is illuminated, by illumination of each character or symbol of the advertisement from within;
- 292 3198 (5) no such advertisement may include any intermittent light source, moving feature, exposed cold cathode tubing or animation;
- 3199 (6) where the method of illumination is that described in head (4)(b) above, the luminance of any such advertisement may not exceed the permitted limits¹³;
- 3200 (7) in the case of any such advertisement consisting of a built-up box containing the light source, the distance between:

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277. (a) the face of the advertisement and any wall parallel to which it is displayed, at the point where it is affixed; or
278. (b) the two faces of an advertisement projecting from a wall,
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- 3201 may not exceed 0.25 metre;
- 3202 (8) the lowest part of any such advertisement must be at least 2.5 metres above ground level¹⁴;
- 3203 (9) no surface of any advertisement may exceed one-sixth of the frontage on which it is displayed, measured up to a height of 4.6 metres from ground level or 0.2 of the frontage measured to the top of the advertisement, whichever is the less;
- 3204 (10) no character or symbol on the advertisement may be more than 0.75 metre in height;
- 3205 (11) no part of the advertisement may be higher above ground level than 4.6 metres or the bottom level of any first floor window in the wall on which the advertisement is displayed, whichever is the lower¹⁵.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 le an illuminated advertisement other than one falling within ibid reg 6(1), Sch 3 Pt I, Class 4A (as amended): see PARA 802 ante. For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 For the meaning of 'business premises' see PARA 790 ante.

6 As to conservation areas see PARA 1169 et seq post.

7 For the meaning of 'area of outstanding natural beauty' see PARA 779 note 7 ante.

8 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 4B para (1) (Sch 3 Pt I, Class 4B amended by SI 1994/2351). As to the Broads see WATER AND WATERWAYS vol 101 (2009) PARA 735.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 4B para (12).

11 As to restrictions in area see PARA 793 note 4 ante.

12 For the meaning of 'halo illumination' see PARA 802 note 13 ante.

13 As to the permitted limits of luminance for these purposes see PARA 802 note 14 ante.

14 For the meaning of 'ground level' see PARA 793 note 7 ante.

15 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 4B paras (2)-(11) (as amended: see note 9 supra).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/804. Class 5: advertisements on business premises other than illuminated advertisements.

804. Class 5: advertisements on business premises other than illuminated advertisements.

Deemed consent¹ is granted² for any advertisement³, other than illuminated advertisements, displayed⁴ on business premises⁵ wholly with reference to any or all of the following matters, namely the business carried on, the goods sold or services provided, or the name or qualifications of the person carrying on the business or supplying the goods or services on those premises, provided that the following conditions and limitations are satisfied:

- 3206 (1) in the case of a shop, no such advertisement may be displayed, except on a wall containing a shop window⁶;
- 3207 (2) in an area of special control⁷, the space occupied by any such advertisement may not exceed 0.1 of the overall area of the face of the building on which it is displayed, up to a height of 3.6 metres from ground level⁸; and the area occupied by any such advertisement must, notwithstanding that it is displayed in some other manner, be calculated as if the whole advertisement were displayed flat against the face of the building⁹;
- 3208 (3) illumination is not permitted unless the advertisement states that medical or similar services or supplies are available at the premises on which the advertisement is displayed and the illumination is in a manner reasonably required to fulfil the purpose of the advertisement;
- 3209 (4) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control;
- 3210 (5) no part of the advertisement may be higher above ground level than whichever is the lower of:
 - 295 279. (a) 4.6 metres, or 3.6 metres in an area of special control; or
 - 280. (b) the bottom level of any first floor window in the wall on which the advertisement is displayed¹⁰.

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1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1); see PARA 789 ante.

3 Ie any advertisement which does not fall within ibid reg 6(1), Sch 3 Pt I, Class 4A (as amended) (see PARA 802 ante) or Class 4B (as amended) (see PARA 803 ante). For the meaning of 'advertisement' see PARA 770 ante; and for the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 For the meaning of 'business premises' see PARA 790 ante. 'Because some land is within the curtilage of a building, it does not ... form part of the building. It may well be that something which is within the curtilage does constitute a building, but that does not mean that every bit of the curtilage is a building': *Jones v*

Merioneth County Council (1968) 20 P & CR 106 at 111-112, DC, per Lord Parker CJ (sign fixed to grass verge adjacent to forecourt). For the meaning of 'curtilage' see PARA 223 note 13 ante.

6 For these purposes, a shop window is a window through which one can see into the shop, or alternatively the goods which are displayed in the shop: *Havering London Borough Council v Network Sites Ltd* [1998] JPL 648.

7 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

8 For the meaning of 'ground level' see PARA 793 note 7 ante.

9 As to restrictions in area see PARA 793 note 4 ante.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt 1, Class 5 paras (1)-(5). Consent is deemed to be granted even if the goods displayed are unrelated to the principal business of the premises and the classes of goods sold there: *Berridge v Vision Posters Ltd* (1994) 159 JP 218, DC.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/805. Class 6: advertisements on forecourts of business premises.

805. Class 6: advertisements on forecourts of business premises.

Deemed consent¹ is granted² for an advertisement³ displayed⁴ on any forecourt⁵ of business premises⁶, wholly with reference to all or any of the matters specified in Class 5⁷, provided that the following conditions and limitations are satisfied:

3211 (1) advertisements displayed on any such forecourt or, in the case of a building with a forecourt on two or more frontages, on each of those frontages, may not exceed in aggregate 4.5 square metres in area⁸;

3212 (2) illumination⁹ is not permitted;

3213 (3) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control¹⁰; and

3214 (4) no part of the advertisement may be more than 4.6 metres above ground level¹¹, or 3.6 metres in an area of special control¹².

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1); see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

- 4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.
- 5 For the meaning of 'forecourt' see PARA 790 note 3 ante.
- 6 For the meaning of 'business premises' see PARA 790 ante.
- 7 The specified the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 5: see PARA 804 ante.
- 8 As to restrictions in area see PARA 793 note 4 ante.
- 9 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.
- 10 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.
- 11 For the meaning of 'ground level' see PARA 793 note 7 ante.
- 12 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 6 paras (1)-(4). See also *Blakemore v Heron Service Stations Ltd* (1971) 22 P & CR 601, DC; affd sub nom *Heron Service Stations Ltd v Coupe* [1973] 2 All ER 110, [1973] 1 WLR 502, HL.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/806. Class 7A: flag advertisement attached to single flagstaff projecting vertically from roof of building.

806. Class 7A: flag advertisement attached to single flagstaff projecting vertically from roof of building.

Deemed consent¹ is granted² for an advertisement³ in the form of a flag attached to a single flagstaff projecting vertically from the roof of a building, provided that the following conditions and limitations are satisfied:

3215 (1) no such advertisement is permitted other than one:
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- 281. (a) bearing the name or device of any person occupying the building; or
- 282. (b) referring to a specific event, other than the offering of named goods for sale, of limited duration, which is taking place in the building, for the duration of that event;

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3216 (2) no character or symbol on the flag may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁴.

¹ For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 lie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 7A paras (1), (2) (substituted by 1994/2351). For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/807. Class 7B: flag advertisement attached to single vertical flagstaff erected on site where planning permission granted for residential development.

807. Class 7B: flag advertisement attached to single vertical flagstaff erected on site where planning permission granted for residential development.

Deemed consent¹ is granted² for an advertisement³ in the form of a flag attached to a single vertical flagstaff erected on a site⁴ which forms part of an area of land in respect of which planning permission⁵ has been granted for development⁶ of which the only or principal component is residential development and on which:

- 3217 (1) operations for the construction of houses⁷ are in progress pursuant to that permission; or
- 3218 (2) such operations having been completed, at least one of the houses remains unsold,

provided that the following conditions and limitations are satisfied:

- 3219 (a) no such advertisement is permitted within a conservation area⁸, an area of outstanding natural beauty⁹, a National Park¹⁰, the Broads¹¹ or an area of special control¹²;
- 3220 (b) the number of such advertisements on the land concerned¹³ may not exceed:

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- 283. (i) where the aggregate number¹⁴ of houses on that land does not exceed 10, one;
- 284. (ii) where the aggregate number of houses on that land exceeds 10 but does not exceed 100, two;
- 285. (iii) where the aggregate number of houses on that land exceeds 100, three;

300

- 3221 (c) no part of the flagstaff may be more than 4.6 metres above ground level¹⁵;
 3222 (d) no flag may exceed 2 square metres in area¹⁶;
 3223 (e) no such advertisement may be displayed after the expiration of the period of one year commencing on the day on which building operations on the land concerned have been substantially completed¹⁷.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of 'site' see PARA 774 note 2 ante.

5 For these purposes, 'planning permission' does not include any outline planning permission in relation to which some or all of the matters reserved for subsequent approval remain to be approved: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 4(1) (Sch 3 Pt II para 4 added by SI 1994/2351). As to outline planning permission see PARA 519 et seq ante; and for the meaning of 'planning permission' generally see PARA 43 note 6 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 For these purposes, 'house' includes a flat; and 'flat' means a separate and self-contained set of premises constructed for the purpose of a dwelling and forming part of a building from some other part of which it is divided horizontally: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt II para 4(1) (as added: see note 5 supra).

8 As to conservation areas see PARA 1169 et seq post.

9 For the meaning of 'area of outstanding natural beauty' see PARA 779 note 7 ante.

10 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

11 As to the Broads see **WATER AND WATERWAYS** vol 101 (2009) PARA 735.

12 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

13 For these purposes, 'the land concerned', in relation to any development, means: (1) except in a case to which the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt II para 4(2) or (3) (as added) applies, the land to which the planning permission for the development relates; (2) in a case to which Sch 3 Pt II para 4(2) applies, the land on which a particular phase of that development was or, as the case may be, is being or is about to be carried out; (3) in a case to which Sch 3 Pt II para 4(3) applies, the part of the land to which the permission relates on which a person has carried out part of that development, or, as the case may be, is carrying it out or is about to carry it out: Sch 3 Pt II para 4(1) (as added: see note 5 supra). Subject to Sch 3 Pt II para 4(3) (as added), Sch 3 Pt II para 4(2) (as added) applies where the development is carried out in phases (Sch 3 Pt II para 4(2) (as so added)); and Sch 3 Pt II para 4(3) (as added) applies where the development is carried out by two or more persons who each carry out part of it on a discrete part of the land to which the planning permission relates (whether the whole of the development or any part of it is carried out in phases or otherwise) (Sch 3 Pt II para 4(3) (as so added)).

14 For these purposes, 'aggregate number' means the aggregate of the number of houses constructed, in the course of construction or proposed to be constructed on the land concerned: *ibid* Sch 3 Pt II para 4(1) (as added: see note 5 supra).

15 For the meaning of 'ground level' see PARA 793 note 7 ante.

16 As to restrictions in area see PARA 793 note 4 ante.

17 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 7B paras (1)-(5) (substituted by SI 1994/2351).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/808. Class 8: advertisements on hoardings.

808. Class 8: advertisements on hoardings.

Deemed consent¹ is granted² for an advertisement³ on a hoarding which incloses, either wholly or in part, land on which building operations are taking place or are about to take place, if those operations are in accordance with a grant of planning permission⁴, other than outline permission⁵, for development primarily for use for commercial, industrial or business purposes, provided that the following conditions and limitations are satisfied:

- 3224 (1) no such advertisement may be displayed in a conservation area⁶, a National Park⁷, an area of outstanding natural beauty⁸ or the Broads⁹, but this does not preclude the continued display of an advertisement being displayed at the date of designation of the relevant area until the expiry of one year from that date or two years from the date of commencement of the display, whichever is the later¹⁰;
- 3225 (2) no such advertisement may be displayed earlier than three months before the commencement of the building operations;
- 3226 (3) any such advertisement must be at least 1.5 metres high and 1 metre long and not more than 3.1 metres high and 12.1 metres long;
- 3227 (4) at least 14 days before the advertisement is first displayed, the local planning authority¹¹ must be notified in writing by the person displaying it¹² of the date on which it will first be displayed and must be sent a copy of the relevant planning permission;
- 3228 (5) no such advertisement may be displayed for more than three years;
- 3229 (6) illumination¹³ is permitted in a manner and to the extent reasonably required to achieve the purpose of the advertisement¹⁴.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 See *R (on the application of Cal Brown Advertising Ltd) v Hounslow London Borough Council* [2001] EWHC 864 (Admin), [2002] 2 P & CR 313, [2001] All ER (D) 313 (Oct). For the meaning of 'planning permission' generally see PARA 43 note 6 ante.

5 As to outline planning permission see PARA 519 et seq ante.

6 As to conservation areas see PARA 1169 et seq post.

7 For the meaning of 'area of outstanding natural beauty' see PARA 779 note 7 ante.

- 8 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.
- 9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 8 para (1). As to the Broads see **WATER AND WATERWAYS** vol 101 (2009) PARA 735.
- 10 Ibid Sch 3 Pt I, Class 8 para (7).
- 11 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.
- 12 For the meaning of references to a person displaying an advertisement see PARA 779 note 6 ante.
- 13 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.
- 14 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 8 paras (2)-(6) (amended by SI 1994/2351). See *Wandsworth London Borough Council v Mills & Allen Ltd* (1997) 76 P & CR 214 (advertisement placed on hoarding adjacent to fencing which inclosed a development site held not to fall within Class 8, as it was not placed on a hoarding which inclosed the land in whole or in part; and the development, a nursing home, was for residential and not commercial purposes); *Posternobile plc v Kensington and Chelsea London Borough Council* [2000] EGCS 68 (deemed consent lost after building operations on site in question had not commenced in three-month period); *Brent London Borough Council v Maiden Outdoor Advertising Ltd* [2002] EWHC 1240 (Admin), [2003] JPL 192, [2002] All ER (D) 564 (May) (it is a question of fact, depending on the particular circumstances in each case, as to whether there is an advertisement on a hoarding which incloses a building site or whether there is an independent advertisement hoarding which is not performing any function of inclosure, but there is no reason why a purpose-built advertisement hoarding cannot also perform an inclosing function; further, the distinction in Class 8 between advertisements and the hoardings upon which they are displayed is no accident and the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 Pt I, Class 8 para (3) (see head (3) in the text) is intended to limit the dimensions of advertisements, not of the hoardings etc on which they are displayed).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/809. Class 9: advertisements on highway structures.

809. Class 9: advertisements on highway structures.

Deemed consent¹ is granted² for an advertisement³ displayed on a part of an object or structure designed to accommodate four-sheet panel displays, the use of which for the display of such advertisements is authorised⁴ under the Highways Act 1980, provided that the following conditions and limitations are satisfied:

- 3230 (1) no such advertisement may exceed 2.16 square metres in area⁵;
- 3231 (2) illumination⁶ is not permitted;
- 3232 (3) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁷;
- 3233 (4) no part of the advertisement may be more than 4.6 metres above ground level⁸, or 3.6 metres in an area of special control⁹.

- 1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.
- 2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.
- 3 For the meaning of 'advertisement' see PARA 770 ante.
- 4 le under the Highways Act 1980 s 115E(1)(a) (as added): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 577.
- 5 As to restrictions in area see PARA 793 note 4 ante.
- 6 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.
- 7 For the meaning of 'area of special control' see PARA 500 note 6 ante. As to areas of special control see PARAS 826-828 post.
- 8 For the meaning of 'ground level' see PARA 793 note 7 ante.
- 9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt 1, Class 9 paras (1)-(4) (amended by SI 1994/2351).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/810. Class 10: advertisements for neighbourhood watch and similar schemes.

810. Class 10: advertisements for neighbourhood watch and similar schemes.

Deemed consent¹ is granted² for an advertisement³ displayed⁴ on or near highway land⁵, but not in the window of a building, to give notice that a neighbourhood watch scheme or a similar scheme established jointly by the police authority and a local committee or other body of persons is in operation in the area, provided that the following conditions and limitations are satisfied:

- 3234 (1) no such advertisement may exceed 0.2 square metre in area⁶;
 - 3235 (2) no such advertisement may be displayed on highway land without the consent of the highway authority;
 - 3236 (3) the local planning authority⁷ must, at least 14 days before the advertisement is first displayed, be given particulars in writing of the place at which it is to be displayed and a certificate:
- 301
286. (a) that the scheme has been properly established;
 287. (b) that the police authority has agreed to the display of the advertisement; and

288. (c) where relevant, that the consent of the highway authority has been given;
- 302
3237 (4) any such advertisement must be removed within 14 days after:
303
289. (a) the relevant scheme ceases to operate;
290. (b) the relevant scheme ceases to be approved by the police authority;
or
291. (c) the highway authority withdraws its consent to the display of the advertisement;
- 304
3238 (5) illumination⁸ is not permitted;
3239 (6) no character or symbol on the advertisement may be more than 0.75 metre in height, or 0.3 metre in an area of special control⁹;
3240 (7) no part of the advertisement may be more than 3.6 metres above ground level¹⁰.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 For these purposes, 'highway land' means any land within the boundaries of a highway: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(2), Sch 3 Pt II para 1(1).

6 As to restrictions in area see PARA 793 note 4 ante.

7 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

8 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

9 For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 10 paras (1)-(7). For the meaning of 'ground level' see PARA 793 note 7 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/811. Class 11: directional advertisements.

811. Class 11: directional advertisements.

Deemed consent¹ is granted² for an advertisement³ on a single flat surface directing potential buyers and others to a site where residential development is taking place, provided that the following conditions and limitations are satisfied:

- 3241 (1) no such advertisement may exceed 0.15 square metre in area⁴;
- 3242 (2) no part of the advertisement may be of a reflective material;
- 3243 (3) the design of the advertisement may not be similar to that of a traffic sign⁵;
- 3244 (4) the advertisement is to be displayed on land adjacent to highway land⁶, in a manner which makes it reasonably visible to an approaching driver, but not within 50 metres of a traffic sign intended to be observed by persons approaching from the same direction;
- 3245 (5) no advertisement may be more than two miles from the main entrance of the site;
- 3246 (6) the local planning authority⁷ must, at least 14 days before the advertisement is first displayed, be notified in writing of the place at which, and the first date on which, it will be displayed;
- 3247 (7) no such advertisement may be displayed after the development of the site is completed or, in any event, for more than two years;
- 3248 (8) illumination⁸ is not permitted;
- 3249 (9) any character or symbol on the advertisement must be at least 0.04 metre high;
- 3250 (10) no character or symbol on the advertisement may be more than 0.25 metre high;
- 3251 (11) no part of the advertisement may be more than 4.6 metres above ground level⁹, or 3.6 metres in an area of special control¹⁰.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 As to restrictions in area see PARA 793 note 4 ante.

5 For these purposes, 'traffic sign' means a sign falling within the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2 Pt 1, Class H (see PARA 786 ante): reg 6(2), Sch 3 Pt II para 1(1).

6 For the meaning of 'highway land' see PARA 810 note 5 ante.

7 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

8 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

9 For the meaning of 'ground level' see PARA 793 note 7 ante.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 11 paras (1)-(11). For the meaning of 'area of special control' see PARA 777 note 6 ante. As to areas of special control see PARAS 826-828 post.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/812. Class 12: advertisements inside buildings.

812. Class 12: advertisements inside buildings.

Deemed consent¹ is granted² for an advertisement³ displayed inside a building which does not fall within Class J⁴.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 See under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 12. As to reg 3(2), Sch 2, Class J see PARA 788 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/813. Class 13: sites used for the display of advertisements on 1 April 1974.

813. Class 13: sites used for the display of advertisements on 1 April 1974.

Deemed consent¹ is granted² for an advertisement³ displayed⁴ on a site⁵ which was used for the display of advertisements without express consent⁶ on 1 April 1974 and has been so used continually since that date, provided that the following conditions and limitations are satisfied:

- 3252 (1) no substantial increase in the extent, or substantial alteration in the manner, of the use of the site for the display of advertisements on 1 April 1974 is permitted;

3253 (2) if any building or structure on which such an advertisement is displayed is required by or under any enactment to be removed, no erection of any building or structure to continue the display is permitted⁷.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 For the meaning of 'site' see PARA 774 note 2 ante.

6 For the meaning of 'express consent' see PARA 777 note 3 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 13 paras (1), (2). See also *Arthur Maiden Ltd v Lanark County Council (No 2)* [1958] JPL 422; *Mills & Allen Ltd v City of Glasgow District Council* [1980] JPL 409; *Westminster City Council v Moran* (1998) 77 P & CR 294, [1998] 4 PLR 79, DC (advertisement displayed regularly, but not continuously, had been displayed continually for purposes of Class 13).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

813 Class 13: sites used for the display of advertisements on 1 April 1974

NOTE 7--There may be deemed consent where an advert has been displayed continuously, notwithstanding that the product is no longer available: *Wandsworth LBC v Western Magistrates' Court* [2007] All ER (D) 27 (May), DC (on facts, site had ceased to be used for advertising). See also *R (on the application of Clear Channel UK Ltd) v Hammersmith and Fulham LBC* [2009] EWHC 465 (Admin), [2009] 22 EG 120, [2009] All ER (D) 276 (Feb) (affirmed: [2009] EWCA Civ 2142, [2010] 01 EG 72, [2009] All ER (D) 269 (Oct)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (B) Classes of Advertisements for which Deemed Consent Granted/814. Class 14: advertisements displayed after expiry of express consent.

814. Class 14: advertisements displayed after expiry of express consent.

Deemed consent¹ is granted² for an advertisement³ displayed with express consent⁴, after the expiry of that consent, unless:

- 3254 (1) a condition to the contrary was imposed on the consent;
 3255 (2) a renewal of consent was applied for and refused,

provided that the following conditions and limitations are satisfied:

- 3256 (a) any condition imposed on the relevant express consent is to continue to apply to any such advertisement; and
 3257 (b) no advertisement may be displayed⁵ under this Class except on a site⁶ which has been continually used for the purpose since the expiry of the express consent⁷.

1 For the meaning of 'deemed consent' see PARA 777 note 4 ante.

2 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1): see PARA 789 ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of 'express consent' see PARA 777 note 3 ante.

5 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

6 For the meaning of 'site' see PARA 774 note 2 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I, Class 14 paras (1), (2).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

814 Class 14: advertisements displayed after expiry of express consent

NOTE 7--See *R (on the application of Clear Channel UK Ltd) v Southwark LBC* [2006] EWHC 3325 (Admin), [2007] JPL 927 (no deemed consent for unauthorised advertisements as site not continually used for purpose of display in accordance with consent expressly given).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (C) Restrictions on and Discontinuance of Deemed Consent/815. Directions restricting deemed consent.

(C) RESTRICTIONS ON AND DISCONTINUANCE OF DEEMED CONSENT

815. Directions restricting deemed consent.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied, upon a proposal made to him or to it by the local planning authority³, that the display of advertisements⁴ of any specified class or description⁵ should not be undertaken in any particular area or in any particular case without express consent⁶, he or the Assembly may direct⁷ that the consent granted⁸ for that class or description shall not apply in that area or in that case, for a specified period or indefinitely⁹.

Before making any such direction, the Secretary of State or the Assembly must:

3258 (1) where the proposal relates to a particular area, publish, or cause to be published, in at least one newspaper circulating in the locality, and on the same or a subsequent date in the London Gazette, a notice that such a proposal has been made, naming a place or places in the locality where a map or maps defining the area concerned may be inspected at all reasonable hours; and

3259 (2) where the proposal relates to a particular case, serve, or cause to be served, on the owner and occupier of the land affected and on any other person who, to his knowledge, proposes to display on such land an advertisement of the class or description concerned, a notice that a proposal has been made, specifying the land and the class or description of advertisement in question¹⁰.

In determining whether to make a direction, the Secretary of State or the Assembly:

3260 (a) must take into account any objections made¹¹;

3261 (b) may modify the proposal of the local planning authority if:

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292. (i) he or the Assembly has notified, in writing, that authority and any person who has made an objection or representation to him or to the Assembly of his or its intention and the reasons for it and has given them a reasonable opportunity to respond; and

293. (ii) the intended modification does not extend the area of land specified in the proposal¹².

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Where the Secretary of State or the Assembly makes a direction, he or it must send it to the local planning authority, with a statement of the reasons for making it, and must send a copy of that statement to any person who has made¹³ an objection¹⁴.

Notice of the making of any direction for a particular area must be published by the local planning authority in at least one newspaper circulating in the locality and, unless the Secretary of State or the Assembly otherwise directs, on the same or a subsequent date in the London Gazette, and such a notice must:

3262 (A) contain a full statement of the effect of the direction;

3263 (B) name a place or places in the locality where a copy of the direction and of a map defining the area concerned may be seen at all reasonable hours; and

3264 (C) specify a date when the direction comes into force, at least 14 and not more than 28 days after the first publication of the notice¹⁵.

Notice of the making of any direction for a particular case must be served by the local planning authority on the owner and on any occupier of the land to which the direction relates, and on any other person who, to the knowledge of the authority, proposes to display on such land an advertisement of the class or description affected¹⁶.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.
- 4 For the meaning of 'advertisement' see PARA 770 ante.
- 5 Ie any class or description specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6(1), Sch 3 Pt I (as amended) (see PARA 791 et seq ante), other than Sch 3 Pt I, Class 12 (see PARA 812 ante) or Sch 3 Pt I, Class 13 (see PARA 813 ante).
- 6 For the meaning of 'express consent' see PARA 777 note 3 ante.
- 7 Any power conferred by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended), to give a direction includes power to cancel or vary the direction by a subsequent direction: reg 26.
- 8 Ie by *ibid* reg 6: see PARA 789 ante.
- 9 *Ibid* reg 7(1). Except in so far as may be provided by the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante), any direction so given by the Secretary of State or the Assembly may not be questioned in any legal proceedings whatsoever: see s 284(1)(f), (3)(h)(iii); and PARA 43 ante.
For guidance as to when such a direction may be appropriate see *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante.
- 10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 7(2). Any such notice must state that any objection to the making of a direction may be made to the Secretary of State or the Assembly in writing within such period, not being less than 21 days from the date when the notice is given, as is specified in the notice: reg 7(3). The Secretary of State or the Assembly may not, however, make a direction under reg 7 until after the expiry of the specified period: reg 7(4). As to the Secretary of State's or the Assembly's power to extend time limits see PARA 778 ante.
- 11 Ie in accordance with *ibid* reg 7(3): see note 10 supra.
- 12 *Ibid* reg 7(5).
- 13 See note 11 supra.
- 14 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 7(6).
- 15 *Ibid* reg 7(7). A direction for an area comes into force on the date specified in the notice so given; and a direction for a particular case comes into force on the date on which notice is served on the occupier or, if there is no occupier, on the owner of the land affected: reg 7(9).
- 16 *Ibid* reg 7(8).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF

ADVERTISEMENTS/ (ii) Control of Display/C. DEEMED CONSENT/ (C) Restrictions on and Discontinuance of Deemed Consent/816. Discontinuance of deemed consent.

816. Discontinuance of deemed consent.

The local planning authority¹ may serve a notice requiring the discontinuance of the display of an advertisement², or the use of a site³ for the display⁴ of an advertisement, for which deemed consent is granted⁵ if the authority is satisfied it is necessary to do so to remedy a substantial injury to the amenity of the locality or a danger to members of the public; but, in the case of an advertisement within Class 12⁶, the authority may not do so if the advertisement is also within⁷ Class F or Class G⁸.

A discontinuance notice:

- 3265 (1) must be served on the advertiser and on the owner and occupier of the site on which the advertisement is displayed;
- 3266 (2) may, if the local planning authority thinks fit, also be served on any other person displaying the advertisement⁹;
- 3267 (3) must specify the advertisement or the site to which it relates;
- 3268 (4) must specify a period within which the display or the use of the site, as the case may be, is to be discontinued; and
- 3269 (5) must contain a full statement of the reasons for taking discontinuance action¹⁰.

A discontinuance notice takes effect¹¹ at the end of the period, being at least eight weeks after the date on which it is served, specified in the notice¹².

The local planning authority, by a notice served on the advertiser, may, however, withdraw a discontinuance notice at any time before it takes effect or may, where no appeal to the Secretary of State¹³ or, in relation to Wales, to the National Assembly for Wales¹⁴ is pending, from time to time vary a discontinuance notice by extending the period specified for the taking effect of the notice¹⁵.

1 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

2 For the meaning of 'advertisement' see PARA 770 ante.

3 For the meaning of 'site' see PARA 774 note 2 ante.

4 For the meaning of references to the land, the building, the site or premises on which the advertisement is displayed see PARA 780 note 2 ante.

5 I.e. under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 6: see PARA 789 ante.

6 I.e. any advertisement within *ibid* reg 6(1), Sch 3 Pt I, Class 12: see PARA 812 ante.

7 I.e. if the advertisement is also within *ibid* reg 3(2), Sch 2, Class F (as amended) (see PARA 784 ante) or Sch 2, Class G (see PARA 785 ante).

8 *Ibid* reg 8(1). See *Swishbrook Ltd v Secretary of State for the Environment and Islington London Borough Council* [1990] JPL 824, CA; *Chequepoint UK Ltd v Secretary of State for the Environment* (1995) 72 P & CR 415. As to the Secretary of State's or the National Assembly for Wales's powers to serve a discontinuance notice see PARA 829 post.

Where a discontinuance notice is so served, the Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante) and s 79 (as amended) (see PARA 601 ante) apply subject to the modifications specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(3), Sch 4 Pt V:

reg 15(3). As to the modifications so specified see PARAS 835-836 post. For these purposes, 'discontinuance notice' means a notice served under reg 8: reg 2(1).

9 For the meaning of references to the person displaying an advertisement see PARA 779 note 6 ante.

10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8(2).

11 Ie subject to ibid reg 8(4), (5): see the text and notes 12-15 infra.

12 Ibid reg 8(3). If, however, an appeal is made to the Secretary of State or the Assembly under reg 15 (see note 8 supra), the notice is of no effect pending the final determination or withdrawal of the appeal: reg 8(4).

13 As to the Secretary of State see PARA 19 ante.

14 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

15 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8(5). The local planning authority must, on so serving on the advertiser a notice of withdrawal or variation, send a copy to every other person served with the discontinuance notice: reg 8(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/817. Application for express consent; in general.

D. EXPRESS CONSENT

817. Application for express consent; in general.

An application for express consent¹ must be made to the local planning authority². Such an application must be made on a form provided by the local planning authority and must give the particulars required by that form; and there must be annexed to the form such plans as the authority requires³. An applicant must provide the local planning authority with two additional copies of the completed form and the annexed plans⁴. A local planning authority may not, however, employ a form or require the submission of plans or information inconsistently with any direction which the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ may have given as to the matter⁷.

If it thinks fit, the local planning authority may accept an application notwithstanding that the above requirements⁸ are not complied with, provided that the application is in writing⁹.

The Secretary of State or the Assembly may give directions¹⁰ to a local planning authority, either generally or in relation to a particular case or class of case, specifying the kinds of particulars, plans or information to be contained in an application for express consent¹¹.

On receipt of an application for express consent, the local planning authority:

- 3270 (1) must send an acknowledgment in writing to the applicant and, in the case of a county planning authority in England¹², must also send a copy of the application and the accompanying plans to the district planning authority¹³ within whose area any part of the application site¹⁴ is situated;
- 3271 (2) may direct the applicant in writing to provide one of its officers with such evidence as may be reasonably called for to verify any particulars or information given to the authority¹⁵.

An application for the renewal of an express consent may not be made at a date earlier than six months before the expiry of that consent¹⁶.

- 1 For the meaning of 'express consent' see PARA 777 note 3 ante.
- 2 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 9(1). For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante. For guidance as to the criteria for dealing with such applications see *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante.
- 3 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 9(2).
- 4 Ibid reg 9(3).
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 9(5).
- 8 I.e. the requirements of ibid reg 9(2) or (3): see the text and notes 1-4 supra.
- 9 Ibid reg 9(4).
- 10 As to the power to give a direction generally see PARA 815 note 7 ante.
- 11 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 10.
- 12 As to county planning authorities see PARA 28 ante.
- 13 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.
- 14 For the meaning of 'site' see PARA 774 note 2 ante.
- 15 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 11(a), (b).
- 16 Ibid reg 9(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/818. Fees for applications for express consent.

818. Fees for applications for express consent.

Where an application is made¹ to a local planning authority² for consent for the display of an advertisement³, a fee must be paid to that authority in accordance with the following provisions⁴.

Where the application relates to the display of one advertisement only, the fee payable in respect of the application is the specified amount⁵ for the appropriate category⁶; and, where the application relates to the display of more than one advertisement on the same site⁷, a single fee is payable in respect of all of the advertisements to be displayed on that site and listed in the application and:

- 3272 (1) if all of the advertisements are within the same category, the fee payable is the amount specified for that category;
- 3273 (2) if all of the advertisements are within categories 1 and 2⁸, the fee payable is the amount specified in category 1;
- 3274 (3) if one or more of the advertisements is within category 3⁹, the fee payable is the amount specified for category 3¹⁰.

Where the application relates to the display of advertisements:

- 3275 (a) on parking meters, litter bins, public seating benches or bus shelters within a specified area, the whole of the area to which the application relates is treated as one site for these purposes¹¹;
- 3276 (b) on more than one site, the fee payable in respect of the application is the aggregate of the sums payable in respect of the display of advertisements on each such site¹².

Where the application is made by or on behalf of a parish council¹³ or community council¹⁴, the fee payable in respect of the application is one-half of the amount appropriate to the display of the advertisement to which the application relates¹⁵.

Where all of the prescribed conditions¹⁶ are satisfied, these provisions do not apply to:

- 3277 (i) an application which is made following the withdrawal, before notice of decision was issued, of an application made by or on behalf of the same person; or
- 3278 (ii) an application which is made following the refusal of consent, whether by the local planning authority or by the Secretary of State¹⁷ or, in relation to Wales, the National Assembly for Wales¹⁸ on appeal, for the display of advertisements on an application made by or on behalf of the same person¹⁹.

The fee due in respect of an application must be paid to the local planning authority with which the application is lodged and must accompany the application²⁰; but, in the case of an application made in relation to a site within a National Park in England²¹, the amount of the fee must be remitted to the county planning authority²² when the application is forwarded to that authority for determination²³.

Any fee so paid must be refunded if the relevant application is rejected as invalidly made²⁴.

- 1 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 9: see PARA 817 ante.
- 2 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.
- 3 For the meaning of 'advertisement' see PARA 770 ante.
- 4 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(1); Interpretation Act 1978 s 17(2).
- 5 le the amount specified in the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(1), Sch 2, Table (substituted in respect of applications made or deemed to be made in relation to England on or after 1 April 2005 by SI 2005/843; and in respect of applications made or deemed to be made in relation to Wales on or after 8 November 2004 by SI 2004/2736).
- 6 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(2).
- 7 For the meaning of 'site' see PARA 774 note 2 ante.
- 8 le the Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, Sch 2, Categories 1, 2 (as substituted: see note 5 supra).
- 9 le *ibid* Sch 2, Category 3 (as substituted: see note 5 supra).
- 10 *Ibid* regs 2(2), 11(3).
- 11 *Ibid* reg 11(4) (amended by SI 1993/3170).
- 12 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(5).
- 13 As to parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.
- 14 As to community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.
- 15 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(6).
- 16 le the conditions set out in *ibid* reg 11(10). The conditions are: (1) that the application is made within 12 months of the date when the earlier application was made, in the case of a withdrawn application or, in any other case, the date of refusal; (2) that the application relates to the same site as that to which the earlier application related, or to part of that site; (3) that the local planning authority to which the application is made is satisfied that the application relates to an advertisement or advertisements of the same description as the advertisement or advertisements to which the earlier application related; (4) that the fee payable in respect of the earlier application was paid; and (5) that no previous application has at any time been made by or on behalf of the same applicant which related to (a) the same site to which the earlier application related; and (b) an advertisement of the same description as the advertisement, or any of the advertisements, to which the earlier application related, and which was exempted from the provisions of reg 11 (as amended) by reg 11(9): reg 11(10).
- 17 As to the Secretary of State see PARA 19 ante.
- 18 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 19 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(9). Nor is a fee payable under reg 11 (as amended) in respect of an application for consent to display an advertisement if the application is occasioned by a direction under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 7 (see PARA 815 ante) disapplying reg 6 (see PARA 789 ante) in relation to the advertisement in question: Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(11); Interpretation Act 1978 s 17(2).
- 20 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(7).

- 21 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.
- 22 As to county planning authorities see PARA 28 ante.
- 23 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, regs 2(3), 11(8) (amended by SI 1996/525).
- 24 Town and Country Planning (Fees for Applications and Deemed Applications) Regulations 1989, SI 1989/193, reg 11(12).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

818 Fees for applications for express consent

NOTE 5--SI 1989/193 Sch 2 further substituted: SI 2008/958 (England), SI 2009/851 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/819. Duty to consult.

819. Duty to consult.

Before granting an express consent¹, a local planning authority² must consult³:

- 3279 (1) any neighbouring local planning authority, any part of whose area appears likely to be affected;
- 3280 (2) where the application relates to land in a National Park in England⁴ which is land that is not in a metropolitan county⁵, the district planning authority⁶ for the area in which the land is situated;
- 3281 (3) where it considers that a grant of consent may affect the safety of persons using any trunk road⁷ in England, the Secretary of State for Transport;
- 3282 (4) where it considers that a grant of consent may affect the safety of persons using any railway, waterway⁸, dock, harbour or aerodrome, civil or military, the person responsible for the operation thereof, and, in the case of coastal waters, the Corporation of Trinity House⁹.

The local planning authority must give anyone whom it is required to consult at least 14 days' notice that the relevant application is to be considered; and the authority must take into account any representations made by any such person¹⁰.

1 For the meaning of 'express consent' see PARA 777 note 3 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

- 3 For the meaning of 'consult' see PARA 2 note 1 ante.
- 4 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.
- 5 As to metropolitan counties see PARA 28 ante.
- 6 As to district planning authorities in England see PARA 28 ante.
- 7 le as defined in the Highways Act 1980 s 329 (as amended): see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 50 note 2.
- 8 For the meaning of 'waterway' see PARA 775 note 8 ante.
- 9 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 12(1) (amended by SI 1996/525; SI 1997/2971). As to the right of entry to survey the land for these purposes see PARAS 57-58 ante.
- 10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 12(2).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/820. Power to deal with application.

820. Power to deal with application.

Where an application for express consent¹ is made to the local planning authority², the authority may³:

- 3283 (1) grant consent, in whole or in part, subject to the standard conditions⁴ and to such additional conditions⁵ as it thinks fit;
- 3284 (2) refuse consent; or
- 3285 (3) decline⁶ to determine the application⁷.

The conditions imposed under head (1) above may in particular include conditions:

- 3286 (a) regulating the display of advertisements⁸ to which the consent relates;
- 3287 (b) regulating the use for the display of advertisements of the site⁹ to which the application relates or any adjacent land under the control of the applicant, or requiring the carrying out of works on any such land;
- 3288 (c) requiring the removal of any advertisement or the discontinuance of any use of land authorised by the consent, at the end of a specified period, and the carrying out of any works then required for the reinstatement of the land¹⁰;

but the local planning authority may not, under head (1) above, impose any conditions in relation to the display of any class of advertisement which may be displayed with deemed consent¹¹ more restrictive than those imposed in relation to that class¹².

An express consent may be:

- 3289 (i) for the display of a particular advertisement or advertisements with or without illumination¹³, as the applicant specifies;
- 3290 (ii) for the use of a particular site for the display of advertisements in a specified manner, whether by reference to the number, siting, size or illumination of the advertisement, or the structures intended for such display, or the design or appearance of any such structure, or otherwise; or
- 3291 (iii) for the retention of any display of advertisements or the continuation of the use of a site begun before the date of the application¹⁴.

An express consent is¹⁵ subject to the condition that it expires at the end of:

- 3292 (A) such period as the local planning authority may specify in granting the consent; or
- 3293 (B) where no period is so specified, a period of five years¹⁶;

and a local planning authority may specify a period under head (A) above as a period running from the earlier of the following, namely the date of the commencement of the display or a specified date not later than six months after the date on which the consent is granted¹⁷.

1 For the meaning of 'express consent' see PARA 777 note 3 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

3 Ie subject to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 19: see PARA 828 post.

4 As to the standard conditions see PARA 775 ante.

5 Ie subject to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(3)-(6): see the text and notes 6-17 infra.

6 Ie decline to determine the application in accordance with the Town and Country Planning Act 1990 s 70A (as substituted, partly as from a day to be appointed in relation to Wales) (see PARA 516 ante). Prior to that substitution being brought into force in Wales, s 70A (as originally added) applies in relation to an application in Wales subject to the modifications specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(1)(c), Sch 4 Pt I and set out in Sch 4 Pt II as follows: A local planning authority may decline to determine an application for express consent if (1) within the period of two years ending with the date on which the application is received, the National Assembly for Wales has dismissed an appeal against the refusal of a similar application; and (2) in the opinion of the authority there has been no significant change since the dismissal mentioned in head (1) supra in any material consideration: Town and Country Planning Act 1990 s 70A(1) (as so modified). For these purposes, an application for express consent is taken to be similar to a later application if the subject matter of the applications and the land to which they relate are in the opinion of the local planning authority the same or substantially the same: s 70A(2) (as so modified).

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(1). For guidance as to advertisement control conditions see *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante.

The Town and Country Planning Act 1990 s 78 (as amended) (see PARA 598 ante) and s 79 (as amended) (see PARA 601 ante) apply, in relation to applications for express consent, subject to the modifications specified in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(1), Sch 4 Pt III and set out in Sch 4 Pt IV: regs 2(1), 15(1), (2). As to the modifications so specified see PARAS 833-834 post.

8 For the meaning of 'advertisement' see PARA 770 ante.

- 9 For the meaning of 'site' see PARA 774 note 2 ante.
- 10 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(3).
- 11 Ie any advertisement within any class specified in ibid reg 6, Sch 3 (as amended): see PARAS 791-814 ante.
- 12 Ibid reg 13(4).
- 13 For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante. The introduction of illuminations to an advertisement for which consent under ibid reg 13 has been granted may amount to a substantial alteration: see *R (on the application of Maiden Outdoor Advertising Ltd) v Lambeth London Borough Council* [2003] All ER (D) 117 (May).
- 14 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(2).
- 15 Ie subject to ibid reg 13(4): see the text and notes 11-12 supra.
- 16 Ibid reg 13(5).
- 17 Ibid reg 13(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/821. Notification of decision.

821. Notification of decision.

The grant or refusal of an express consent¹ by a local planning authority² must be notified in writing to the applicant within a period of eight weeks from the date of the receipt of the application or such longer period as the applicant may, before the expiry of that period, agree in writing³.

The authority must state in writing its reasons for:

- 3294 (1) any refusal of consent in whole or in part;
- 3295 (2) any decision to impose any condition⁴ on a consent, except a specified condition⁵; and
- 3296 (3) any condition whereby the consent expires before the expiry of five years from the date on which it is granted, except when the consent is granted for the period for which it was applied for⁶.

1 For the meaning of 'express consent' see PARA 777 note 3 ante.

2 For the meaning of 'local planning authority' see PARA 775 note 3 ante.

3 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 14(1). A decision given two years out of time has been held to be void (*Edwick v Sunbury-on-Thames UDC* [1962] 1 QB 229, [1961] 3 All ER 10), but this was a very special case: see *James v Minister of Housing and Local Government* [1965] 3 All ER 602 at 606, [1966] 1 WLR 135 at 142, CA; revsd in part but affd on this point [1968] AC 409, [1966] 3 All ER 964, HL. As to the Secretary of State's or the National Assembly for Wales's power to extend time limits see PARA 778 ante.

The validity of any permission granted by a local planning authority in respect of an application for consent to the display of advertisements under the Town and Country Planning Act 1990 s 220 (as amended) (see PARA 769 ante) may not be challenged on the grounds that the permission should have been granted by some other local planning authority: see s 286(1)(c) (as amended); and PARA 45 ante.

4 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13(1)(a): see PARA 820 ante at head (1) in the text.

5 le a condition specified in *ibid* reg 6, Sch 3 (as amended) in relation to a class within which the advertisement falls: see PARA 791 et seq ante.

6 *Ibid* reg 14(2).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/822. Register of applications.

822. Register of applications.

Every local planning authority¹ must keep a register containing particulars of:

- 3297 (1) any application made to it for express consent² for the display of an advertisement³, including the name and address of the applicant, the date of the application and the type of advertisement concerned;
- 3298 (2) any direction given⁴ relating to the application;
- 3299 (3) the date and effect of any decision of the local planning authority on the application;
- 3300 (4) the date and effect of any decision of the Secretary of State⁵ or, in relation to Wales, of the National Assembly for Wales⁶ on an appeal⁷.

Every entry in the register consisting of particulars of an application must be made within 14 days of the receipt of that application⁸; and the register must include an index to enable a person to trace any entry therein⁹.

The register must be kept at the office of the local planning authority¹⁰; but any part of the register which relates to land within a particular part of the area of a local planning authority may be kept at a place within or convenient to that part of its area¹¹.

The register must be open to public inspection at all reasonable hours¹².

- 1 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.
- 2 For the meaning of 'express consent' see PARA 777 note 3 ante.
- 3 For the meaning of 'advertisement' see PARA 770 ante.
- 4 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 770 et seq ante, PARA 823 et seq post.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 21(1).
- 8 Ibid reg 21(5). As to the Secretary of State's or the Assembly's power to extend time limits see PARA 778 ante.
- 9 Ibid reg 21(2).
- 10 Ibid reg 21(4).
- 11 Ibid reg 21(3).
- 12 Ibid reg 21(6).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/D. EXPRESS CONSENT/823. Revocation or modification of express consent.

823. Revocation or modification of express consent.

If a local planning authority¹ is satisfied that it is expedient, it may² by order revoke or modify an express consent³; but such an order may not take effect without the approval of the Secretary of State⁴ or, in relation to Wales, of the National Assembly for Wales⁵.

When an authority submits such an order to the Secretary of State or the Assembly for approval, it must serve notice on the person who applied for the express consent, the owner and the occupier of the land affected and any other person who, in the authority's opinion, will be affected by the order, specifying a period of at least 28 days from the service of the notice within which objection may be made⁶.

If, within the period specified in the notice, an objection to the order is received by the Secretary of State or the Assembly from any person on whom notice was served, the Secretary of State or the Assembly must, before approving the order, give to that person and to the local

planning authority an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly⁷.

The Secretary of State or the Assembly may approve an order submitted to him or to it under the above provision either without modification or subject to such modifications as he or it considers expedient⁸.

1 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

2 le subject to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 16(2)-(7): see the text and notes 3-8 infra.

3 Ibid reg 16(1). For the meaning of 'express consent' see PARA 777 note 3 ante. The power so to make an order may be exercised (1) in a case which involves the carrying out of building or other operations, at any time before those operations have been completed; (2) in any other case, at any time before the display of advertisements is begun: reg 16(5). In a case to which head (1) supra applies, the revocation or modification of consent does not affect such operations as have already been carried out: reg 16(6). For the meaning of 'advertisement' see PARA 770 ante.

4 As to the Secretary of State see PARA 19 ante.

5 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 16(2). As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 16(3). As to the Secretary of State's or the Assembly's power to extend time limits see PARA 778 ante.

7 Ibid reg 16(4).

8 Ibid reg 16(7).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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824. Compensation.

Where an order revoking or modifying an express consent¹ takes effect and within six months of its approval a claim in writing is served on the local planning authority², either by delivery at or by post to its offices, the authority must pay compensation to the claimant for any loss or damage suffered in the circumstances and to the extent specified below³.

Compensation is so payable if, and to the extent that, any person has:

- 3301 (1) incurred expenditure⁴ in carrying out abortive work⁵, including the preparation of plans or similar material;

3302 (2) otherwise sustained loss or damage directly attributable⁶ to the order, other than loss or damage consisting of any depreciation in value of any interest in land,

but excluding any work done, or loss or damage arising out of anything done or not done, before the grant of consent⁷.

1 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 16: see PARA 823 ante. For the meaning of 'express consent' see PARA 777 note 3 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

3 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 17(1). As to the Secretary of State's or the National Assembly for Wales's power to extend time limits see PARA 778 ante.

4 'Expenditure' means money paid out, and does not include liabilities incurred: *Southern Olympia (Syndicate) Ltd v West Sussex County Council* (1952) 3 P & CR 60, Lands Tribunal.

5 'Work' must involve physical matters and does not include the cost of leasing land and raising capital: *Southern Olympia (Syndicate) Ltd v West Sussex County Council* (1952) 3 P & CR 60, Lands Tribunal. See also *Holmes v Bradfield RDC* [1949] 2 KB 1, [1949] 1 All ER 381, DC.

6 Loss of profit and goodwill from a business which would have been established but never in fact existed is too remote: *Halford v Oxfordshire County Council* (1952) 2 P & CR 358, Lands Tribunal; *Evans v Cheshire County Council* (1952) 3 P & CR 50, Lands Tribunal. The costs of an appeal against the revocation order do not qualify: *Evans v Cheshire County Council* supra at 56.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 17(2).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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825. Applications by an interested planning authority.

An application for express consent¹ made by an interested planning authority², whether solely or jointly with any other person, to display an advertisement³ is to be determined by the authority concerned unless the application is referred⁴ to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ for determination by him or by it⁷. Any consent granted pursuant to this provision expires:

3303 (1) at the end of such period as the authority may specify in granting the consent; or

3304 (2) where no period is so specified, at the end of a period of five years; or

3305 (3) on the date on which the interested planning authority ceases, whether solely or jointly, to display the advertisement,

whichever is the earlier⁸.

1 For the meaning of 'express consent' see PARA 777 note 3 ante.

2 For the meaning of 'interested planning authority' see PARA 891 note 5 post; and as to development by interested planning authorities see PARA 891 et seq post.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 Ie under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 13A(1) (regs 9A, 13A added by SI 1999/1810). The Town and Country Planning Act 1990 s 77 (as amended) applies to applications for express consent made by an interested planning authority pursuant to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended) subject to the following adaptations and modifications: (1) in the Town and Country Planning Act 1990 s 77(1) (as prospectively amended) for the reference to applications for planning permission, or for the approval of any local planning authority required under a development order or local development order there is substituted a reference to applications for the display of advertisements pursuant to regulations made under s 220 (as amended); and (2) s 77(4) (as amended) and s 77(6) are omitted: Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 9A(1) (as so added). Where the Secretary of State or the Assembly gives a direction pursuant to the Town and Country Planning Act 1990 s 77 (as amended) in respect of an application for express consent to display an advertisement, the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 12 (as amended) (duty to consult: see PARA 819 ante), reg 13 (power to deal with applications: see PARA 820 ante) and reg 14 (notification of decision: see PARA 821 ante) apply to that application subject to the following adaptations, modifications and exceptions: (a) any references to a local planning authority are to be construed as references to the Secretary of State or the Assembly; (b) reg 12(1)(c) does not apply; and (c) in reg 14(1) for 'applicant' there is substituted 'interested planning authority': reg 9A(2) (as so added).

8 Ibid reg 13A(2) (as added: see note 7 supra).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

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E. AREAS OF SPECIAL CONTROL

826. Area of special control orders.

Every local planning authority¹ must from time to time consider whether any part or additional part of its area should be designated as an area of special control². An area of special control must be designated by an area of special control order made³ by the local planning authority and approved⁴ by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶.

An area of special control order may be revoked or modified by a subsequent order made by the authority and approved by the Secretary of State or the Assembly in accordance with the relevant⁷ statutory provisions⁸.

Before making such an order, a local planning authority must consult⁹:

- 3306 (1) where it appears to the authority that the order will be likely to affect any part of the area of a neighbouring local planning authority, that authority;
- 3307 (2) where the order will relate to any land within a National Park¹⁰ in England which is land that is not in a metropolitan county¹¹, any district planning authority¹² within whose area any of that land is situated¹³.

A local planning authority may not, however, exercise its power under the above provisions in the interests¹⁴ of public safety¹⁵.

Where an area of special control order is in force, the local planning authority must consider at least once in every five years whether it should be revoked or modified¹⁶.

1 For the meaning of 'local planning authority' see PARA 775 note 3 ante.

2 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 18(1). As to the Secretary of State's or the National Assembly for Wales's power to make such an order see PARA 829 post. For general guidance in relation to areas of special control see *PPG19--Outdoor advertisement control*; and as to the status of such guidance see PARA 9 ante.

3 In accordance with the provisions of the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 18, Sch 5: see PARA 827 post.

4 See note 3 supra.

5 As to the Secretary of State see PARA 19 ante.

6 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 18(2). As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 See note 3 supra.

8 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1999/666, reg 18(3).

9 For the meaning of 'consult' see PARA 2 note 1 ante.

10 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

11 As to metropolitan counties see PARA 28 note 1 ante.

12 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

13 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1999/666, reg 18(5).

14 In the interests of public safety within the meaning of *ibid* reg 4(1): see PARA 776 ante.

15 *Ibid* reg 18(6).

16 Ibid reg 18(4).

UPDATE

769-846 Control of Advertisements

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827. Procedure for making orders.

A local planning authority¹ which proposes to:

- 3308 (1) designate an area of special control²; or
- 3309 (2) modify an area of special control order³,

must make an area of special control order designating the area or indicating the modifications by reference to an annexed map⁴. As soon as may be after the making of an area of special control order, the authority must submit it to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ for approval, together with:

- 3310 (a) two certified copies of the order;
- 3311 (b) a full statement of the authority's reasons for making it;
- 3312 (c) in the case of an order modifying an existing order, unless the boundaries of the existing area of special control are indicated on the map annexed to the order, a plan showing both these boundaries and the proposed modifications; and
- 3313 (d) any additional certified copy of any of the material in heads (a) to (c) above, which the Secretary of State or the Assembly requires⁷.

The authority must forthwith publish a notice in the prescribed form⁸ in the London Gazette and, in two successive weeks, in at least one newspaper circulating in the locality⁹.

If any objection is made to an order, in the manner and within the time provided for in the prescribed form, the Secretary of State or the Assembly:

- 3314 (i) may offer all interested parties an opportunity to make representations to him or to it in writing about any such operation before such date as he or it may specify;
- 3315 (ii) may, and at the request of any interested party must, either provide for a local inquiry¹⁰ to be held or afford to the parties an opportunity of a hearing before a person appointed by him or by the Assembly¹¹.

After considering any representations or objections duly made and not withdrawn and, where applicable, the report of any person holding an inquiry or hearing, the Secretary of State or the

Assembly may approve the order with or without modifications¹²; but, if he or the Assembly proposes to make a modification for the inclusion of additional land in an order, he or it must:

- 3316 (A) publish notice of his or its intention to do so;
- 3317 (B) afford an opportunity for the making of objections to, or representations about, the proposed modification; and
- 3318 (C) if he or the Assembly considers it expedient, provide for a further inquiry or hearing to be held¹³.

As soon as may be after the order has been approved, the local planning authority must publish a notice of its approval in the prescribed form¹⁴ in the London Gazette, and in two successive weeks in at least one newspaper circulating in the locality¹⁵.

An area of special control order comes into force on the date on which the notice of its approval is published in the London Gazette¹⁶.

1 For the meaning of 'local planning authority' see PARA 775 note 3 ante.

2 For the meaning of 'area of special control' see PARA 777 note 6 ante.

3 Where a local planning authority proposes to make an order revoking an area of special control order, a map showing the existing area must be annexed to the order, and the procedure prescribed in the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 18, Sch 5 paras 2-9 (see the text and notes 4-16 infra) in relation to an order modifying an existing order must be followed, subject to the modification that the prescribed forms of notice under Sch 5 para 4 and Sch 5 para 8 respectively are Sch 5, Forms 3, 4: Sch 5 para 10. Any reference in Sch 5 Pt I (paras 1-11) to a prescribed form is to the form bearing that number in Sch 5 Pt II or a form substantially to the like effect: Sch 5 para 11.

As to the questioning of the validity of such an order see PARA 43 ante.

4 Ibid Sch 5 para 1. If an area of special control order contains any descriptive matter relating to the area or the modifications in question, that descriptive matter prevails, in the case of any discrepancy with the map, unless the order provides to the contrary: Sch 5 para 2.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 5 para 3.

8 For the prescribed form of notice see *ibid* Sch 5, Form 1. As to the use of prescribed forms see note 3 *supra*.

9 Ibid Sch 5 para 4.

10 A technical assessor may be appointed to assist the person holding an inquiry: *General Poster and Publicity Co Ltd v Secretary of State for Scotland and Country East Lothian County Council* 1960 SC 266.

11 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 5 para 5.

12 Ibid Sch 5 para 6. See also *General Poster and Publicity Co Ltd v Secretary of State for Scotland and East Lothian County Council* 1960 SC 266 (on the facts brought out at the inquiry, the inspector and assessor held different views; held that the Secretary of State may prefer one to the other, or may ignore both views and prefer his own or that of his advisers).

13 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 5 para 7.

14 For the prescribed form of notice of approval see *ibid* Sch 5, Form 2. As to the use of prescribed forms see note 3 *supra*.

15 Ibid Sch 5 para 8.

16 Ibid Sch 5 para 9.

UPDATE

769-846 Control of Advertisements

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828. Control in areas of special control.

No advertisements¹ may be displayed in an area of special control² unless they fall within:

- 3319 (1) Classes B to J³;
 - 3320 (2) Classes 1 to 3, Classes 5 to 7 and Classes 9 to 14⁴;
 - 3321 (3) advertisements of the following descriptions displayed with express consent⁵:
- 307
- 294. (a) hoardings or similar structures⁶ to be used only for the display of notices relating to local events, activities or entertainments;
 - 295. (b) any advertisement for the purpose of announcement or direction in relation to buildings or other land in the locality, where reasonably required having regard to the nature and situation of such buildings or other land;
 - 296. (c) any advertisement required in the interests of public safety;
 - 297. (d) any advertisement which could be displayed by virtue of head (2) above but for some non-compliance with a condition or limitation imposed⁷ as respects size, height from the ground, number or illumination or but for a direction restricting deemed consent⁸;
 - 298. (e) any advertisement within Class 4A, Class 4B or Class 8⁹.
- 308

Where an area is designated as an area of special control, advertisements within heads (i) to (iii) below which are being displayed immediately before the relevant order comes into force¹⁰ may¹¹ continue to be displayed but only for the period specified in relation thereto:

- 3322 (i) any advertisement within Class 4A or Class 4B for which express consent has not been granted, for five years from the date on which the order comes into force;
- 3323 (ii) any advertisement within Class 8 for which express consent has not been granted, for one year from the date on which the order comes into force or two years from the date on which the advertisement was first displayed, whichever period expires later;

- 3324 (iii) any advertisement for which express consent has been granted, for six months from the date on which the order comes into force or for the remainder of the period of the express consent, whichever period expires later¹².

Nothing in the above provisions, however:

- 3325 (A) affects a notice served¹³ at any time under the provisions relating to the discontinuance of deemed consent;
- 3326 (B) overrides any condition imposed on a consent, whereby an advertisement is required to be removed;
- 3327 (C) restricts the powers of a local planning authority¹⁴, or of the Secretary of State¹⁵ or, in relation to Wales, of the National Assembly for Wales¹⁶, in regard to any contravention of the statutory controls¹⁷ on advertisements;
- 3328 (D) renders unlawful the display, pursuant to express consent or to Class 14¹⁸, of an advertisement mentioned in head (d) or head (e) above¹⁹.

1 For the meaning of 'advertisement' see PARA 770 ante.

2 For the meaning of 'area of special control' see PARA 777 note 6 ante.

3 As to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Classes B-J (as amended) see PARAS 780-788 ante.

4 As to ibid reg 6(1), Sch 3 Pt I, Classes 1-3, 5-7, 9-14 (as amended) see PARAS 791-801, 804-806, 809-814 ante.

5 For the meaning of 'express consent' see PARA 777 note 3 ante. Express consent may not, however, be given for the display in an area of special control of an illuminated advertisement falling within ibid reg 19(2)(a) or (b) (see heads (a)-(b) in the text): reg 19(3). For the meaning of 'illuminated advertisement' see PARA 783 note 6 ante.

6 See PARA 770 note 4 ante.

7 Ie imposed by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, Sch 3 (as amended).

8 Ie a direction under ibid reg 7: see PARA 815 ante. For the meaning of 'deemed consent' see PARA 777 note 4 ante.

9 Ibid reg 19(1), (2). As to Sch 3 Pt I, Classes 4A, 4B and 8 (as amended) see PARAS 802-803, 808 ante.

10 As to the date when an order designating an area as an area of special control comes into force see PARA 827 ante.

11 Ie without prejudice to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 19(2).

12 Ibid reg 19(4), (5).

13 Ie under ibid reg 8: see PARA 816 ante.

14 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

15 As to the Secretary of State see PARA 19 ante.

16 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

17 Ie the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 770 et seq ante, PARA 829 et seq post.

18 As to ibid Sch 3 Pt I, Class 14 see PARA 814 ante.

19 Ibid reg 19(6).

UPDATE

769-846 Control of Advertisements

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F. ENFORCEMENT

829. Powers of the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give a direction³ to a local planning authority⁴, or to such authorities generally, requiring it or them to provide him or the Assembly with information required for the purpose of any of his or its functions under the regulations⁵ relating to the control of advertisements⁶.

If it appears to the Secretary of State or the Assembly, after consultation⁷ with the local planning authority, that:

- 3329 (1) a discontinuance notice⁸ should be served⁹; or
- 3330 (2) an area of special control order or a revocation order should be made¹⁰, he or the Assembly may himself or itself serve such a notice or make such an order¹¹.

If the Secretary of State or the Assembly is satisfied that it is necessary to remedy a substantial injury to the amenity of the locality or a danger to members of the public¹², he or the Assembly may serve¹³ a discontinuance notice in relation to an advertisement¹⁴ displayed by an interested planning authority¹⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to the power to give a direction see generally para 815 note 7 ante.

4 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

5 I.e. his or its functions under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 770 et seq ante.

6 Ibid reg 22. Except in so far as may be provided by the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante), any direction so given by the Secretary of State or the Assembly may not be questioned in any legal proceedings whatsoever: see s 284(1)(f), (3)(h)(iii); and PARA 43 ante.

7 For the meaning of 'consult' see PARA 2 note 1 ante.

8 For the meaning of 'discontinuance notice' see PARA 816 note 8 ante.

9 le under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8: see PARA 816 ante.

10 le under ibid reg 18: see PARA 826 ante. For the meaning of 'area of special control' see PARA 777 note 6 ante.

11 Ibid reg 23(1). Where the Secretary of State or the Assembly proposes to exercise the power under reg 23(1), the provisions of reg 8 (see PARA 816 ante) and reg 15 (appeals: see PARA 833 et seq post) in relation to reg 23(1)(a) (see head (1) in the text), and reg 18 (see PARA 826 ante) and Sch 5 (see PARA 827 ante), in relation to reg 23(1)(b) (see head (2) in the text), apply as they apply to the action of a local planning authority, with such modifications as may be necessary: reg 23(2).

12 See PARA 776 ante.

13 See note 9 supra.

14 For the meaning of 'advertisement' see PARA 770 ante.

15 Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 24(1) (amended by SI 1999/1810). For the meaning of 'interested planning authority' see PARA 891 note 5 post.

The Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8(2), (5), (6) applies to a discontinuance notice to which reg 24(1) applies as if references to the local planning authority were references to the Secretary of State or the Assembly (reg 24(2)); and reg 15(3) (see PARA 816 note 8 ante) applies to a discontinuance notice to which reg 24(1) (as so amended) applies, with such modifications as may be necessary (reg 24(3)).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/F. ENFORCEMENT/830. Enforcement of control; power to make regulations.

830. Enforcement of control; power to make regulations.

Regulations¹ may make provision for enabling the local planning authority² to require:

3331 (1) the removal of any advertisement³ which is displayed in contravention of the regulations;

3332 (2) the discontinuance of the use⁴ for the display of advertisements of any site which is being so used in contravention of the regulations⁵.

Without prejudice to any provisions so included in such regulations, if any person displays⁶ an advertisement in contravention of the regulations, he is guilty of an offence and liable on summary conviction to a fine of such amount as may be prescribed⁷, not exceeding level 4 on

the standard scale and, in the case of a continuing offence, one-tenth of level 4 on the standard scale for each day during which the offence continues after conviction⁸.

A person is not, however, guilty of such an offence by reason only:

- 3333 (a) of his being the owner or occupier of the land on which the advertisement is displayed; or
- 3334 (b) of his goods, trade or business or other concerns being given publicity by the advertisement,

if he proves that it was displayed without his knowledge or consent⁹.

1 le under the Town and Country Planning Act 1990 s 220 (as amended): see PARA 769 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'advertisement' see PARA 770 ante.

4 For the meaning of 'use' see PARA 221 note 4 ante.

5 Town and Country Planning Act 1990 s 224(1). For that purpose, the regulations may apply any of the provisions of Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante) with respect to enforcement notices or the provisions of s 186 (as amended) (see PARA 581 ante), subject to such adaptations and modifications as may be specified in the regulations: s 224(2). In exercise of the power so conferred, and prior to the transfer of functions in relation to Wales to the National Assembly for Wales, the Secretary of State made the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 27: see note 8 infra. As to termination of a deemed consent by service of a discontinuance notice see *O'Brien v Croydon London Borough Council* [1999] JPL 47, DC.

The functions of local planning authorities in England under the Town and Country Planning Act 1990 s 224 (as amended) are exercisable by district planning authorities: see s 1(5) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to district planning authorities (of which there are none in Wales) see PARA 28 ante.

6 Without prejudice to the generality of *ibid* s 224(3) (as amended: see note 8 infra), a person is deemed to display an advertisement for these purposes if (1) he is the owner or occupier of the land on which the advertisement is displayed; or (2) the advertisement gives publicity to his goods, trade, business or other concerns: s 224(4). For the meaning of 'owner' see PARA 17 note 1 ante; and for the meaning for the meaning of 'land' see PARA 2 note 10 ante.

7 For the meaning of 'prescribed' see PARA 16 note 5 ante.

8 Town and Country Planning Act 1990 s 224(3) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 38; and by the Anti-social Behaviour Act 2003 s 53). See also the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 27. For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to continuing offences see *Kensington and Chelsea Royal London Borough v Elmton Ltd* (1978) 246 Estates Gazette 1011, DC (conviction for unauthorised advertisement; offending advertisement removed but replaced a week later; not a continuing offence but a new offence); *Kingston upon Thames London Borough Council v National Solus Sites Ltd* (1993) 158 JP 70, DC (display of 11 different posters on 11 different dates constituted 11 different offences, not one continuing offence); and as to offences by corporations see PARA 55 ante. The Town and Country Planning Act 1990 s 171B(3) (as added) (see PARA 552 ante) affords no defence: *Wyatt v Jarrad* [1998] 2 PLR 81, DC. As to the burden of proof in respect of such an offence see *R v O'Brien* (1997) 74 P & CR 264, DC.

9 Town and Country Planning Act 1990 s 224(5). See also *John v Reveille Newspapers Ltd* (1955) 5 P & CR 95, DC (an independent contractor posted bills without the accused's knowledge). An accused whose business is being advertised but who was not responsible for posting up the advertisements is not entitled to rely upon the defence in the Town and Country Planning Act 1990 s 224(5) where he has failed to remove the advertisements once he has knowledge of their existence: *Preston v British Union for the Abolition of Vivisection* (1985) 149 JP 740. The words 'knowledge or consent' in the Town and Country Planning Act 1990 s 224(5) are to be construed disjunctively: see *Merton London Borough Council v Edmonds* (1994) 157 JP 1129; *Wycombe District Council v Michael Shanley Group Ltd* (1993) 67 P & CR 374. See also *Barking and Dagenham London Borough Council v Christodoulou* [2003] EWHC 1662 (Admin), [2003] All ER (D) 193 (Jun), DC (large number of posters advertising events at defendant's nightclub were unlawfully displayed; held that burden of proof was on

the defendant to show that the posters had been put up without his consent or knowledge, and not on the authority to establish such knowledge or consent).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

830 Enforcement of control; power to make regulations

NOTES--Certain functions under provisions mentioned in this paragraph are 'relevant functions' for the purposes of the Regulatory Enforcement and Sanctions Act 2008 s 4, Sch 3, see LOCAL GOVERNMENT vol 69 (2009) PARA 733.

TEXT AND NOTE 8--See London Local Authorities Act 2007 s 31(1), Sch 2 Pt 1 (modification of enactments in enforcement action zone).

TEXT AND NOTE 9--For 'or consent' read 'or he took all reasonable steps to prevent the display or, after the advertisement had been displayed, to secure its removal': 1990 Act s 224(5), (6) (s 224(5) amended, s 224(6) added by the Clean Neighbourhoods and Environment Act 2005 s 33).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/F. ENFORCEMENT/831. Power to remove or obliterate placards and posters.

831. Power to remove or obliterate placards and posters.

The local planning authority¹ may² remove or obliterate any placard or poster:

- 3335 (1) which is displayed in its area; and
- 3336 (2) which in its opinion, is so displayed in contravention of regulations³ relating to the control of advertisements⁴;

but the above provisions do not authorise the removal or obliteration of a placard or poster displayed within a building⁵ to which there is no public right of access⁶.

Where a placard or poster identifies the person who displayed it or caused it to be displayed, the local planning authority may not exercise any such power⁷ unless it has first given him notice in writing that:

- 3337 (a) in its opinion the placard or poster is displayed in contravention of the regulations relating to the control of advertisements; and
- 3338 (b) the authority intends to remove or obliterate it on the expiry of a period specified⁸ in the notice⁹.

These provisions are modified in relation to London¹⁰.

- 1 As to local planning authorities see PARA 28 et seq ante.
- 2 Ie subject to the Town and Country Planning Act 1990 s 225(2), (3): see the text and notes 5-9 infra.
- 3 Ie regulations made under ibid s 220 (as amended): see PARA 769 ante.
- 4 Ibid s 225(1). As to rights of entry see PARAS 57-58 ante. In England, the functions of local planning authorities under s 225 are exercisable by district planning authorities: see s 1(5) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to district planning authorities (of which there are none in Wales) see PARA 28 ante. As to London see further the text and note 10 infra.
- 5 For the meaning of 'building' see PARA 2 note 10 ante.
- 6 Town and Country Planning Act 1990 s 225(2).
- 7 Ie the power conferred by ibid s 225(1): see the text and notes 1-4 supra.
- 8 The period so specified must be not less than two days from the date of service of the notice: ibid s 225(5). As to the mode of service see PARA 54 ante.
- 9 Ibid s 225(3). Section 225(3) does not, however, apply if:
 - 63 (1) the placard or poster does not give his address (s 225(4)(a)); and
 - 64 (2) the authority does not know the address and is unable to ascertain it after reasonable inquiry (s 225(4)(b)).
- 10 In its application to a participating council, ibid s 225 (power to remove or obliterate placards and posters) has effect as though s 225(3), (4) and (5) were replaced as follows: The council of a London borough may give notice in writing to a person who displays or causes to be displayed a placard or poster in respect of which it may exercise the powers conferred by s 225(1):
 - 65 (1) that in its opinion it is displayed in contravention of regulations made under s 220 (as amended) (s 225(3) (s 225(3)-(9) substituted for these purposes by the London Local Authorities Act 1995 s 10));
 - 66 (2) requiring him to remove or obliterate it before the expiry of a period being not less than two days from the service of the notice, specified in the notice (Town and Country Planning Act 1990 s 225(3) (as so substituted)); and
 - 67 (3) that if he does not do so, the council intends to remove or obliterate it after the expiry of the period and recover from him the expenses reasonably incurred by it in so doing: s 225(3) (as so substituted).

Where such a notice has been duly served and the poster or placard to which it relates has not been removed or obliterated before the expiry of the period specified in the notice, the council of the London borough may remove or obliterate it and may recover from the person on whom the notice was served the expenses reasonably incurred by the council in so doing; but in any proceedings for the recovery of such expenses it is for the council to show that the poster or placard was displayed in contravention of regulations made under s 220 (as amended): s 225(4) (as so substituted). If a poster or placard is removed or obliterated pursuant to a notice under this provision and within 28 days thereof another poster or placard is displayed on the same premises, in addition to the power under the foregoing provisions the council of the London borough may serve a notice under s 225(3) (as so substituted) on the owner or occupier of the premises on which the poster or placard is displayed, and s 225(4) (as so substituted) applies to that person, subject to s 225(6) (as so substituted): s 225(5) (as so substituted). In its application to a case in which a notice is served on any person under s 225(5) (as so substituted), s 225(4) (as so substituted) has effect with the omission of the right to recover from that person the expenses of removal or obliteration: s 225(6) (as so substituted). If a poster or placard is removed or obliterated pursuant to such a notice, the council of the London borough may exhibit a notice in the vicinity of the place where the poster or placard was displayed, stating that the display of an advertisement in contravention of regulations made under s 220 (as amended) is a criminal offence punishable by a fine under s 224 (as amended) (see PARA 830 ante): s 225(7) (as so substituted). A notice under s 225(7) (as so substituted) may not be exhibited without the consent of the occupier of the premises, unless he cannot after reasonable inquiry be identified: s 225(8) (as so substituted). Without prejudice to the generality of s 225(3) (as so

substituted), a person is deemed to display or cause to be displayed a placard or poster for these purposes if the placard or poster gives publicity to his goods, trade, business or other concerns except when the placard or poster is displayed on a hoarding or other structure designed for the display of advertisements: s 225(9) (as so substituted). 'Participating council' means the common council of the City of London and the council of any London borough; and 'borough' and 'council' are to be construed accordingly: London Local Authorities Act 1995 s 2 (definition amended by the London Local Authorities Act 1996 s 27).

As to the removal of unauthorised advertisement hoardings etc in London see the London Local Authorities Act 1995 s 11, which applies to a hoarding or other structure used, or designed or adapted for use, for the display of advertisements including a movable structure, fitments used to support a hoarding or other structure and a structure which itself is an advertisement, other than such a structure for which deemed or express consent has been granted under the Town and Country Planning Act 1990 or regulations made thereunder or for which no such consent for such use is required or which was erected before 1 April 1990: London Local Authorities Act 1995 s 11(1). Where there is in its area a hoarding or structure to which s 11 applies, a participating council may serve notice on any person who appears to the council to be responsible for the erection or maintenance thereof or, if after reasonable inquiry the council has been unable to ascertain the name and address of such person, may affix a notice to the hoarding or structure or exhibit a notice in the vicinity of the place where the hoarding or structure is fixed and serve a copy on the occupier of the land unless after reasonable inquiry he cannot be identified: s 11(2). Such a notice must require the removal of the hoarding or structure to which it relates within a period, being not less than 21 days after the date of the notice, specified in the notice, and must state the effect of s 11(4): s 11(3). If a notice under s 11(2) is not complied with before the expiry of the period specified in the notice, the participating council may: (a) enter on the land; (b) remove the hoarding or structure and its fitments and dispose of them; and (c) recover from the person on whom the notice was served the reasonable expenses incurred by the council in so doing unless he satisfies the council that he was not responsible for the erection, and is not responsible for the maintenance of the hoarding or structure: s 11(4). Nothing in s 11(4), however, authorises entry into a building: s 11(6). Where, in the exercise of a right of entry conferred under s 11(4), damage is caused to land or chattels other than the hoarding or structure and its fitments, compensation may be recovered from the participating council by any person suffering the damage: s 11(5). As to enforcement under s 11 see eg *R (on the application of Maiden Outdoor Advertising Ltd) v Lambeth London Borough Council* [2003] All ER (D) 117 (May).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

831 Power to remove or obliterate placards and posters

TEXT AND NOTES--Where a local planning authority serves a notice on a person under the 1990 Act s 225(3) in relation to a placard or poster, and the person fails to remove or obliterate it within the period specified in the notice, the authority may recover from that person the costs it may reasonably incur in exercising its power under s 225(1): s 225(6) (added by the Clean Neighbourhoods and Environment Act 2005 s 34(3)).

Where a placard or poster does not identify the person who displayed it or caused it to be displayed, or it does do so, but the 1990 Act s 225(3) does not apply by reason of s 225(4), and the placard or poster publicises the goods, services or concerns of an identifiable person, then s 225(3)-(6) has effect as if the reference in s 225(3) to the person who displayed the placard or poster or caused it to be displayed were a reference to the person whose goods, services or concerns are publicised: s 225(7), (8) (added by the 2005 Act s 34(4)).

Where any damage is caused to land or chattels in the exercise of the power under the 1990 Act s 225(1) in relation to a placard or poster, compensation may be recovered by any person suffering the damage from the local planning authority exercising the power: s 225(9) (s 225(9)-(11) added by the 2005 Act s 34(5)). However, the 1990 Act s 225(9) does not permit the recovery of compensation by the person who displayed the placard or poster or caused it to be displayed: s 225(10) (as so added). The

provisions of s 118 (see PARA 931) apply in relation to compensation under s 225(9) as they apply in relation to compensation under Pt 4 (ss 107-118): s 225(10) (as so added).

TEXT AND NOTE 9--Under head (b) the authority must also give notice that it intends to recover from him the costs it may reasonably incur in removing or obliterating the placard or poster: 1990 Act s 225(3) (amended by the 2005 Act s 34(2)).

NOTE 10--1995 Act s 11(1) amended: London Local Authorities Act 2007 s 7(2). The 1995 Act s 11 does not apply to a hoarding or other structure which was erected before 1 April 1990, unless (1) a discontinuance notice has been served in relation to it under regulations made under the Town and Country Planning Act 1990 s 220; and (2) either (a) the time for making an appeal in relation to the discontinuance notice under the 1990 Act s 78 (right to appeal against planning decisions and failure to take such decisions) has expired with no such appeal having been made; or (b) an appeal in relation to the discontinuance notice under the 1990 Act s 78 has been made, and the appeal has been discontinued or dismissed: 1995 Act s 11(1A) (added by 2007 Act s 7(3)). As to enforcement under the 1995 Act s 11 see also *R (on the application of Blow Up Media UK Ltd) v Lambeth LBC* [2008] EWHC 1912 (Admin), [2008] 1 P & CR 187, [2008] All ER (D) 52 (Jul).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (ii) Control of Display/F. ENFORCEMENT/832. Repayment of expense of removing prohibited advertisements.

832. Repayment of expense of removing prohibited advertisements.

Where, for the purpose of complying with any regulations made for the control of advertisements¹, works are carried out by any person:

- 3339 (1) for removing an advertisement which was being displayed on 1 August 1948; or
- 3340 (2) for discontinuing the use² for the display of advertisements of a site used for that purpose on that date,

that person is entitled, on a claim made to the local planning authority³ within such time⁴ and in such manner as may be prescribed⁵, to recover from that authority compensation in respect of any expenses reasonably incurred by him in carrying out those works⁶.

Except in so far as may be otherwise provided⁷, any questions of disputed compensation⁸ must be referred to and determined by the Lands Tribunal⁹.

1 le any regulations made under the Town and Country Planning Act 1990 s 220 (as amended): see PARA 769 ante. For the meaning of 'advertisement' see PARA 770 ante.

2 For the meaning of 'use' see PARA 221 note 4 ante.

3 As to local planning authorities see PARA 28 et seq ante. As to the authority to which claims for compensation are to be made see PARA 912 post.

4 The time limit so prescribed for the purpose of making a claim for compensation is a period of six months from the completion of the works: Town and Country Planning (Control of Advertisements) Regulations 1992, SI

1992/666, reg 20. As to the Secretary of State's or the National Assembly for Wales's power to extend time limits see PARA 778 ante.

5 For the meaning of 'prescribed' see PARA 16 note 5 ante.

6 Town and Country Planning Act 1990 s 223(1). Compensation payable under s 223 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the expenses are incurred until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. See further s 80(2), (3); and PARA 581 note 15 ante.

7 Ie except as provided by any regulations made under the Town and Country Planning Act 1990.

8 Ie under ibid s 223.

9 Ibid s 223(2). In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply subject to any necessary modifications and to the provisions of any regulations made under the Town and Country Planning Act 1990: s 223(3).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

832 Repayment of expense of removing prohibited advertisements

TEXT AND NOTE 9--Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Town and Country Planning Act 1990 s 223(2), (3) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(iii) Appeals/A. EXPRESS CONSENT/833. Right of appeal.

(iii) Appeals

A. EXPRESS CONSENT

833. Right of appeal.

Where a local planning authority¹ refuses an application for express consent² for the display of an advertisement, or grants it subject to conditions³, the applicant may by notice appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵.

A person who has made an application for express consent may also appeal to the Secretary of State or the Assembly if, within the period of eight weeks from the date when the application was received by the local planning authority, that authority has neither given him notice of its decision on it nor given him notice that it has exercised its power⁶ to decline to determine the application⁷.

Any such appeal must be made by notice served within eight weeks from the date of receipt of the local planning authority's decision or, as the case may be, within eight weeks from the expiry of the specified period⁸ or within such longer period as the Secretary of State or the Assembly may in either case at any time allow⁹. Such a notice must be accompanied by a copy of each of the following documents:

- 3341 (1) the application made to the local planning authority;
- 3342 (2) all relevant plans and particulars submitted to it;
- 3343 (3) any notice of decision; and
- 3344 (4) any other relevant correspondence with the authority¹⁰.

Where an appeal is so made¹¹ to the Secretary of State or the Assembly, he or it may require the appellant or the local planning authority to submit to him or to it, within such period as he or the Assembly may specify, a statement in writing in respect of such matters relating to the application as he or it may specify; and, if, after considering the grounds of appeal and any such statement, the Secretary of State or the Assembly is satisfied that he or it has sufficient information to enable him or it to determine the appeal, he or it may, with the agreement in writing of both the appellant and the local planning authority, determine the appeal¹² without giving either the appellant or the local planning authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose¹³.

1 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

2 As to applications for express consent see PARA 817 et seq ante.

3 As to the grant of express consent subject to conditions see PARA 820 ante.

4 As to the Secretary of State see PARA 19 ante.

5 Town and Country Planning Act 1990 s 78(1) (s 78 applied for these purposes, s 78(1), (5) amended and s 78(2), (3), (3A), (4) substituted, by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(1), Sch 4 Pt III para 1 and set out, as so modified, in reg 15(2), Sch 4 Pt IV). As to the transfer of functions under the Town and Country Planning Act 1990 s 78 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie under the Town and Country Planning Act 1990 s 70A (as added and substituted): see PARA 516 ante.

7 Ibid s 78(2) (as substituted and applied: see note 5 supra). For the purposes of the application of s 79(1) (see PARA 834 post) and s 288(10)(b) (see PARA 47 ante) in relation to an appeal under s 78(2) (as so substituted), it is assumed that the authority decided to refuse the application in question: s 78(5) (as so amended and applied).

8 Ie the period mentioned in ibid s 78(2) (as substituted and applied: see note 5 supra).

9 Ibid s 78(3) (as substituted and applied: see note 5 supra).

10 Ibid s 78(3A) (as substituted and applied: see note 5 supra).

11 Ie as mentioned in ibid s 78(3) (as substituted and applied: see note 5 supra).

12 Ie the Secretary of State or the Assembly may determine the appeal without complying with ibid s 79(2) (as applied for these purposes): see PARA 834 post.

13 Ibid s 78(4) (as substituted and applied: see note 5 supra).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(iii) Appeals/A. EXPRESS CONSENT/834. Determination of appeal.

834. Determination of appeal.

On an appeal against the refusal of an application for express consent for the display of an advertisement or the grant of consent subject to conditions¹ the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 3345 (1) allow or dismiss the appeal; or
- 3346 (2) reverse or vary any part of the decision of the local planning authority⁴, whether the appeal relates to that part of it or not,

and may deal with the application as if it had been made to him or to the Assembly in the first instance⁵.

In granting an express consent, the Secretary of State or the Assembly may specify that its term is to run for such longer or shorter period than five years as he or it considers⁶ expedient⁷.

Before so determining an appeal, the Secretary of State or the Assembly must, if either the appellant or the local planning authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by it for the purpose⁸.

If, before or during the determination of such an appeal in respect of an application for express consent, the Secretary of State or the Assembly forms the opinion⁹ that consent:

- 3347 (a) could not have been granted by the local planning authority; or
- 3348 (b) could not have been granted otherwise than subject to the conditions imposed,

he or it may decline to determine the appeal or to proceed with the determination¹⁰.

If, at any time before or during the determination of such an appeal¹¹, it appears to the Secretary of State or the Assembly that the appellant is responsible for undue delay in the progress of the appeal, he or it may:

- 3349 (i) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- 3350 (ii) if the appellant fails to take those steps within that period, dismiss the appeal accordingly¹².

The decision of the Secretary of State or the Assembly on such an appeal¹³ is final and otherwise has effect as if it were a decision of the local planning authority¹⁴.

- 1 le an appeal under the Town and Country Planning Act 1990 s 78 (as amended and applied for these purposes): see PARA 833 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the Town and Country Planning Act 1990 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 4 As to local planning authorities see PARA 28 et seq ante.
- 5 Town and Country Planning Act 1990 s 79(1) (s 79 applied for these purposes, s 79(1A) added, s 79(4) omitted, and s 79(5), (6), (6A) amended, by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(1), Sch 4 Pt III para 2, and set out, as so modified, in reg 15(2), Sch 4 Pt IV).
- 6 le having regard to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 4 (see PARA 776 ante) and to any period specified in the application for consent.
- 7 Town and Country Planning Act 1990 s 79(1A) (as added and applied for these purposes: see note 5 supra).
- 8 Ibid s 79(2) (as applied for these purposes: see note 5 supra). Section 79(2) does not apply to an appeal referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 ante): s 79(3) (as so applied).
Section 79(7), Sch 6 (as amended) (see PARA 621 et seq ante) applies to appeals under s 78 (as amended and so applied), including appeals under that provision as applied by or under any other provision of the Town and Country Planning Act 1990: s 79(7) (as so applied).
- 9 le having regard to the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended), and to any direction given thereunder.
- 10 Town and Country Planning Act 1990 s 79(6) (as amended and applied: see note 5 supra).
- 11 le such an appeal as is mentioned in ibid s 79(6) (as amended and applied: see note 5 supra).
- 12 Ibid s 79(6A) (as added and applied: see note 5 supra).
- 13 le an appeal under ibid s 78 (as amended and applied): see PARA 833 ante.
- 14 Ibid s 79(5) (as amended and applied: see note 5 supra). As to challenging such decisions see PARA 601 the text and notes 19-22 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(iii) Appeals/B. DISCONTINUANCE NOTICES/835. Right of appeal.

B. DISCONTINUANCE NOTICES

835. Right of appeal.

Where a discontinuance notice relating to deemed consent for the display of an advertisement has been served¹ on any person by a local planning authority², that person may, if he is aggrieved³ by the notice, appeal by notice to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵.

Notice of appeal must be given in writing to the Secretary of State or the Assembly at any time before the date on which the discontinuance notice is due to take effect⁶, taking account, where appropriate, of any extension of time⁷, or such longer period as he or it may allow; and the notice must be accompanied by a copy of each of the following documents:

- 3351 (1) the discontinuance notice;
- 3352 (2) any notice of variation thereof; and
- 3353 (3) any relevant correspondence with the authority⁸.

Where an appeal is so brought, the Secretary of State or the Assembly may require the appellant or the local planning authority to submit to him or to it, within such period as he or it may specify, a statement in writing in respect of such matters relating to the discontinuance notice as he or it may specify; and, if, after considering the grounds of appeal and any such statement, the Secretary of State or the Assembly is satisfied that he or it has sufficient information to enable him or it to determine the appeal, he or the Assembly may, with the agreement in writing of both the appellant and the local planning authority, determine the appeal⁹ without giving either the appellant or the local planning authority an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose¹⁰.

1 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8: see PARA 816 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

3 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

4 As to the Secretary of State see PARA 19 ante.

5 Town and Country Planning Act 1990 s 78(1) (s 78 substituted and applied for these purposes by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(3), Sch 4 Pt V para 1). As to the transfer of functions under the Town and Country Planning Act 1990 s 78 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 8(3): see PARA 816 ante.

7 Ie under *ibid* reg 8(5): see PARA 816 ante.

8 Town and Country Planning Act 1990 s 78(2) (as substituted and applied: see note 5 *supra*).

9 Ie the Secretary of State or the Assembly may determine the appeal without complying with *ibid* s 79(2) (as applied for these purposes): see PARA 836 post.

10 Ibid s 78(3) (as substituted and applied: see note 5 *supra*).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/(iii) Appeals/B. DISCONTINUANCE NOTICES/836. Determination of appeal.

836. Determination of appeal.

Where an appeal is brought in respect of a discontinuance notice relating to deemed consent for the display of an advertisement¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 3354 (1) allow or dismiss the appeal; or
- 3355 (2) reverse or vary any part of the discontinuance notice, whether the appeal relates to that part of it or not, and may deal with the matter as if an application for express consent⁴ had been made and refused for the reasons stated for the taking of discontinuance action⁵.

Before so determining an appeal, the Secretary of State or the Assembly must, if either the appellant or the local planning authority⁶ so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by it for the purpose⁷.

If, at any time before or during the determination of an appeal in respect of a discontinuance notice, it appears to the Secretary of State or the Assembly that the appellant is responsible for undue delay in the progress of the appeal, he or it may:

- 3356 (a) give the appellant notice that the appeal will be dismissed unless the appellant takes, within the period specified in the notice, such steps as are specified in the notice for the expedition of the appeal; and
- 3357 (b) if the appellant fails to take those steps within that period, dismiss the appeal accordingly⁸.

On the determination of an appeal⁹ the Secretary of State or the Assembly must give such directions as may be necessary for giving effect to his or its determination, including, where appropriate, directions for quashing the discontinuance notice or for varying its terms in favour of the appellant¹⁰.

The decision of the Secretary of State or the Assembly on such an appeal is final¹¹.

¹ ie under the Town and Country Planning Act 1990 s 78 (as substituted and applied for these purposes): see PARA 835 ante.

² As to the Secretary of State see PARA 19 ante.

³ As to the transfer of functions under the Town and Country Planning Act 1990 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

⁴ As to applications for express consent see PARA 817 et seq ante; and as to appeals against such applications see PARAS 833-834 ante.

5 Town and Country Planning Act 1990 s 79(1) (s 79 applied for these purposes, s 79(1), (4) substituted, s 79(6) omitted and s 79(6A) amended, by the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 15(3), Sch 4 Pt V para 2).

6 For the meaning of 'local planning authority' for these purposes see PARA 775 note 3 ante.

7 Town and Country Planning Act 1990 s 79(2) (as applied: see note 5 supra). Section 79(2) does not apply to an appeal referred to a planning inquiry commission under s 101 (as amended) (see PARA 704 ante): s 79(3) (as so applied).

Section 79(7), Sch 6 (as amended) (see PARA 621 et seq ante) applies to appeals under s 78 (as substituted and applied: see PARA 835 ante), including appeals under that provision as applied by or under any other provision of the Town and Country Planning Act 1990: s 79(7) (as so applied).

8 Ibid s 79(6A) (added by the Planning and Compensation Act 1991 s 18; and as applied and amended (see note 5 supra)).

9 Ie an appeal under the Town and Country Planning Act 1990 s 78 (as substituted and applied): see PARA 835 ante.

10 Ibid s 79(4) (as substituted and applied: see note 5 supra).

11 Ibid s 79(5) (as applied: see note 5 supra). As to challenging such decisions see PARA 601 the text and notes 19-22 ante.

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/837. Application of rules.

(iv) Inquiries

837. Application of rules.

Local inquiries caused by the Secretary of State¹ or, in relation to Wales, by the National Assembly for Wales² to be held for the purposes of applications for consent referred to him or to it under the Town and Country Planning (Control of Advertisements) Regulations 1992³ and appeals to him or to it thereunder, and hearings⁴ before a person appointed by the Secretary of State or by the Assembly for the purpose of any such application or appeal, continue, at the date at which this title states the law, to be governed by the Town and Country Planning (Inquiries Procedure) Rules 1974⁵. Those 1974 Rules are revoked for all other purposes⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 Ie under the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666 (as amended): see PARA 769 et seq ante.

4 le to the extent provided in the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 15 (revoked with savings). The 1974 Rules, except r 5(2), (3) (see PARA 838 post) and r 7(1)(i) (as so revoked) (see PARA 840 post) apply to any such hearing as is mentioned in r 2(1)(d); and, for that purpose, references to an inquiry are to be construed as references to such a hearing: r 15. For these purposes, 'inquiry' means a local inquiry to which the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419 (as amended; revoked with savings), apply: r 3(1) (as so revoked).

5 Ibid r 2(1)(d) (revoked with savings); Planning (Consequential Provisions) Act 1990 s 2. The 1974 Rules, which are otherwise revoked, continue to apply for the purposes mentioned in the text, with the omission of r 4: see r 2(1)(d)(i) (as so revoked).

6 See the Town and Country Planning (Inquiries Procedure) Rules 1988, SI 1988/944, r 21 (revoked with savings in relation to England by the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624, r 24 and in relation to Wales by the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266, r 23).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/838. Notification of inquiry.

838. Notification of inquiry.

A date, time and place for the holding of the inquiry¹ must be fixed and may be varied by the Secretary of State² or, if it is to be held in Wales, by the National Assembly for Wales³; and he or the Assembly must give not less than 42 days' notice in writing of such date, time and place to the applicant⁴ and to the local planning authority⁵ at the addresses furnished by them; but:

3358 (1) with the consent of the applicant and of the local planning authority, the Secretary of State or the Assembly may give such lesser period of notice as is agreed with the applicant and the local planning authority and in that event he or the Assembly may specify a date for service of the prescribed statements⁶ later than the prescribed date⁷;

3359 (2) where it becomes necessary or advisable to vary the time or place fixed for the inquiry, the Secretary of State or the Assembly must give such notice of the variation as may appear to him or to it to be reasonable in the circumstances⁸.

The Secretary of State or the Assembly may require⁹ the local planning authority to take one or more of the following steps:

3360 (a) to publish in one or more newspapers circulating in the locality in which the land¹⁰ is situated such notices of the inquiry as he or it may direct;

3361 (b) to serve notice of the inquiry in such form and on such persons or classes of persons as he or it may specify;

3362 (c) to post such notices of the inquiry as he or it may direct in a conspicuous place or places near to the land¹¹.

Where the land is under the control of the applicant, he must, if so required by the Secretary of State or the Assembly, affix firmly to some object on the land, in such a manner as to be readily visible to and legible by the public, such notice of the inquiry as the Secretary of State or the Assembly may specify; and thereafter for such period before the inquiry as the Secretary of State or the Assembly may specify the appellant may not remove the notice or cause or permit it to be removed¹².

1 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the Assembly see PARA 20 ante.

4 For these purposes, 'applicant' in the case of an appeal, means the appellant: Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (revoked with savings).

5 For these purposes, 'local planning authority' means, if the inquiry is held in England, (1) in relation to an application referred to the Secretary of State, the local planning authority or any local authority or committee acting pursuant to the Local Government Act 1972 s 101 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 370), which would otherwise have dealt with the application; and (2) in relation to an appeal, the local planning authority or any such local authority or committee which was responsible for dealing with the application: Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (amended by SI 1986/420; revoked with savings). 'Local authority' has the meaning assigned to it by the Town and Country Planning Act 1990 s 336(1) (as amended) (see PARA 3 note 3 ante): Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (as so revoked); Planning (Consequential Provisions) Act 1990 s 2. If the inquiry is held in Wales, however, 'local planning authority' means the local planning authority which was responsible for dealing with the relevant application: Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (modified by SI 1992/2038; and as so revoked).

6 I.e. the statements referred to in the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 6(1), (2) (revoked with savings): see PARA 839 post.

7 I.e. the date prescribed in *ibid* r 6(1), (2) (revoked with savings).

8 *Ibid* rr 2(1)(d)(i), 5(1) (revoked with savings).

9 I.e. without prejudice to *ibid* r 5(1) (revoked with savings): see the text and notes 1-8 *supra*.

10 For these purposes, 'the land' means the land, including trees and buildings, to which the inquiry relates: *ibid* r 3(1) (revoked with savings).

11 *Ibid* r 5(2) (revoked with savings). The requirements as to the period of notice contained in r 5(1) (as so revoked) do not, however, apply to any such notices: r 5(2) (as so revoked).

Notices or documents required or authorised to be served or sent under the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419 (as amended; revoked with savings) may be sent by post: r 14 (as so revoked).

12 *Ibid* r 5(3) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/839. Statements to be served before inquiry.

839. Statements to be served before inquiry.

In the case of a referred application¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ must, where this has not already been done, not later than 28 days before the date of the inquiry⁴, or such later date as the Secretary of State or the Assembly may specify⁵, serve or cause to be served on the applicant⁶ and the local planning authority⁷ a written statement of the reasons for his or its direction that the application be referred to him or to it and of any points which seem to him or to it to be likely to be relevant to his or its consideration of the application; and, where a government department has expressed in writing to the Secretary of State or to the Assembly the view that the application should not be granted either wholly or in part, or should be granted only subject to conditions, the Secretary of State or the Assembly must include this expression of view in his or its statement and must supply a copy of the statement to the government department concerned⁸.

Not later than 28 days before the date of the inquiry, or such later date as the Secretary of State or the Assembly may specify⁹, the local planning authority must:

- 3363 (1) serve on the applicant a written statement of any submission which the local planning authority proposes to put forward at the inquiry; and
- 3364 (2) supply a copy of the statement to the Secretary of State or the Assembly¹⁰.

Where the Secretary of State (or the Assembly) or a local authority¹¹ has given a direction restricting the grant of consent for the display of advertisements for which application was made or a direction as to how the application was to be determined, the local planning authority must mention this in its statement and must include in the statement a copy of the direction and the reasons given for it and must, within the prescribed period¹², supply a copy of the statement to the Secretary of State (or the Assembly) or the local authority concerned¹³. Where a government department or a local authority has expressed in writing to the local planning authority the view that the application should not be granted, either wholly or in part, or should be granted only subject to conditions, and the local planning authority proposes to rely on such expression of view in its submissions at the inquiry, it must include it in its statement and must, within the prescribed period¹⁴, supply a copy of the statement to the government department or local authority concerned¹⁵.

Where the local planning authority intends to refer to, or put in evidence at the inquiry, documents, including maps and plans, the authority's statement must be accompanied by a list of such documents, together with a notice stating the times and place at which the documents may be inspected by the applicant; and the local planning authority must afford him a reasonable opportunity to inspect and, where practicable, to take copies of the documents¹⁶.

If so required by the Secretary of State or the Assembly, the applicant must serve on the local planning authority and on the Secretary of State or the Assembly, within such time before the inquiry as the Secretary of State or the Assembly may specify, a written statement of the submissions which he proposes to put forward at the inquiry; and such statement must be accompanied by a list of any documents, including maps and plans, which the applicant intends to refer to or put in evidence at the inquiry and he must, if so required by the Secretary of State or the Assembly, afford the local planning authority a reasonable opportunity to inspect and, where practicable, to take copies of such documents¹⁷.

- 1 For these purposes, 'referred application' means an application referred to the Secretary of State under the Town and Country Planning Act 1990 s 77 (as amended) as applied by s 220(2)(c) (see PARA 769 ante): Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (revoked with savings); Planning (Consequential Provisions) Act 1990 s 2.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the Assembly see PARA 20 ante.
- 4 For the meaning of 'inquiry' see PARA 837 note 4 ante.
- 5 le under the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 5(1) proviso (1) (revoked with savings): see PARA 838 ante at head (1) in the text.
- 6 For the meaning of 'applicant' see PARA 838 note 4 ante.
- 7 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.
- 8 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 6(1) (revoked with savings). As to the mode of service see PARA 838 note 11 ante. The local planning authority must afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any statement served by the Secretary of State or the Assembly under r 6(1) (as so revoked): r 6(5) (as so revoked).
- 9 See note 5 supra.
- 10 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 6(2) (revoked with savings). The local planning authority must afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any statement served by the authority under r 6(2) (as so revoked): r 6(5) (as so revoked).
- 11 For the meaning of 'local authority' see PARA 838 note 5 ante.
- 12 le the period specified in the Town and Country Planning (Inquiries Procedure) Rules 1974 SI 1974/419, r 6(2) (revoked with savings): see the text to notes 9-10 supra.
- 13 Ibid r 6(3) (revoked with savings).
- 14 See note 12 supra.
- 15 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 6(3) (revoked with savings).
- 16 Ibid rr 2(1)(d)(i), 6(4) (revoked with savings). The local planning authority must afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any documents referred to in r 6(4) (as so revoked): r 6(5) (as so revoked).
- 17 Ibid rr 2(1)(d)(i), 6(6) (revoked with savings). The local planning authority must afford any other person interested a reasonable opportunity to inspect and, where practicable, to take copies of any statement served on the authority under r 6(6) (as so revoked): r 6(4) (as so revoked).

UPDATE

769-846 Control of Advertisements

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840. Appearance at the inquiry.

The persons entitled to appear at the inquiry¹ are:

- 3365 (1) the applicant²;
- 3366 (2) the local planning authority³;
- 3367 (3) where the land⁴ is not in Greater London⁵ or a metropolitan county⁶, the council of the administrative county⁷ in which the land is situated, if not the local planning authority;
- 3368 (4) where the land is not in Greater London, the council of the district⁸ in which the land is situated or the Council of the Isles of Scilly⁹, as the case may be, if not the local planning authority;
- 3369 (5) where the land is in a National Park¹⁰, the National Park authority¹¹, if any, if not the local planning authority;
- 3370 (6) any joint planning board¹² or any reconstituted joint planning board or special planning board¹³, where that board is not the local planning authority;
- 3371 (7) where the land is in an area designated as the site of a new town¹⁴, the development corporation of the new town;
- 3372 (8) the council of the parish¹⁵ or community¹⁶ in which the land is situated, if that council has made representations to the local planning authority in respect of the application in pursuance of a provision of a development order¹⁷;
- 3373 (9) any persons on whom the Secretary of State¹⁸ (or, in relation to Wales, the National Assembly for Wales¹⁹) or the appointed person²⁰ has required²¹ notice to be served²².

Any other person may appear at the inquiry at the discretion of the appointed person²³.

A local authority²⁴ may appear by its clerk, or by any other officer appointed for the purpose by the local authority, or by counsel or solicitor; and any other person may appear on his own behalf or be represented by counsel, solicitor or any other person²⁵.

Where there are two or more persons having a similar interest in the matter under inquiry, the appointed person may allow one or more persons to appear for the benefit of some or all of the persons so interested²⁶.

1 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

2 For the meaning of 'applicant' see PARA 838 note 4 ante.

3 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.

4 For the meaning of 'the land' see PARA 838 note 10 ante.

5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

6 As to metropolitan counties see PARA 28 note 1 ante.

7 As to county councils see PARA 28 note 1 ante.

8 As to district councils (of which there are none in Wales) see PARA 28 note 2 ante.

9 As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

10 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636.

11 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. The statutory wording is 'National Park Committee', defined by the Town and Country Planning (Inquiries Procedure)

Rules 1974, SI 1974/419, r 3(1) (revoked with savings) as having the meaning assigned to it by the Local Government Act 1972 s 184, Sch 17 para 5 (now repealed).

12 le constituted under the Town and Country Planning Act 1990 s 2 (as amended): see PARA 30 ante.

13 le any joint planning board or special planning board reconstituted under the Local Government Act 1972 Sch 17 Pt I (paras 1-21A) (now repealed).

14 As to new towns see PARA 1315 et seq post.

15 As to parish councils see LOCAL GOVERNMENT vol 69 (2009) PARA 27 et seq.

16 As to community councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

17 le a development order made under the Town and Country Planning Act 1990 s 59: see PARA 252 ante.

18 As to the Secretary of State see PARA 19 ante.

19 As to the Assembly see PARA 20 ante.

20 For these purposes, 'appointed person' means the person appointed by the Secretary of State or the Assembly to hold the inquiry: Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 3(1) (revoked with savings).

21 le under ibid r 5(2)(b) (revoked with savings): see PARA 838 ante.

22 Ibid rr 2(1)(d)(i), 7(1) (revoked with savings); Planning (Consequential Provisions) Act 1990 s 2.

23 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 7(2) (revoked with savings).

24 For the meaning of 'local authority' see PARA 838 note 5 ante.

25 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 7(3) (revoked with savings).

26 Ibid r 7(4) (revoked with savings).

UPDATE

769-846 Control of Advertisements

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841. Representatives of government departments at inquiry.

Where either:

3374 (1) the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² has given a direction restricting the grant of consent for the display of advertisements for which application was made; or

3375 (2) a government department³ has expressed in writing the view that the application should not be granted, either wholly or in part, or should be granted

only subject to conditions and the Secretary of State (or the Assembly) or the local planning authority⁴ has included this view in his or its statement⁵,

the applicant⁶ may, not later than 14 days before the date of the inquiry⁷, apply in writing to the Secretary of State for a representative of the government department to be made available at the inquiry⁸.

Where an application is so made to the Secretary of State, he must make a representative of his department available to attend the inquiry or, as the case may be, must transmit the application to the other government department concerned, which must make a representative of that department available to attend the inquiry⁹.

A representative of a government department who so attends an inquiry:

- 3376 (a) into a referred application¹⁰, must state the reasons for the Secretary of State's direction restricting the grant of consent or, as the case may be, the reasons for the view expressed by his department and included in the Secretary of State's statement¹¹ or the local planning authority's statement¹² and must give evidence and is subject to cross-examination to the same extent as any other witness¹³;
- 3377 (b) on an appeal, must be called as a witness by the local planning authority and must state the reasons for the Secretary of State's direction or, as the case may be, the reasons for the view expressed by his department and included in the authority's statement¹⁴ and must give evidence and is subject to cross-examination to the same extent as any other witness¹⁵.

Nothing in the above provisions, however, requires a representative of a government department to answer any question which in the opinion of the appointed person¹⁶ is directed to the merits of government policy and the appointed person must disallow any such question¹⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the Assembly see PARA 20 ante.

3 In relation to any inquiry which is held or caused to be held other than by the Assembly, references to a government department have effect as if they included reference to the Assembly; but for these purposes reference to an inquiry does not include an inquiry held by an inspector where jurisdiction to determine the appeal to which that inquiry relates has been transferred to the inspector by the Assembly: National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 6(1), (3), (4), Sch 4.

4 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.

5 Ie as required by the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 6(1) or (3) (revoked with savings): see PARA 839 ante.

6 For the meaning of 'applicant' see PARA 838 note 4 ante.

7 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

8 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(ii), (iii), 8(1) (revoked with savings).

9 Ibid r 8(2) (revoked with savings).

10 For the meaning of 'referred application' see PARA 839 note 1 ante.

11 Ie under the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 6(1) (revoked with savings).

12 Ie under ibid r 6(3) (revoked with savings).

- 13 Ibid r 8(3) (revoked with savings).
- 14 See note 12 *supra*.
- 15 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 8(4) (revoked with savings).
- 16 For the meaning of 'appointed person' see PARA 840 note 20 *ante*.
- 17 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 8(5) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/842. Representatives of local authorities at inquiry.

842. Representatives of local authorities at inquiry.

Where any local authority¹ has:

- 3378 (1) given to the local planning authority² a direction restricting the grant of consent for the display of advertisements or a direction as to how an application for consent was to be determined;
- 3379 (2) expressed in writing the view that an application for consent for the display of advertisements should not be granted wholly or in part or should be granted only subject to conditions, and the local planning authority has included this view in its statement³,

the applicant may, not later than 14 days before the date of the inquiry⁴, apply in writing to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ for a representative of the authority concerned to be made available to attend the inquiry⁷. Where an application is so made to the Secretary of State or the Assembly, he or it must transmit the application to the authority concerned which must make a representative of the authority available to attend the inquiry⁸.

A representative of a local authority who so attends an inquiry must be called as a witness by the local planning authority and must state the reasons for the authority's direction or, as the case may be, the reasons for the view expressed by it and included in the local planning authority's statement⁹ and must give evidence and is to be subject to cross-examination to the same extent as any other witness¹⁰.

1 For the meaning of 'local authority' see PARA 838 note 5 *ante*.

2 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 *ante*.

- 3 le as required under the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 6(3) (revoked with savings): see PARA 839 ante.
- 4 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the Assembly see PARA 20 ante.
- 7 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(ii), (iii), 9(1) (revoked with savings).
- 8 Ibid r 9(2) (revoked with savings).
- 9 See note 5 supra.
- 10 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 9(3) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/843. Procedure at inquiry.

843. Procedure at inquiry.

The procedure at the inquiry¹ is² such as the appointed person³ in his discretion determines⁴.

Unless in any particular case the appointed person with the consent of the applicant⁵ otherwise determines, the applicant must begin and has the right of final reply; and the other persons entitled or permitted to appear⁶ must be heard in such order as the appointed person may determine⁷.

The applicant and the local planning authority⁸ are entitled to call evidence and cross-examine persons giving evidence, but any other person appearing at the inquiry may do so only to the extent permitted by the appointed person⁹.

The appointed person may not require or permit the giving or production of any evidence, whether written or oral, which would be contrary to the public interest; but any evidence may be admitted¹⁰ at the discretion of the appointed person, who may direct that documents tendered in evidence may be inspected by any person entitled or permitted to appear at the inquiry and that facilities be afforded him to take or obtain copies thereof¹¹.

The appointed person may allow the local planning authority or the applicant, or both of them, to alter or add to the submissions contained in any statement served by them¹², or to any list of documents which accompanied such statement, so far as may be necessary for the purpose of determining the questions in controversy between the parties but must, if necessary by adjourning the inquiry, give the appellant or the local planning authority, as the case may be, an adequate opportunity of considering any such fresh submission or document; and the appointed person may make to the Secretary of State¹³ or, in relation to Wales, to the National

Assembly for Wales¹⁴ a recommendation as to the payment of any additional costs occasioned by any such adjournment¹⁵.

If any person entitled to appear at the inquiry fails to do so, the appointed person may proceed with the inquiry at his discretion¹⁶.

The appointed person is entitled, subject to disclosure thereof at the inquiry, to take into account any written representations or statements received by him before the inquiry from any person¹⁷.

The appointed person may from time to time adjourn the inquiry and, if the date, time and place of the adjourned inquiry are announced before the adjournment, no further notice is required¹⁸.

1 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

2 le except as otherwise provided in the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419 (as amended; revoked with savings): see PARA 837 et seq ante; the text and notes 3-18 infra; and PARA 844 et seq post.

3 For the meaning of 'appointed person' see PARA 840 note 20 ante.

4 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 10(1) (revoked with savings).

5 For the meaning of 'applicant' see PARA 838 note 4 ante.

6 As to the persons entitled and permitted to appear at the inquiry see PARA 840 ante.

7 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 10(2) (revoked with savings).

8 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.

9 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 10(3) (revoked with savings).

10 le except as set out in the text and without prejudice to ibid r 8(5) (revoked with savings): see PARA 841 ante.

11 Ibid r 10(4) (revoked with savings).

12 le served under ibid r 6(2) or (6) (revoked with savings): see PARA 839 ante.

13 As to the Secretary of State see PARA 19 ante.

14 As to the Assembly see PARA 20 ante.

15 Ibid rr 2(1)(d)(i), 10(5) (revoked with savings). As to the payment of additional costs occasioned by such an adjournment see *Performance Cars Ltd v Secretary of State for the Environment* (1977) 34 P & CR 92, CA.

16 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 10(6) (revoked with savings).

17 Ibid r 10(7) (revoked with savings).

18 Ibid r 10(8) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/844. Site inspections.

844. Site inspections.

The appointed person¹ may make an unaccompanied inspection of the land² before or during the inquiry³ without giving notice of his intention to the persons entitled to appear⁴ at the inquiry⁵.

The appointed person may, and must if so requested by the applicant⁶ or the local planning authority⁷ before or during the inquiry, inspect the land after the close of the inquiry and must, in all cases where he intends to make such an inspection, announce during the inquiry the date and time at which he proposes to do so⁸.

The applicant and the local planning authority are entitled to accompany the appointed person on any inspection after the close of the inquiry; but the appointed person is not bound to defer his inspection if any person entitled to accompany him is not present at the time appointed⁹.

1 For the meaning of 'appointed person' see PARA 840 note 20 ante.

2 For the meaning of 'the land' see PARA 838 note 10 ante.

3 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

4 As to the persons entitled to appear at the inquiry see PARA 840 ante.

5 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 11(1) (revoked with savings).

6 For the meaning of 'applicant' see PARA 838 note 4 ante.

7 For the meaning of 'local planning authority' see PARA 838 note 5 ante.

8 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 11(2) (revoked with savings).

9 Ibid rr 2(1)(d)(i), 11(3) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/845. Procedure after inquiry.

845. Procedure after inquiry.

After the close of the inquiry¹ the appointed person² must make a report in writing to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ which must include the appointed person's finding of fact and his recommendations, if any, or his reasons for not making any recommendations⁵.

Where the Secretary of State or the Assembly:

- 3380 (1) differs from the appointed person on a finding of fact; or
- 3381 (2) after the close of the inquiry takes into consideration any new evidence, including expert opinion on a matter of fact, or any new issue of fact, not being a matter of government policy, which was not raised at the inquiry,

and by reason thereof is disposed to disagree with a recommendation made by the appointed person, he or the Assembly may not come to a decision which is at variance with any such recommendation without first notifying the applicant and the local planning authority⁶ of his or its disagreement and the reasons for it and affording them an opportunity of making representations in writing within 21 days or, if the Secretary of State or the Assembly has taken into consideration any new evidence or any new issue of fact, not being a matter of government or Assembly policy⁷, of asking within 21 days for the reopening of the inquiry⁸.

The Secretary of State may in any case, if he thinks fit, cause the inquiry to be reopened and must cause it to be reopened if asked⁹ to do so¹⁰.

1 For the meaning of 'inquiry' for these purposes see PARA 837 note 4 ante.

2 For the meaning of 'appointed person' see PARA 840 note 20 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 12(1) (revoked with savings).

6 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.

7 The policy adopted or formulated by the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, art 6(1), (2), Sch 4.

8 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 12(2) (revoked with savings).

9 If asked to do so in accordance with *ibid* r 12(2) (revoked with savings): see the text and notes 1-5 *supra*.

10 *Ibid* r 12(3) (revoked with savings). If the inquiry is reopened, r 5(1), (2) (revoked with savings) (see PARA 838 ante) applies as it applied to the original inquiry, with the substitution in r 5(1) (as so revoked) of '28' for '42': r 12(3) (as so revoked).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(2) CONTROL OF ADVERTISEMENTS/ (iv) Inquiries/846. Notification of decision.

846. Notification of decision.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales², must notify his or its decision and his reasons therefor in writing to the applicant³, the local planning authority⁴ and to any person who, having appeared at the inquiry⁵, has asked to be notified of the decision⁶.

Where a copy of the appointed person's⁷ report⁸ is not sent with the notification of the decision, the notification must be accompanied by a summary of the appointed person's conclusions and recommendations; and, if any person entitled to be so notified of the Secretary of State's or the Assembly's decision has not received a copy of the appointed person's report, he must be supplied with a copy thereof on written application be made to the Secretary of State or the Assembly within one month from the date of his decision⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the National Assembly for Wales see PARA 20 ante.

3 For the meaning of 'applicant' see PARA 838 note 4 ante.

4 For the meaning of 'local planning authority' for these purposes see PARA 838 note 5 ante.

5 For the meaning of 'inquiry' see PARA 837 note 4 ante.

6 Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, rr 2(1)(d)(i), 13(1) (revoked with savings).

7 For the meaning of 'appointed person' see PARA 840 note 20 ante.

8 For these purposes, 'report' does not include documents, photographs or plans appended to the report; but any person entitled to be supplied with a copy of the report under the Town and Country Planning (Inquiries Procedure) Rules 1974, SI 1974/419, r 13(2) (revoked with savings) may apply to the Secretary of State or the Assembly in writing within six weeks of the notification to him of the decision or the supply to him of the report, whichever is the later, for an opportunity of inspecting such documents, photographs and plans and the Secretary of State or the Assembly must afford him an opportunity accordingly: r 13(3) (revoked with savings).

9 Ibid r 13(2) (revoked with savings).

UPDATE

769-846 Control of Advertisements

SI 1992/666 replaced in relation to England by the Town and Country Planning (Control of Advertisements) (England) Regulations 2007, SI 2007/783 (amended by SI 2007/1739).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(i) Trees and Hedgerows; in general/847. Planning permission to include appropriate provision for preservation and planting of trees.

(3) PRESERVATION OF TREES AND HEDGEROWS

(i) Trees and Hedgerows; in general

847. Planning permission to include appropriate provision for preservation and planting of trees.

It is the duty of the local planning authority¹:

- 3382 (1) to ensure, whenever it is appropriate, that, in granting planning permission² for any development³, adequate provision is made, by the imposition of conditions⁴, for the preservation or planting of trees⁵; and
- 3383 (2) to make such tree preservation orders⁶ as appear to the authority to be necessary in connection with the grant of such permission, whether or not giving effect to such conditions or otherwise⁷.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 If there is a breach of such a condition, there would be a contravention of planning control, subject to enforcement action: see PARA 551 et seq ante.

5 There is no statutory definition of 'tree' for these purposes; but see *Kent County Council v Batchelor* (1976) 33 P & CR 185 at 189, CA, per Lord Denning MR ('trees' in a woodland should probably be over seven or eight inches in diameter); not applied in *Bullock v Secretary of State for the Environment* (1980) 40 P & CR 246; and cf para 878 post at head (e) in the text (statutory exemption in respect of trees in conservation areas which are below specified diameters). See also *Fowler v Ealing London Borough Council* [2004] EWHC 2860 (Admin), [2004] All ER (D) 366 (Nov) (local planning authority entitled in all the circumstances to conclude that two arbutuses were in fact 'trees' for the statutory purposes).

6 I.e. orders under the Town and Country Planning Act 1990 s 198 (as amended): see PARA 850 post.

7 Ibid s 197. As to the powers of local authorities and statutory undertakers to contribute towards any expenses incurred by a local planning authority in or in connection with the performance of any of its function under the Town and Country Planning Act 1990 Pt VIII Ch I (ss 197-214D) (as amended): see PARA 850 et seq post, except s 207 (as amended) (see PARA 874 post), see s 306(2)(b) (as amended); and PARA 50 ante at head (b) in the text; and as to the application of Pt VIII Ch I (as amended) to Crown land see ss 293, 296 (as amended; s 296 prospectively repealed); and PARA 11 ante. As to the exercise of certain functions under Pt VIII Ch I (as amended) as respects a National Park see PARA 32 ante.

As to the general duty of every minister, government department and public body to have regard to the desirability of conserving the natural beauty and amenity of the countryside see the Countryside Act 1968 s 11; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 665; and as to a local planning authority's or National Park authority's power to plant trees on land in its area for the purpose of preserving or enhancing the natural beauty thereof see the National Parks and Access to the Countryside Act 1949 s 89 (as amended); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 647.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(i) Trees and Hedgerows; in general/848. Preservation of important hedgerows.

848. Preservation of important hedgerows.

The appropriate ministers¹ or, in relation to Wales, the National Assembly for Wales² may by regulations make provision for, or in connection with, the protection of important hedgerows³ in England or Wales⁴. Such regulations may provide for the application, with or without modifications, of, or include provision comparable to, any provision contained in the planning Acts⁵. These powers, and the Hedgerows Regulations 1997⁶ which have been made under them, are discussed elsewhere in this work⁷.

1 As to the appropriate ministers see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 700.

2 As to the transfer of functions under the Environment Act 1995 s 97, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 The question whether a hedgerow is or is not 'important' for these purposes is to be determined in accordance with prescribed criteria: Environment Act 1995 s 97(2). For the purpose of facilitating the protection of important hedgerows, regulations under s 97(1) may also make provision in relation to other hedgerows in England or Wales: s 97(3). For the prescribed criteria see the Hedgerows Regulations 1997, SI 1997/1160, reg 4; and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 702.

4 Environment Act 1997 s 97(1).

5 Ibid s 97(4). For the meaning of 'the planning Acts' see PARA 2 ante. As to the particular provision that may be made by such regulations see s 97(4)(a)-(e), (5); and **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 700.

6 Ie the Hedgerows Regulations 1997, SI 1997/1160 (as amended), which were made by the appropriate ministers prior to the transfer of functions in relation to Wales to the Assembly, and which came into force on 1 June 1997: reg 1.

7 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 700.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(i) Trees and Hedgerows; in general/849. Controls on felling of trees under forestry legislation.

849. Controls on felling of trees under forestry legislation.

Under the Forestry Act 1967, and subject to certain exceptions, there are restrictions on the felling¹ of trees without a licence granted by the Forestry Commissioners². These provisions are discussed elsewhere in this work³.

1 'Felling' includes wilfully destroying by any means: Forestry Act 1967 s 35.

2 See ibid Pt II (ss 9-36) (as amended); and **FORESTRY** vol 52 (2009) PARA 120 et seq.

3 See **FORESTRY** vol 52 (2009) PARA 120 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/A. POWERS TO MAKE TREE

PRESERVATION ORDERS; IN GENERAL/850. Local planning authority's power to make tree preservation orders.

(ii) Tree Preservation Orders

A. POWERS TO MAKE TREE PRESERVATION ORDERS; IN GENERAL

850. Local planning authority's power to make tree preservation orders.

If it appears to a local planning authority¹ that it is expedient in the interests of amenity² to make provision for the preservation of trees or woodlands in its area, it may for that purpose make an order (a 'tree preservation order') with respect to such trees, groups of trees or woodlands as may be specified in the order³.

A tree preservation order does not take effect until it is confirmed⁴ by the local planning authority; and the local planning authority may confirm any such order either without modification or subject to such modifications as it considers expedient⁵.

A tree preservation order may, in particular, make provision for:

- 3384 (1) prohibiting, subject to any exemptions for which provision may be made by the order, the cutting down, topping, lopping, uprooting, wilful damage, or wilful destruction⁶ of trees except with the consent⁷ of the local planning authority, and for enabling that authority to give its consent subject to conditions;
- 3385 (2) securing the replanting⁸, in such manner as may be prescribed by or under the order, of any part of a woodland area which is felled in the course of forestry operations permitted by or under the order;
- 3386 (3) applying, in relation to any consent under the order, and to applications for such consent, any of the specified statutory provisions⁹, subject to such adaptations and modifications as may be specified in the order¹⁰.

A tree preservation order may be made so as to apply, in relation to trees to be planted pursuant to any conditions imposed by a local planning authority on granting planning permission¹¹, as from the time when those trees are planted¹².

Without prejudice to any other exemptions for which provision may be made by a tree preservation order, no such order may apply to:

- 3387 (a) the cutting down, uprooting, topping or lopping of trees which are dying or dead or have become dangerous¹³; or
- 3388 (b) the cutting down, uprooting, topping or lopping of any trees in compliance with any obligations imposed by or under an Act of Parliament or so far as may be necessary for the prevention or abatement of a nuisance¹⁴.

Where a local planning authority has so made a tree preservation order, the powers of varying or revoking the order and the powers of dispensing¹⁵ with the requirement to replace trees or serving, or appearing on an appeal relating to, an enforcement notice¹⁶ are exercisable only by the authority which made the order¹⁷.

It has been held that the statutory regime under which tree preservation orders are made and confirmed strikes a fair balance between the interests of the community and the individual's Convention rights under the Human Rights Act 1998¹⁸ to respect for his private and family life¹⁹ and the peaceful enjoyment of his possessions²⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 As to the meaning of 'amenity' see PARA 158 note 8 ante.

3 Town and Country Planning Act 1990 ss 198(1), (2), 336(1). As to tree preservation orders affecting Crown land or land in which there is a Forestry Commission interest see PARAS 854-855 post.

Section 198 (as amended) has effect subject to the Housing and Planning Act 1986 s 39(2) (saving for effect of the Opencast Coal Act 1958 s 2(4) on land affected by a tree preservation order despite its repeal: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 404) and the Forestry Act 1967 s 15 (as amended) (licences to fell trees comprised in a tree preservation order: see FORESTRY vol 52 (2009) PARAS 130-131): Town and Country Planning Act 1990 s 198(7). See also PARA 847 note 7 ante.

As to rights of entry for the purpose of surveying land in connection with making a tree preservation order see PARAS 880-882 post. Trees may also be protected by the designation of the area in which they are growing as a conservation area; a tree preservation order affords better protection, but 'blanket' coverage of trees in an area by one tree preservation order is inappropriate: see *R v Canterbury City Council, ex p Halford* [1992] 2 PLR 137 at 145. As to conservation areas see PARA 1169 et seq post; and as to trees in conservation areas see PARA 877 et seq post.

4 As to confirmation of the order see PARA 856 et seq post; and as to rights of entry for the purpose of surveying land in connection with confirming a tree preservation order see PARAS 880-882 post. A tree preservation order made in anticipation of the disposal of Crown land does not, however, so require confirmation until after the occurrence of the event by virtue of which it takes effect: see PARA 854 post.

5 Town and Country Planning Act 1990 s 199(1). As to the right to challenge the validity of a tree preservation order see PARA 43 ante at head (c) in the text; and see eg *R (on the application of Gilman) v Rutland County Council* [2004] EWHC 2792 (Admin), [2004] All ER (D) 392 (Nov).

6 Before a tree can be said to have been 'destroyed', it must have been rendered useless in the sense of having ceased to have any use as an amenity or as something worth preserving. If a person inflicts on a tree so radical an injury that in all the circumstances a competent forester, taking into account its situation eg its proximity to a highway, would decide that it ought to be felled, that person would have wilfully destroyed the tree: *Barnet London Borough Council v Eastern Electricity Board* [1973] 2 All ER 319, [1973] 1 WLR 430.

7 As to applications for consent under a tree preservation order see PARA 868 post.

8 As to the replanting of trees see the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 8.

9 The provisions so specified are (1) the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) relating to planning permission and to applications for planning permission, except s 56 (as amended) (see PARA 221 ante), s 62 (prospectively substituted) (see PARA 448 ante), s 65 (as substituted and amended) (see PARA 468 ante), s 69(3), (4) (as amended; prospectively substituted) (see PARA 466 ante), s 71 (as amended) (see PARA 473 ante), ss 91-96 (as amended) (see PARAS 519, 537 et seq ante), s 100 (as amended) (see PARA 544 ante), s 101 (as amended) (see PARA 704 ante), and Sch 8 (as amended) (see PARA 705 et seq ante); and (2) ss 137-141 (as amended) (see PARA 966 et seq post), s 143 (see PARA 974 post) and s 144 (as amended) (see PARA 977 post), except so far as they relate to purchase notices served in consequence of such orders as are mentioned in s 137(1)(b) or (c) (see PARA 966 post); (3) s 316 (as substituted) (see PARA 891 post): s 198(4) (amended by the Planning and Compensation Act 1991 ss 31, 32, 84(6), Sch 6 paras 8, 20, Sch 7 paras 8, 34, Sch 19 Pts I, II). For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'purchase notice' see PARA 966 post.

10 Town and Country Planning Act 1990 s 198(3).

11 *Ibid* under *ibid* s 197(a): see PARA 847 ante at head (1) in the text.

12 *Ibid* s 198(5); and see the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Schedule art 10. Whilst not unlawful, it is not best practice for an area tree preservation order to pertain for any substantial length of time; a detailed inspection should at some point be undertaken and tree preservation orders specific to individual trees or areas of woodland should then be made: see *Robinson v East Riding of Yorkshire Council* [2002] EWCA Civ 1660, [2002] All ER (D) 91 (Nov), [2003] JPL 894. The absence of a review does not, however, diminish the protection afforded by an area tree preservation order: see eg *Evans v First Secretary of State* [2003] EWHC 2169 (Admin), [2003] All ER (D) 226 (Oct).

13 The burden of proving that a tree was dying, dead, dangerous or creating a nuisance lies with the person accused of cutting down a tree in contravention of a preservation order contrary to the Town and Country Planning Act 1990 s 210(1) (see PARA 876 post); and s 198(6) constitutes an exception to the absolute liability created by s 210(1) and is not part of the definition of the offence itself: *R v Alath Construction Ltd, R v*

Brightman [1990] 1 WLR 1255, 60 P & CR 533, CA. Whether or not trees have become dangerous is a question of fact, to be decided using the sensible approach of a prudent citizen; there must be a present danger which is not limited to disease or damage to the trees themselves: *Smith v Oliver* [1989] 2 PLR 1, DC.

14 Town and Country Planning Act 1990 s 198(6).

15 Ie dispensing with *ibid* s 206: see PARA 873 post.

16 Ie a notice under *ibid* s 207 (as amended): see PARA 874 post.

17 See *ibid* s 1(5)(c) (as amended), s 1(6) (as added), Sch 1 para 13(2) (which applies in relation to England), Sch 1A para 6 (Sch 1A added in relation to Wales by the Local Government (Wales) Act 1994 s 18(7), Sch 4). In England, the Town and Country Planning Act 1990 Sch 1 para 13 does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. In Wales, Sch 1A para 6 (as so added) applies only in relation to any area for which, by virtue of any provision of or made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added).

18 As to Convention rights see the Human Rights Act 1998 s 1(3), Sch 1; and PARA 4 ante.

19 See PARA 7 ante at head (iii) in the text.

20 *R (on the application of Brennon) v Bromsgrove District Council* [2003] EWHC 752 (Admin), [2003] 2 P & CR 430, [2003] All ER (D) 248 (Mar). As to the right to peaceful enjoyment of possessions see PARA 7 ante at head (iv) in the text.

UPDATE

850 Local planning authority's power to make tree preservation orders

NOTE 5--See *Palm Development Ltd v Secretary of State for Communities and Local Government* [2009] EWHC 220 (Admin), [2009] LLR 275, [2009] All ER (D) 132 (Feb) (conclusions of Secretary of State's inspector were conclusions in exercise of her planning judgment and could not be challenged on basis that they were erroneous in law).

NOTE 14--The existence of an alternative way to prevent or abate the nuisance is relevant in determining the question whether operations to the tree itself are necessary to prevent or abate the nuisance: *Perrin v Northampton BC* [2007] EWCA Civ 1353, [2008] 4 All ER 673.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/A. POWERS TO MAKE TREE PRESERVATION ORDERS; IN GENERAL/851. Secretary of State's or Assembly's power to make tree preservation orders.

851. Secretary of State's or Assembly's power to make tree preservation orders.

If it appears to the Secretary of State¹, or, in relation to Wales, to the National Assembly for Wales², after consultation³ with the local planning authority⁴, to be expedient that a tree preservation order⁵ or an order amending or revoking such an order should be made, he or the Assembly may himself or itself make such an order⁶. Any order so made by the Secretary of State or the Assembly has the same effect as if it had been made by the local planning authority and confirmed⁷ by that authority⁸.

The statutory provisions relating to tree preservation orders⁹ and the provisions of any regulations made thereunder with respect to the procedure to be followed in connection with the making and confirmation of any such order¹⁰ and the service of copies of it as confirmed have effect, subject to any necessary modifications, in relation to:

- 3389 (1) any proposal by the Secretary of State or the Assembly to make such an order;
- 3390 (2) the making of it by the Secretary of State or the Assembly; and
- 3391 (3) the service of copies of it as so made¹¹.

Where the Secretary of State or the Assembly has so made a tree preservation order, the powers of varying or revoking the order and the powers of dispensing¹² with the requirement to replace trees or serving, or appearing on an appeal relating to, an enforcement notice¹³ are exercisable only by the authority named in the order¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 202, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'consult' see PARA 2 note 1 ante.

4 In England, the local planning authority which the Secretary of State is required so to consult is the country planning authority or the district planning authority, as he thinks appropriate; and references in the Town and Country Planning Act 1990 s 202 to the local planning authority are to be construed accordingly: see s 1(5)(c) (as amended), Sch 1 para 20(1) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 53(1), (8)). The Town and Country Planning Act 1990 Sch 1 para 20(1) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). As to local planning authorities see PARA 28 et seq ante; as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to county planning authorities and district planning authorities in England see PARA 28 ante. There are no district planning authorities in Wales.

5 For the meaning of 'tree preservation order' see PARA 850 ante.

6 Town and Country Planning Act 1990 s 202(1). See also PARAS 847 note 7, 850 note 3 ante. As to rights of entry see PARAS 880-882 post.

7 *Ie* under *ibid* Pt VIII Ch I (ss 197-214D) (as amended): see PARA 847 et seq ante, PARA 852 et seq post.

8 *Ibid* s 202(2).

9 *Ie* *ibid* Pt VIII Ch I (as amended).

10 *Ie* any order to which *ibid* s 202(1) applies: see the text and notes 1-4 *supra*.

11 *Ibid* s 202(3).

12 *Ie* dispensing with *ibid* s 206: see PARA 873 post.

13 *Ie* a notice under *ibid* s 207 (as amended): see PARA 874 post.

14 See *ibid* s 1(5)(c) (as amended), s 1(6) (as added), Sch 1 para 13(2) (which applies in relation to England), Sch 1A para 6 (Sch 1A added in relation to Wales by the Local Government (Wales) Act 1994 s 18(7), Sch 4). In England, the Town and Country Planning Act 1990 Sch 1 para 13 does not, however, apply in Greater London: Sch 1 para 21(1). In Wales, Sch 1A para 6 (as so added and modified) applies only in relation to any area for which, by virtue of any provision of or made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added).

PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/A. POWERS TO MAKE TREE PRESERVATION ORDERS; IN GENERAL/852. Power of county planning authority in England to make tree preservation order.

852. Power of county planning authority in England to make tree preservation order.

In the case of any area for which there is both a district planning authority¹ and a county planning authority², the county planning authority may only make a tree preservation order³ if:

3392 (1) it makes the order in connection with the grant of planning permission⁴;

3393 (2) the order relates to land⁵ which does not lie wholly within the area of a single district planning authority;

3394 (3) the order relates to land in which the county planning authority holds an interest⁶.

1 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

2 As to county planning authorities see PARA 28 ante.

3 For the meaning of 'tree preservation order' see PARA 850 ante.

4 I.e. if it makes the order in pursuance of the Town and Country Planning Act 1990 s 197(b): see PARA 847 ante at head (2) in the text. For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning Act 1990 s 1(5)(c) (as amended), Sch 1 para 13(1) (amended by the Environment Act 1995 ss 78, 120(3), Sch 10 para 32, Sch 24). The Town and Country Planning Act 1990 Sch 1 para 13(1) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/A. POWERS TO MAKE TREE PRESERVATION ORDERS; IN GENERAL/853. Provisional tree preservation orders.

853. Provisional tree preservation orders.

If it appears to a local planning authority¹ that a tree preservation order² proposed to be made by that authority should take effect immediately without previous confirmation³, that authority may include in the order as made by it a direction that heads (1) and (2) below are to apply to the order⁴.

An order which contains such a direction:

3395 (1) takes effect⁵ provisionally on such date as may be specified in it; and

3396 (2) continues in force⁶ until the expiration of a period of six months beginning with the date on which the order was made or the date on which the order is confirmed, whichever first occurs⁷.

1 As to local planning authorities see PARA 28 et seq ante.

- 2 For the meaning of 'tree preservation order' see PARA 850 ante.
- 3 As to the normal requirement for confirmation see the Town and Country Planning Act 1990 s 199(1); and PARA 850 ante.
- 4 Ibid s 201(1). See also PARA 847 note 7 ante.
- 5 Ie notwithstanding ibid s 199(1); see PARA 850 ante.
- 6 See note 5 supra.
- 7 Town and Country Planning Act 1990 s 201(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/B. CROWN LAND AND LAND WITH FORESTRY COMMISSION INTEREST/854. Tree preservation orders in anticipation of disposal of Crown land.

B. CROWN LAND AND LAND WITH FORESTRY COMMISSION INTEREST

854. Tree preservation orders in anticipation of disposal of Crown land.

At the date at which this title states the law, no tree preservation order¹ may be made in relation to land² which is for the time being Crown land³ except with the consent of the appropriate authority⁴. A local planning authority⁵ may, however, make a tree preservation order in respect of Crown land in which no interest is for the time being held otherwise than by or on behalf of the Crown, if it considers it expedient to do so for the purpose of preserving trees or woodlands on the land in the event of its ceasing to be Crown land or becoming subject to a private interest⁶; but no such order may be made except with the consent of the appropriate authority⁷. An order so made does not take effect until the first occurrence of a relevant event⁸; and, for these purposes, a relevant event occurs in relation to any land if it ceases to be Crown land or becomes subject to a private interest⁹. Such an order:

- 3397 (1) does not require confirmation¹⁰ until after the occurrence of the event by virtue of which it takes effect; and
- 3398 (2) continues in force until the expiration of the period of six months beginning with the occurrence of that event or the date on which the order is confirmed, whichever first occurs¹¹.

Where a tree preservation order so takes effect¹², the appropriate authority must as soon as practicable give to the authority which made the order a notice in writing of the name and address of the person who has become entitled to the land in question or to a private interest in it¹³; and the prescribed procedure¹⁴ in connection with the confirmation of a tree preservation order applies in relation to an order made by virtue of the above provisions as if the order were made on the date on which such notice¹⁵ is received by the authority which made it¹⁶.

As from a day to be appointed¹⁷, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹⁸, subject to transitional provisions¹⁹. A tree preservation order may then be made whether or not a disposal of the Crown land in question is anticipated²⁰.

- 1 For the meaning of 'tree preservation order' see PARA 850 ante.
- 2 For the meaning of 'land' see PARA 2 note 10 ante.
- 3 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.
- 4 See the Town and Country Planning Act 1990 s 296(2)(a) (as amended; prospectively repealed); and PARA 11 ante at head (ii) in the text. For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.
- 5 As to local planning authorities see PARA 28 et seq ante.
- 6 Town and Country Planning Act 1990 s 300(1). For the meaning of 'private interest', and as to the position of a person who occupies Crown land by virtue of a licence in writing, see PARA 11 note 19 ante.
- 7 Ibid s 300(2).
- 8 Ibid s 300(3).
- 9 Ibid s 300(4).
- 10 Ie under ibid s 199: see PARA 850 ante.
- 11 Ibid s 300(5).
- 12 Ie in accordance with ibid s 300(3): see the text and note 8 supra.
- 13 Ibid s 300(6). As to service of notices see PARA 54 ante.
- 14 Ie the procedure prescribed under ibid s 199.
- 15 Ie notice under ibid s 300(6): see the text and notes 12-13 supra.
- 16 Ibid s 300(7).
- 17 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.
- 18 See ibid ss 79(4), 120, Sch 3 para 26(1), Sch 9. At the date at which this title states the law, these repeals were not in force.
- 19 The repeal of the Town and Country Planning Act 1990 s 300 does not affect its operation in relation to a tree preservation order made by virtue of s 300 before the commencement of the Planning and Compulsory Purchase Act 2004 Sch 3 para 26: Sch 3 para 26(2).
- 20 As to the prospective general application of the Town and Country Planning Act 1990 to the Crown see PARA 13 ante. As to exceptions for land placed at the disposal of the Forestry Commissioners see s 200 (as prospectively substituted); and PARA 855 post.

UPDATE

854-855 Crown Land and Land with Forestry Commission Interest

Repeal of these provisions now in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/B. CROWN LAND AND LAND WITH FORESTRY COMMISSION INTEREST/855. Tree preservation orders and the Forestry Commissioners.

855. Tree preservation orders and the Forestry Commissioners.

As from a day to be appointed¹, the following provisions apply. A tree preservation order² does not have effect in respect of anything done:

3399 (1) by or on behalf of the Forestry Commissioners³ on land⁴ placed at their disposal in pursuance of the Forestry Act 1967⁵ or otherwise under their management or supervision;

3400 (2) by or on behalf of any other person in accordance with a relevant plan⁶ which is for the time being in force⁷.

At the date at which this title states the law, however, the provisions set out above were not in force and the following provisions continued to apply. In relation to land in which the Forestry Commissioners have an interest⁸, a tree preservation order may be made only if:

3401 (a) there is not in force in respect of the land a plan of operations or other working plan approved by the Commissioners under a forestry dedication covenant; and

3402 (b) the Commissioners consent to the making of the order⁹.

A tree preservation order in respect of such land does not have effect so as to prohibit, or to require any consent for, the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Commissioners, and for the time being in force, under a forestry dedication covenant or under the conditions of a grant or loan made¹⁰ under the Forestry Act 1979¹¹.

1 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 As to the Forestry Commissioners see FORESTRY vol 52 (2009) PARA 34 et seq.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For these purposes a reference to a provision of the Forestry Act 1967 or the Forestry Act 1979 includes a reference to a corresponding provision replaced by that provision or any earlier corresponding provision: Town and Country Planning Act 1990 s 200(3) (s 200(1)-(3) prospectively substituted by the Planning and Compulsory Purchase Act 2004 s 85, as from a day to be appointed: see note 1 supra).

6 For these purposes, a relevant plan is a plan of operations or other working plan approved by the Forestry Commissioners under (1) a forestry dedication covenant within the meaning of the Forestry Act 1967 s 5 (as amended) (see FORESTRY vol 52 (2009) PARA 116 et seq); or (2) conditions of a grant or loan made under the Forestry Act 1979 s 1 (as amended) (see FORESTRY vol 52 (2009) PARA 40): Town and Country Planning Act 1990 s 200(2) (as substituted: see note 5 supra).

7 Ibid s 200(1) (as substituted: see note 5 supra).

8 For these purposes, the Forestry Commissioners are only to be regarded as having an interest in land if (1) they have made a grant or loan under the Forestry Act 1979 s 1 (as amended) (see FORESTRY vol 52 (2009) PARA 40) in respect of it; or (2) there is a forestry dedication covenant in force in respect of it: Town and Country Planning Act 1990 s 200(2) (as originally enacted). 'A forestry dedication covenant' means a covenant entered into with the Commissioners under the Forestry Act 1967 s 5 (as amended) (see FORESTRY vol 52 (2009) PARA 116 et seq): Town and Country Planning Act 1990 s 200(4)(a). References to the provisions of the Forestry Act 1967 and the Forestry Act 1979 include references to any corresponding provisions replaced by those provisions or by earlier corresponding provisions: Town and Country Planning Act 1990 s 200(4)(b) (as originally enacted).

9 Ibid s 200(1) (as originally enacted). See also PARA 847 note 7 ante. As to applications for a felling licence in respect of trees to which a tree preservation order relates see the Forestry Act 1967 s 15, Sch 3 (as amended); and FORESTRY vol 52 (2009) PARAS 130-131.

10 Ie under the Forestry Act 1979 s 1 (as amended).

11 Town and Country Planning Act 1990 s 200(3) (as originally enacted).

UPDATE

854-855 Crown Land and Land with Forestry Commission Interest

Repeal of these provisions now in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/856. Power to make regulations.

C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS

856. Power to make regulations.

Provision may be made¹ by regulations with respect to:

- 3403 (1) the form of tree preservation orders²; and
- 3404 (2) the procedure to be followed in connection with the making and confirmation of such orders³.

Without prejudice to the generality of the above, the regulations may make provision:

- 3405 (a) that, before a tree preservation order is confirmed by the local planning authority⁴, notice of the making of the order shall be given to the owners⁵ and occupiers of land⁶ affected by the order and to such other persons, if any, as may be specified in the regulations;
- 3406 (b) that objections and representations with respect to the order, if duly made in accordance with the regulations, shall be considered before the order is confirmed by the local planning authority; and
- 3407 (c) that copies of the order, when confirmed by the authority, shall be served on such persons as may be specified in the regulations⁷.

1 Ie regulations under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante. The Town and Country Planning (Trees) Regulations 1999, SI 1999/1892 (as amended) are made in the exercise of this power. See PARA 857 et seq post.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 Town and Country Planning Act 1990 s 199(2). See also PARA 847 note 7 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 For the meaning of 'owner' see PARA 17 note 1 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 Town and Country Planning Act 1990 s 199(3). As to the service of notices see PARA 54 ante.

UPDATE

856 Power to make regulations

NOTES 3, 7--See also SI 1999/1892 reg 9A (added by SI 2008/2260) (applications in relation to England for consent to cut down, top, lop or uproot a tree which is subject to a tree preservation order).

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857. Form of tree preservation order.

A tree preservation order¹ must be in the prescribed form², or in a form substantially to the same effect, and must:

- 3408 (1) specify the trees, groups of trees or woodlands to which it relates³;
- 3409 (2) where the order relates to a group of trees, specify the number of trees in the group; and
- 3410 (3) indicate the position of the trees, groups of trees or woodlands, as the case may be, by reference to a map⁴.

An order must contain or have annexed to it the map referred to in head (3) above⁵, which must be prepared to a scale sufficient to give a clear indication of the position of the trees, groups of trees or woodlands to which the order relates⁶; and where a map is annexed to an order it is treated as part of the order⁷.

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 For the prescribed form of order see the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule (as amended). As to the prohibited acts in relation to trees to be specified in the order see Schedule art 4; and as to the exemptions to be specified see Schedule art 5 (as amended); and PARA 878 note 9 post.

3 As to specification of trees see Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Schedule art 4, Sch 1.

4 Ibid regs 1(2), 2(1). So long as the map attached to the tree preservation order is sufficient to meet the statutory objective set out in head (3) in the text, it is nothing to the point whether it is otherwise inaccurate or outdated: see *Robinson v East Riding of Yorkshire Council* [2002] EWCA Civ 1660, [2002] All ER (D) 91 (Nov), [2003] JPL 894.

5 Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(2).

6 Ibid reg 2(3).

7 Ibid reg 2(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/858. Procedure after making order.

858. Procedure after making order.

As soon as practicable after making a tree preservation order¹, and before confirming it², the authority³ which made it must:

3411 (1) serve on the persons interested in the land affected by the order⁴ a copy of the order and a notice containing the following particulars⁵:

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299. (a) the reasons for making the order;

300. (b) a statement that objections or other representations with respect to any trees, groups of trees or woodlands specified in the order may be made to the authority⁶;

301. (c) the date, being at least 28 days after the date of the notice, by which any objection or representation must be received by the authority;

302. (d) a copy of the relevant statutory provision with regard to objections⁷; and

303. (e) where the order contains a direction that the order is to be a provisional tree preservation order⁸, a statement of the effect of that direction⁹; and

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3412 (2) make a copy of the order available¹⁰ for public inspection¹¹.

Electronic communications may not be used for giving the notice, or serving the copy of the order, referred to in head (1) above¹².

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 As to confirmation of the order see PARA 860 post.

3 For these purposes, unless the context otherwise requires, 'authority' means a local planning authority making, or having functions under, a tree preservation order: Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 1(2). As to local planning authorities see PARA 28 et seq ante.

4 For these purposes, unless the context otherwise requires, 'person interested', in relation to land affected by an order, means every owner and occupier of the land and every other person whom the authority knows to be entitled to fell any of the trees to which the order relates or to work by surface working any materials in, on or under the land; and 'land affected by the order' includes any land adjoining the land on which the trees, groups of trees or woodlands to which the order relates are situated: *ibid* reg 1(2).

5 *Ie* the particulars mentioned in *ibid* reg 3(2): see heads (a)-(e) in the text.

6 *Ie* in accordance with *ibid* reg 4: see PARA 859 post.

7 *Ie* *ibid* reg 4: see PARA 859 post.

8 *Ie* a direction under the Town and Country Planning Act 1990 s 201: see PARA 853 ante.

9 Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 3(1)(a), (2).

10 le in accordance with *ibid* reg 3(3). Subject to regs 6(c), 7(c) and 9(1)(c) (see PARA 861 *et seq post*), a copy of the order must be made available for inspection, free of charge, at all reasonable hours, at the offices of the authority by which the order was made; and where an order is made on behalf of an authority, it must be made available for inspection also at the offices of the authority on whose behalf it was made: reg 3(3).

11 *Ibid* reg 3(1)(b).

12 See PARA 54 note 4 *ante*.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/859. Objections and representations.

859. Objections and representations.

Objections and representations must¹:

3413 (1) be made in writing and:

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304. (a) delivered to the authority² not later than the date specified³ by it; or

305. (b) sent to the authority in a properly addressed and pre-paid letter posted at such time that, in the ordinary course of post, it would be delivered to the authority not later than that date;

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3414 (2) specify the particular trees, groups of trees or woodlands, as the case may be, in respect of which the objections or representations are made; and

3415 (3) in the case of an objection, state the reasons for the objection⁴.

The authority may, however, treat as duly made objections and representations which do not comply with the above requirements if, in the particular case, it is satisfied that compliance with those requirements could not reasonably have been expected⁵.

1 le subject to the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 4(2): see the text and note 5 *infra*.

2 For the meaning of 'authority' see PARA 858 note 3 *ante*.

3 le specified under the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 3(2)(c): see PARA 858 *ante* at head (1)(c) in the text.

4 *Ibid* reg 4(1).

5 *Ibid* reg 4(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/860. Procedure for confirmation of a tree preservation order.

860. Procedure for confirmation of a tree preservation order.

The authority¹ may not confirm a tree preservation order² which it has made unless it has first considered any objections and representations duly made³ in respect of it and not withdrawn⁴. The local planning authority⁵ may confirm any such order either without modification or subject to such modification as it considers expedient⁶.

Where an order is confirmed it must be indorsed to that effect, and the indorsement must also indicate that the order was confirmed with modifications or without modification, as the case may be, and the date on which it was confirmed⁷. Where an order is confirmed with modifications, the modifications must be indicated in the order by distinctive type or other means⁸.

1 For the meaning of 'authority' see PARA 858 note 3 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 As to objections and representations see PARA 859 ante.

4 Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 5(1).

5 As to local planning authorities see PARA 28 et seq ante.

6 Town and Country Planning Act 1990 s 199(1). See also the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 5(2), which provides that an authority may confirm an order with or without modification.

7 Ibid reg 5(3).

8 Ibid reg 5(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/861. Action after confirmation of tree preservation order.

861. Action after confirmation of tree preservation order.

As soon as practicable after confirming a tree preservation order¹, the authority² which confirmed it must:

3416 (1) notify the persons interested in the land affected by the order³:

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306. (a) of the confirmation of the order;

307. (b) of the date on which the order was confirmed; and

308. (c) of the time within which an application may be made to the High Court challenging the validity of the order⁴, and of the grounds on which such an application may be made;

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3417 (2) where the order was confirmed with modifications, send a copy of the order, as confirmed, to those persons⁵; and

3418 (3) make a copy of the order, as confirmed, available for public inspection, in place of the copy previously⁶ made so available⁷.

Electronic communications may not be used for giving the notice, or serving the copy of the order, referred to in head (1) above⁸.

1 For the meaning of 'tree preservation order' see PARA 850 ante; and as to confirmation of the order see PARA 860 ante.

2 For the meaning of 'authority' see PARA 858 note 3 ante.

3 For the meaning of 'person interested' and 'land affected by the order' see PARA 858 note 4 ante.

4 In an application under the Town and Country Planning Act 1990 s 284 (as amended): see PARA 43 ante.

5 The original order need not, however, be so sent; nor need a copy of the confirmed order be sent if it is confirmed without modifications: see *R (on the application of Brennon) v Bromsgrove District Council* [2003] EWHC 752 (Admin), [2003] 2 P & CR 430, [2003] All ER (D) 248 (Mar).

6 In the copy made available in accordance with the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 3: see PARA 859 ante.

7 Ibid reg 6. The copy of the order as confirmed must otherwise be made available in accordance with reg 3(3) (see PARA 859 ante): reg 6. When a tree preservation order has come in effect, it is registrable as a planning charge in the register of local land charges: see the Local Land Charges Rules 1977, SI 1977/985, r 2; and LAND CHARGES vol 26 (2004 Reissue) PARA 678. Non-registration does not, however, affect criminal liability for failure to comply with an order: *Vale of Glamorgan Borough Council v Palmer and Bowles* (1982) 81 LGR 678, DC.

8 See PARA 54 note 4 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/862. Action where a tree preservation order is not confirmed.

862. Action where a tree preservation order is not confirmed.

Where an authority¹ decides not to confirm a tree preservation order² it must as soon as practicable:

3419 (1) endorse the order with a statement to that effect and with the date of its decision;

3420 (2) notify the persons interested in the land affected by the order³ of its decision; and

3421 (3) withdraw from public inspection the copy of the order⁴ made available⁵.

1 For the meaning of 'authority' see PARA 858 note 3 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 For the meaning of 'person interested' and 'land affected by the order' see PARA 858 note 4 ante.

4 In the copy of the order made available for public inspection in accordance with the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 3: see PARA 858 ante.

5 Ibid reg 7.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/C. PROCEDURE FOR MAKING TREE PRESERVATION ORDERS/863. Register of information regarding tree preservation orders.

863. Register of information regarding tree preservation orders.

Every local planning authority¹ must keep a register containing information with respect to matters relevant to tree preservation orders² made by the authority³. The register must contain, as regards each such order:

- 3422 (1) details of every application under the order⁴ and of the authority's decision, if any, in relation to each such application; and
- 3423 (2) a statement as to the subject-matter of every appeal under the order⁵ and of the date and nature of the Secretary of State's⁶ determination, or the National Assembly for Wales's⁷ determination, of it⁸.

Every register so kept must be available for inspection by the public at all reasonable hours⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 Town and Country Planning Act 1990 s 69(1) (s 69 modified for these purposes by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 7, Sch 2 Pt I and set out, as so modified, in Schedule art 7, Sch 2 Pt II).

4 As to applications for consent to felling etc of trees subject to a tree preservation order see PARA 868 et seq post.

5 As to appeals see PARAS 883-884 post.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 69 (as modified), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 69(2) (as modified: see note 3 supra).

9 Ibid s 69(5) (as modified: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/D. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY ORDERS ETC/864. Compensation in respect of tree preservation orders.

D. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY ORDERS ETC

864. Compensation in respect of tree preservation orders.

A tree preservation order¹ may make provision for the payment by the local planning authority², subject to such exceptions and conditions as may be specified in the order, of compensation in

respect of loss or damage caused or incurred in consequence of the refusal of any consent required under the order or of the grant of any such consent subject to conditions³.

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 Town and Country Planning Act 1990 s 203. See PARA 847 note 7 ante; the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 9; and *Cardigan Timber Co v Cardiganshire County Council* (1957) 9 P & CR 158, Lands Tribunal (refusal of licence to fell trees scheduled in tree preservation order; measure of compensation); *Bell v Canterbury City Council* (1988) 86 LGR 635, CA (refusal of consent to grubbing out of woodland and conversion to grazing; if consent had been granted, replanting requirement would have been imposed; measure of compensation). See also *Deane v Bromley Borough Council* (1991) 63 P & CR 308, [1992] JPL 279, Lands Tribunal (consent to pruning subject to condition that work carried out by approved contractor; could otherwise have been carried out by occupier; cost recoverable as compensation); *Fletcher v Chelmsford Borough Council* (1991) 63 P & CR 312, [1992] JPL 279, Lands Tribunal (consent to felling of tree refused; cost of specialist report as to effect of tree on house foundations recoverable as compensation).

As to the determination of compensation claims see PARA 867 post. Compensation payable under the Town and Country Planning Act 1990 s 203 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the consent required by the tree preservation order is refused or granted subject to conditions until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt 1. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

UPDATE

864 Compensation in respect of tree preservation orders

NOTE 3--In relation to England, SI 1999/1892 Schedule art 9 amended: SI 2008/2260.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/D. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY ORDERS ETC/865. Compensation in respect of requirement as to replanting of trees.

865. Compensation in respect of requirement as to replanting of trees.

The following provisions apply where:

- 3424 (1) in pursuance of provision made by a tree preservation order¹, a direction is given by the local planning authority² or by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴ for securing the replanting of all or any part of a woodland area which is felled in the course of forestry operations permitted by or under the order; and
- 3425 (2) the Forestry Commissioners⁵ decide not to make any grant or loan⁶ in respect of the replanting by reason that the direction frustrates the use of the woodland area for the growing of timber or other forest products for commercial purposes and in accordance with the rules or practice of good forestry⁷.

Where these provisions apply, the local planning authority exercising functions⁸ under the tree preservation order is liable, on the making of a claim⁹, to pay compensation in respect of such

loss or damage, if any, as is caused or incurred in consequence of compliance with the direction¹⁰.

Such a claim must be served on the local planning authority:

- 3426 (a) within 12 months from the date on which the direction was given; or
- 3427 (b) where an appeal has been made¹¹ to the Secretary of State or the Assembly against the decision of the local planning authority, within 12 months from the date of the decision of the Secretary of State or the Assembly on the appeal,

but subject in either case to such extension of that period as the local planning authority may allow¹².

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 204, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 As to the Forestry Commissioners see FORESTRY vol 52 (2009) PARA 34 et seq.

6 le under the Forestry Act 1979 s 1 (as amended); see FORESTRY vol 52 (2009) PARA 40.

7 Town and Country Planning Act 1990 s 204(1).

8 The reference in *ibid* s 204(2) to the authority exercising functions under the tree preservation order has effect subject, in England, to the provisions of s 1(5)(c) (as amended), Sch 1 para 17, and, in Wales, to the provisions of s 1(6), Sch 1A para 9 (as added) (see PARA 866 post): Sch 1 para 17, Sch 1A para 9 (added by the Local Government (Wales) Act 1994 s 18(7), Sch 4). For the meaning of 'functions' see PARA 2 note 1 ante.

9 le in accordance with the Town and Country Planning Act 1990 s 204: see the text and notes 11-12 *infra*.

10 *Ibid* s 204(2). See also PARA 847 note 7 ante. At the request of the person under a duty to comply with such a direction as is mentioned in s 204(1)(a) (see head (1) in the text), the Forestry Commissioners must give a certificate stating (1) whether they have decided not to make such a grant or loan as is mentioned in s 204(1)(b) (see head (2) in the text); and (2) if so, the grounds for their decision: s 204(3).

As to the determination of compensation claims see PARA 867 post. Compensation payable under s 204 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the direction is given by the local planning authority or the Secretary of State or the Assembly until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt 1. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

11 As to appeals see PARAS 885-886 post.

12 Town and Country Planning Act 1990 s 204(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/D. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY ORDERS ETC/866. Authority to which claims to be made.

866. Authority to which claims to be made.

Claims for payment of compensation under a tree preservation order¹, and claims for payment of compensation² by virtue of directions given in pursuance of such an order, must be made to and paid by the local planning authority³ which made the order or, in the case of an order made⁴ by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶, the authority named in the order⁷.

1 Ie by virtue of the Town and Country Planning Act 1990 s 203: see PARA 864 ante. For the meaning of 'tree preservation order' see PARA 850 ante.

2 Ie under *ibid* s 204: see PARA 865 ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 Ie under the Town and Country Planning Act 1990 s 202: see PARA 851 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 1(5)(c) (as amended), Sch 1 para 17 (which applies in relation to England); s 1(6), Sch 1A para 9 (added by the Local Government (Wales) Act 1994 s 18, Sch 4) (which applies in relation to Wales). In England, however, the Town and Country Planning Act 1990 Sch 1 para 17 does not apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. In Wales, Sch 1A para 9 (as so added) applies only in relation to any area for which, by virtue of any provision of or made by s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/D. COMPENSATION FOR LOSS OR DAMAGE CAUSED BY ORDERS ETC/867. Determination of compensation.

867. Determination of compensation.

Except in so far as may be otherwise provided by any tree preservation order¹ or any regulations², any question of disputed compensation in respect of tree preservation orders³ or a requirement as to replanting of trees⁴ must be referred to and determined⁵ by the Lands Tribunal⁶.

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 Ie any regulations made under the Town and Country Planning Act 1990.

3 Ie compensation under *ibid* s 203: see PARA 864 ante.

4 Ie compensation under *ibid* s 204: see PARA 865 ante.

5 In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply subject to any necessary modifications and to the provisions of any regulations made under the Town and Country Planning Act 1990: s 205(2).

6 *Ibid* s 205(1). See also PARAS 847 note 7, 864 note 3, 865 note 10 ante. As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

UPDATE

867 Determination of compensation

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 205(1) amended: SI 2009/1307. Land Compensation Act 1961 s 2 omitted: Town and Country Planning Act 1990 s 205(2) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/E. APPLICATIONS FOR CONSENT TO FELLING OF TREES ETC SUBJECT TO ORDER/868. Form and manner of application for consent.

E. APPLICATIONS FOR CONSENT TO FELLING OF TREES ETC SUBJECT TO ORDER

868. Form and manner of application for consent.

In relation to an application for consent under a tree preservation order¹ the appropriate authority² may by regulations³ make provision as to:

- 3428 (1) the form and manner in which the application must be made;
- 3429 (2) particulars of such matters as are to be included in the application;
- 3430 (3) the documents or other materials as are to accompany the application⁴.

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 The appropriate authority is: (1) the Secretary of State in relation to England; (2) the National Assembly for Wales in relation to Wales; and in the case of regulations made by the National Assembly for Wales the Town and Country Planning Act 1990 s 333(3) (see PARA 3 ante) must be ignored: s 198(9) (s 198(8), (9) added by the Planning and Compulsory Purchase Act 2004 s 42(3)).

3 Ie under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante.

4 Ibid s 198(8) (as added: see note 3 supra). At the date at which this title states the law, no such regulations had been made. See, however, the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 6 which provides that an application for consent to the cutting down, topping, lopping or uprooting of any tree in respect of which the relevant tree preservation order is for the time being in force is to be made in writing to the authority and is to identify the tree or trees to which it relates (if necessary, by reference to a plan), specify the work for which consent is sought and contain a statement of the applicant's reasons for making the application. For the meaning of 'authority' for these purposes see PARA 858 note 3 ante.

UPDATE

868 Form and manner of application for consent

NOTE 4--In relation to England, SI 1999/1892 Schedule art 6 revoked: SI 2008/2260. As to applications in relation to England for consent to cut down, top, lop or uproot a tree

which is subject to a tree preservation order, see SI 1999/1892 reg 9A (added by SI 2008/2260).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/E. APPLICATIONS FOR CONSENT TO FELLING OF TREES ETC SUBJECT TO ORDER/869. Grant or refusal of consent.

869. Grant or refusal of consent.

Subject to the following provisions, where an application is made to the authority¹ for consent under a tree preservation order², the authority may:

- 3431 (1) grant consent under the order, either unconditionally or subject to such conditions as it thinks fit, including conditions limiting the duration of the consent or requiring the replacement of trees; or
- 3432 (2) refuse consent under the order³.

Where an application relates to an area of woodland, the authority must grant consent so far as accords with the practice of good forestry, unless it is satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area⁴; and where the authority grants consent for the felling of trees in a woodland area it may not impose conditions requiring replacement where such felling is carried out in the course of forestry operations, but may give directions for securing replanting⁵.

Except in so far as the consent otherwise provides, any grant of consent under a tree preservation order enures for the benefit of the land to which the order relates and of all persons for the time being interested⁶ in it⁷.

1 For the meaning of 'authority' see PARA 858 note 3 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 Town and Country Planning Act 1990 s 70(1) (ss 70, 75 modified for these purposes by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 7, Sch 2 Pt I and set out as so modified in Schedule art 7, Sch 2 Pt II). Where consent is granted, the decision letter must identify with sufficient clarity eg which branches may be lopped: see *Richmond upon Thames London Borough Council v Secretary of State for Transport, Environment and the Regions* [2001] All ER (D) 46 (Mar) (a decision on an application challenging the validity of a decision given by the Secretary of State on an appeal against the refusal of consent).

4 Town and Country Planning Act 1990 s 70(1A) (as added for these purposes: see note 3 supra).

5 Ibid s 70(1B) (as added for these purposes: see note 3 supra).

6 For the meaning of 'person interested' see PARA 858 note 4 ante.

7 Town and Country Planning Act 1990 s 75 (as modified for these purposes: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION

OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/E. APPLICATIONS FOR CONSENT TO FELLING OF TREES ETC SUBJECT TO ORDER/870. Applications by interested planning authorities.

870. Applications by interested planning authorities.

Where an interested planning authority¹ is seeking a consent under a tree preservation order², the application is to be determined by the interested planning authority³; but no such application may be determined⁴:

- 3433 (1) by a committee or sub-committee of the interested planning authority if that committee or sub-committee is responsible, wholly or partly, for the management of any land to which the application relates; or
- 3434 (2) by an officer of the interested planning authority if his responsibilities include any aspect of the management of any land to which the application relates⁵.

Before determining such an application the interested planning authority must publicise it by posting a notice in at least one place on or near the land to which the application relates for not less than 21 days⁶. Such a notice must:

- 3435 (a) identify the tree or trees to which the application relates, if necessary by reference to a plan;
- 3436 (b) specify the work for which consent is sought;
- 3437 (c) state the interested planning authority's reasons for making the application;
- 3438 (d) state the place at which a copy of the application may be inspected;
- 3439 (e) state the address to which representations may be sent; and
- 3440 (f) state the date, being not less than 21 days from the date on which the notice is first displayed, by which representations must be made,

and must be sited and displayed in such a way as to be easily visible and legible by members of the public⁷.

In determining such an application, the interested planning authority must take into account any representations made by the date specified in the notice described above⁸. The interested planning authority must give notice of its decision to every person who made representations which the authority was required to take into account⁹.

1 For the meaning of 'interested planning authority' see PARA 891 note 5 post.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11(2) (regs 11(2), (3), 11A added by SI 1999/1892).

4 Ie notwithstanding anything in the Local Government Act 1972 s 101 (as amended) (arrangements for the discharge of functions by local authorities): see LOCAL GOVERNMENT vol 69 (2009) PARA 370.

5 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11(3) (as added: see note 3 supra).

6 Ibid reg 11A(1) (as added: see note 3 supra).

7 Ibid reg 11A(2) (as added: see note 3 supra). Where, however, such a notice (1) is, without any fault or intention of the interested planning authority, removed, obscured or defaced before the date referred to in reg

11(2)(f) (as so added) (see head (f) in the text), the authority is to be treated as having complied with the requirements of reg 11A(1) (as so added) if it has taken reasonable steps to preserve the notice and, if necessary, replace it: reg 11A(3) (as so added).

8 Ibid reg 11A(4) (as added: see note 3 supra).

9 Ibid reg 11A(5) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/F. VARIATION OR REVOCATION OF ORDERS/871. Variation of tree preservation orders.

F. VARIATION OR REVOCATION OF ORDERS

871. Variation of tree preservation orders.

Where an authority¹ varies a tree preservation order² it must:

3441 (1) indorse the original order with a statement to the effect that the order has been varied, specifying the date of the variation order;

3442 (2) serve on the persons interested³ in the land affected by the variation order⁴:

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309. (a) a copy of the variation order; and

310. (b) a statement explaining the effect of the variation order; and

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3443 (3) make a copy of the variation order available⁵ for public inspection⁶.

Where an authority varies an order so as to add to the prescribed specification of trees⁷ and the map references to trees, groups of trees or woodlands to which the order did not previously apply, the relevant statutory provisions⁸ apply to the variation order as they applied to the order, subject to the substitution, for references to persons interested, of references to persons who are the owners and occupiers of the land affected by the variation order and every other person whom the authority knows to be entitled to fell any of the trees to which the variation order relates, or to work by surface working any minerals in, on or under that land⁹.

1 For the meaning of 'authority' see PARA 858 note 3 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 For the meaning of 'person interested' see PARA 858 note 4 ante.

4 For these purposes, 'land affected by the variation order' includes any land adjoining the land on which the trees, groups of trees or woodlands to which the variation order relates are situated: Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 8(3).

5 Ie in accordance with ibid reg 3(3): see PARA 858 ante.

6 Ibid reg 8(1).

7 Ie ibid reg 2(1), Schedule art 4, Sch 1.

8 Ie ibid regs 3(1)(a)(ii), (2), 4-7: see PARAS 858-862 ante.

9 Ibid reg 8(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/F. VARIATION OR REVOCATION OF ORDERS/872. Revocation of tree preservation orders.

872. Revocation of tree preservation orders.

Where an authority¹ revokes a tree preservation order² it must:

- 3444 (1) indorse the original order with a statement to the effect that the order has been revoked, specifying the date of the revocation order;
- 3445 (2) serve a copy of the revocation order on the persons interested in the land affected by the order³; and
- 3446 (3) withdraw from public inspection the copy of the original order⁴ made available⁵.

A revocation order must contain a statement of the date on which it was made⁶.

1 For the meaning of 'authority' see PARA 858 note 3 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 For the meaning of 'person interested' and 'land affected by the order' see PARA 858 note 4 ante.

4 Ie the copy made available for public inspection in accordance with the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 3: see PARA 858 ante.

5 Ibid reg 9(1).

6 Ibid reg 9(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/G. CONSEQUENCES OF TREE REMOVAL ETC/873. Replacement of trees.

G. CONSEQUENCES OF TREE REMOVAL ETC

873. Replacement of trees.

If any tree in respect of which a tree preservation order¹ is for the time being in force:

- 3447 (1) is removed, uprooted or destroyed² in contravention of the order; or
- 3448 (2) except in the case of a tree to which the order applies as part of a woodland, is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised³ only on the grounds that the tree is dying or dead or has become dangerous,

it is the duty⁴ of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can⁵. Such a duty does not, however, apply to an owner if on application by him the local planning authority⁶ dispenses with it⁷.

In respect of trees in a woodland it is sufficient for these purposes to replace the trees removed, uprooted or destroyed by planting the same number of trees:

- 3449 (a) on or near the land on which the trees removed, uprooted or destroyed stood; or
- 3450 (b) on such other land as may be agreed between the local planning authority and the owner of the land,

and in such places as may be designated by the local planning authority⁸.

In relation to any tree so planted the relevant tree preservation order applies as it applied to the original tree⁹.

1 For the meaning of 'tree preservation order' see PARA 850 ante.

2 See PARA 850 note 9 ante.

3 I.e. by virtue of the Town and Country Planning Act 1990 s 198(6)(a): see PARA 850 ante at head (a) in the text.

4 The duty so imposed on the owner of any land attaches to the person who is from time to time the owner of the land: *ibid* s 206(5). For the meaning of 'owner' see PARA 17 note 1 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

5 *Ibid* s 206(1). See also PARA 847 note 7 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 s 206(2).

8 *Ibid* s 206(3).

9 *Ibid* s 206(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/G. CONSEQUENCES OF TREE REMOVAL ETC/874. Enforcement of duties as to replacement of trees.

874. Enforcement of duties as to replacement of trees.

If it appears to the local planning authority¹ that:

- 3451 (1) the statutory provisions relating to the replacement of trees²; or
- 3452 (2) any conditions of a consent given under a tree preservation order³ which require the replacement of trees,

are not complied with in the case of any tree or trees, that authority may serve on the owner⁴ of the land⁵ a notice requiring him, within such period as may be specified in the notice, to plant a tree or trees of such size and species as may be so specified⁶.

Such a notice:

3453 (a) may only be served within four years from the date of the alleged failure to comply with those provisions or conditions⁷;

3454 (b) must specify a period, being a period of not less than 28 days beginning with the date of service of the notice, at the end of which it is to take effect⁸.

The statutory duty to replace trees⁹ may only be enforced as so provided and not otherwise¹⁰.

1 As to local planning authorities see PARA 28 et seq ante.

2 I.e. the Town and Country Planning Act 1990 s 206: see PARA 873 ante.

3 For the meaning of 'tree preservation order' see PARA 850 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning Act 1990 s 207(1). As to rights of entry to ascertain whether such a notice should be served see PARAS 880-882 post; as to the service of notices see PARA 54 ante; and as to appeals against enforcement notices see PARAS 885-886 post. See also PARA 847 note 7 ante.

7 Ibid s 207(2).

8 Ibid s 207(3), (4) (substituted by the Planning and Compensation Act 1991 s 23(1)).

9 I.e. the duty imposed by the Town and Country Planning Act 1990 s 206(1): see PARA 873 ante.

10 Ibid s 207(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/G. CONSEQUENCES OF TREE REMOVAL ETC/875. Execution and cost of works required by enforcement notice.

875. Execution and cost of works required by enforcement notice.

If, within the period specified in an enforcement notice¹ for compliance with it, or within such extended period as the local planning authority² may allow, any trees which are required to be planted by an enforcement notice have not been planted, the local planning authority may:

3455 (1) enter the land³ and plant those trees; and

3456 (2) recover from the person who is then the owner⁴ of the land any expenses reasonably incurred by the authority in doing so⁵.

Where such a notice has been served:

3457 (a) any expenses incurred by the owner of any land for the purpose of complying with the notice; and

3458 (b) any sums so paid by the owner of any land in respect of expenses incurred by the local planning authority in planting trees required by such a notice to be planted,

are deemed to be incurred or paid for the use and at the request of any person, other than the owner, responsible for the cutting down, destruction or removal of the original tree or trees⁶.

Any person who wilfully obstructs a person acting in the exercise of the power under head (1) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

1 le a notice under the Town and Country Planning Act 1990 s 207(1): see PARA 874 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 Town and Country Planning Act 1990 s 209(1). See also PARA 847 note 7 ante. Regulations made under the 1990 Act may provide that (1) the Public Health Act 1936 s 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale); (2) s 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises); or (3) s 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act), shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a notice under the Town and Country Planning Act 1990 s 207(1): s 209(3). Any such regulations applying the Public Health Act 1936 s 289 may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice: Town and Country Planning Act 1990 s 209(4). Any such regulations may also provide for the charging on the land of any expenses recoverable by a local authority or National Park authority under s 209(1): s 209(5) (amended by the Environment Act 1995 s 78, Sch 10 para 32(6)). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

As to the exercise of this power to apply the provisions of the Public Health Act 1936 ss 276, 289 and 294 (as to which see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 118, 123-124) see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(1); and PARA 568 note 7 ante. As to the making of regulations generally see PARA 3 ante.

6 Town and Country Planning Act 1990 s 209(2).

7 Ibid s 209(6) (substituted by the Planning and Compensation Act 1991 s 23(5)). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(ii) Tree Preservation Orders/G. CONSEQUENCES OF TREE REMOVAL ETC/876. Penalties for failure to comply with tree preservation orders.

876. Penalties for failure to comply with tree preservation orders.

If any person, in contravention¹ of a tree preservation order²:

3459 (1) cuts down, uproots or wilfully destroys³ a tree; or

3460 (2) wilfully damages, tops or lops a tree in such a manner as to be likely to destroy it,

he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000⁴.

In determining the amount of any fine to be so imposed on a person convicted of any such offence, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence⁵.

If any person contravenes the provisions of a tree preservation order otherwise than as mentioned in heads (1) and (2) above, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale⁶.

Where a local planning authority⁷ considers it necessary or expedient for an actual or apprehended offence under the above provision to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other statutory⁸ powers⁹.

1 A person is guilty of such contravention only if he is directly or vicariously liable: see *Groveside Homes Ltd v Elmbridge Borough Council* (1987) 55 P & CR 214, [1987] 2 EGLR 199, DC (no liability for offence by independent contractor who had been expressly told not to touch the protected tree).

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 For the meaning of 'wilfully destroy' see PARA 850 note 9 ante.

4 Town and Country Planning Act 1990 s 210(1), (2) (amended by the Planning and Compensation Act 1991 s 23(6)(a)). See also PARA 847 note 7 ante. As to rights of entry to ascertain whether such an offence has been committed see PARAS 880-882 post. As to offences by corporations see PARA 55 ante.

As to knowledge of the existence of the order see *Maidstone Borough Council v Mortimer* (1982) 43 P & CR 67, CA. Non-registration of the order as a land charge has no effect on criminal liability: *Vale of Glamorgan Borough Council v Palmer and Bowles* (1982) 81 LGR 678, [1984] JPL 334, DC. See also *Carter v Eastbourne Borough Council* [2000] 2 PLR 60. As to the destruction of trees in a group covered by a tree preservation order see *JR Charles & Sons Ltd v Barnet London Borough Council* [2005] EWHC 1056 (Admin), [2005] All ER (D) 217 (May) (not necessary to make a finding of fact as to the age of the trees in question in order to convict the defendant).

5 Town and Country Planning Act 1990 s 210(3) (amended by the Planning and Compensation Act 1991 ss 23(6)(b), 84(7), Sch 19 Pt I).

6 Town and Country Planning Act 1990 s 210(4). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

7 As to local planning authorities see PARA 28 et seq ante.

8 I.e. any of its other powers under the Town and Country Planning Act 1990 Pt VIII Ch I (ss 197-214D) (as amended): see PARA 847 et seq ante, PARA 877 et seq post.

9 Ibid s 214A(1) (added by the Planning and Compensation Act 1990 s 23(7)). The Town and Country Planning Act 1990 s 187B(2)-(4) (as added) (see PARA 585 ante) applies to an application under s 214A (as added) as it applies to an application under s 187B (as added): s 214A(2) (as so added)). As to the procedure for obtaining an injunction in the High Court or a county court see PARA 585 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iii) Trees in Conservation Areas/877. Preservation of trees.

(iii) Trees in Conservation Areas

877. Preservation of trees.

Any person who, in relation to any tree in a conservation area¹ in respect of which no tree preservation order² is for the time being in force, does any act which might³ be prohibited by a tree preservation order is, subject to the power to disapply this provision⁴, guilty of an offence⁵.

It is, however, a defence for a person charged with such an offence to prove:

3461 (1) that he served notice of his intention to do the act in question, with
sufficient particulars to identify the tree, on the local planning authority in whose
area the tree is or was situated; and

3462 (2) that he did the act in question:

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311. (a) with the consent of the local planning authority in whose area the
tree is or was situated; or

312. (b) after the expiry of the period of six weeks from the date of the
notice but before the expiry of the period of two years from that date⁶.

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As from a day to be appointed⁷, an emanation of the Crown⁸ must not, in relation to a tree in a conservation area in respect of which no tree preservation order is for the time being in force⁹, do any act which might be prohibited by a tree preservation order¹⁰ unless:

3463 (i) the first condition is satisfied; and

3464 (ii) either the second or third condition is satisfied¹¹.

The first condition is that the emanation serves notice of an intention to do the act, with sufficient particulars to identify the tree, on the local planning authority in whose area the tree is situated¹². The second condition is that the act is done with the consent of the authority¹³ and the third condition is that the act is done:

3465 (A) after the end of the period of six weeks starting with the date of the notice;
and

3466 (B) before the end of the period of two years starting with that date¹⁴.

It is the duty of a local planning authority to compile and keep available for public inspection free of charge at all reasonable hours and at a convenient place a register containing such particulars as the Secretary of State¹⁵ or, in relation to Wales, the National Assembly for Wales¹⁶ may determine of notices under the above provisions¹⁷ affecting trees in its area¹⁸.

Where a local planning authority considers it necessary or expedient for an actual or apprehended offence under the above provisions to be restrained by injunction, it may apply to the court for an injunction, whether or not it has exercised or is proposing to exercise any of its other statutory¹⁹ powers²⁰.

1 As to conservation areas see PARA 1169 et seq post.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 I.e. by virtue of the Town and Country Planning Act 1990 s 198(3)(a): see PARA 850 ante at head (1) in the text.

4 I.e. subject to ibid s 212 (power to disapply s 211): see PARA 878 post.

5 Ibid s 211(1), (2). See also PARA 847 note 7 ante. Section 210 (as amended) (see PARA 876 ante) applies to such an offence as it applies to a contravention of a tree preservation order: s 211(4). As to rights of entry to ascertain whether such an offence has been committed see PARAS 880-882 post.

In England, the functions of local planning authorities under s 211 (as prospectively amended) and s 214 (see the text and notes 7-18 *infra*) are exercisable by district planning authorities: see s 1(5) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'functions' see PARA 2 note 1 *ante*; as to local planning authorities see PARA 28 *et seq ante*; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to district planning authorities see PARA 28 *ante*.

6 Ibid s 211(3). As to the mode of service see PARA 54 *ante*. A tree preservation order is not, however, invalid if made more than six weeks after the applicant has served notice as required by s 211(3): *R v North Hertfordshire District Council, ex p Hyde* (1989) 88 LGR 426.

7 *Ie* as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

8 'Emanation of the Crown' is not defined for these purposes; as to judicial criticism of the phrase in other contexts see CROWN PROPERTY vol 12(1) (Reissue) PARA 213.

9 *Ie* a tree to which the Town and Country Planning Act 1990 s 211 (as prospectively amended) applies: see the text and notes 1-5 *supra*.

10 *Ie* an act mentioned in *ibid* s 211(1): see the text and notes 1-5 *supra*.

11 Ibid s 211(5) (s 211(5)-(8) prospectively added by the Planning and Compulsory Purchase Act 2004 s 86, as from a day to be appointed: see note 7 *supra*).

12 Town and Country Planning Act 1990 s 211(6) (as added: see note 11 *supra*).

13 Ibid s 211(7) (as added: see note 11 *supra*).

14 Ibid s 211(8) (as added: see note 11 *supra*).

15 As to the Secretary of State see PARA 19 *ante*.

16 As to the transfer of functions under the Town and Country Planning Act 1990 s 211 (as prospectively amended), s 214, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

17 *Ie* under the Town and Country Planning Act 1990 s 211 (as prospectively amended): see the text and notes 1-14 *supra*.

18 Ibid s 214. See also note 5 *supra*.

19 *Ie* any of its other powers under *ibid* Pt VIII Ch I (ss 197-214D) (as amended): see PARA 847 *et seq ante*, PARA 878 *et seq post*.

20 Ibid s 214A(1) (added by the Planning and Compensation Act 1991 s 23(7)). The Town and Country Planning Act 1990 s 187B(2)-(4) (as added) (see PARA 585 *ante*) applies to an application under s 214A (as added) as it applies to an application under s 187B (as added): s 214A(2) (as so added). As to the procedure for obtaining an injunction in the High Court or a county court see PARA 585 *ante*.

UPDATE

877 Preservation of trees

TEXT AND NOTE 7--Day now appointed: SI 2006/1281.

NOTE 8--The National Assembly for Wales Commission is to be treated as an emanation of the Crown for the purposes of the 1990 Act s 211: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(a).

PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iii) Trees in Conservation Areas/878. Exempted cases.

878. Exempted cases.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations³ direct that the statutory provisions relating to the preservation of trees in conservation areas⁴ shall not apply in such cases as may be specified in the regulations⁵; and the regulations may be framed⁶ so as to exempt from the application of those provisions cases defined by reference to all or any of the following matters:

- 3467 (1) acts of such descriptions or done in such circumstances or subject to such conditions as may be specified in the regulations;
- 3468 (2) trees in such conservation areas as may be so specified;
- 3469 (3) trees of a size or species so specified; or
- 3470 (4) trees belonging to persons or bodies of a description so specified⁷.

The regulations may, in relation to any matter by reference to which an exemption is conferred by them, make different provision for different circumstances⁸.

The cases in which the statutory provisions relating to the preservation of trees in conservation areas do not apply are:

- 3471 (a) the cutting down of a tree or the cutting down, uprooting, topping or lopping of a tree in specified circumstances⁹;
 - 3472 (b) the cutting down of a tree in accordance with a felling licence¹⁰ granted by the Forestry Commissioners¹¹;
 - 3473 (c) the cutting down of a tree in accordance with a plan of operations or other working plan approved by the Forestry Commissioners, and for the time being in force, under a forestry dedication covenant¹² or under the conditions of a grant or loan¹³;
 - 3474 (d) the cutting down, uprooting, topping or lopping of a tree by, or on behalf of, a local planning authority¹⁴;
 - 3475 (e) the cutting down or uprooting:
- 319
- 313. (i) of a tree whose diameter does not exceed 75 millimetres¹⁵; or
 - 314. (ii) where carried out for the sole purpose of improving the growth of other trees, of a tree whose diameter does not exceed 100 millimetres¹⁶; or
- 320
- 3476 (f) the topping or lopping of a tree whose diameter does not exceed 75 millimetres¹⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 212, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante; and as to the exercise of this power see the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 10; and heads (a)-(f) in the text.

4 Ie the Town and Country Planning Act 1990 s 211 (as prospectively amended): see PARA 877 ante. As to conservation areas see PARA 1169 et seq post.

5 Ibid s 212(1). See also PARA 847 note 7 ante. Such regulations may in particular, but without prejudice to the generality of s 212(1), exempt from the application of s 211 (as prospectively amended) cases exempted from s 198 (as amended) by s 198(6) (see PARA 850 ante): s 212(4). See the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 10(1)(a); and head (a) in the text.

6 Ie without prejudice to the generality of the Town and Country Planning Act 1990 s 212(1): see the text and notes 1-5 supra.

7 Ibid s 212(2).

8 Ibid s 212(3).

9 Ie in the circumstances mentioned in ibid s 198(6) (see PARA 850 ante) or in the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 5 (as amended): reg 10(1)(a). Schedule art 5(1) provides that nothing in the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Schedule art 4 (prohibited acts in relation to trees) prevents:

- 68 (1) the cutting down, topping, lopping or uprooting of a tree by or at the request of a statutory undertaker, where the land on which the tree is situated is operational land of the statutory undertaker and the work is necessary (a) in the interests of the safe operation of the undertaking; (b) in connection with the inspection, repair or renewal of any sewers, mains, pipes, cables or other apparatus of the statutory undertaker; or (c) to enable the statutory undertaker to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) (see PARA 255 et seq ante);
- 69 (2) the cutting down, topping, lopping or uprooting of a tree cultivated for the production of fruit in the course of a business or trade where such work is in the interests of that business or trade;
- 70 (3) the pruning, in accordance with good horticultural practice, of any tree cultivated for the production of fruit;
- 71 (4) the cutting down, topping, lopping or uprooting of a tree where that work is required to enable a person to implement a planning permission (other than an outline planning permission or, without prejudice to head (1)(c) supra, a permission granted by or under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended)) granted on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) or deemed to have been granted (whether for the purposes of Pt III (as amended) or otherwise);
- 72 (5) the cutting down, topping, lopping or uprooting of a tree by or at the request of the Environment Agency to enable the Agency to carry out development permitted by or under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended);
- 73 (6) the cutting down, topping, lopping or uprooting of a tree by or at the request of a drainage body where that tree interferes, or is likely to interfere, with the exercise of any of the functions of that body in relation to the maintenance, improvement or construction of watercourses or of drainage works, and for this purpose 'drainage body' and 'drainage' have the same meanings as in the Land Drainage Act 1991 (see WATER AND WATERWAYS vol 101 (2009) PARA 573); or
- 74 (7) without prejudice to the Town and Country Planning Act 1990 s 198(6)(b), the felling or lopping of a tree or the cutting back of its roots by or at the request of, or in accordance with a notice served by, a licence holder (ie an electricity supplier or distributor: see the Utilities Act 2000 s 31(3)) under the Electricity Act 1989 s 10(1), Sch 4 para 9 (see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1295).

For these purposes, 'statutory undertaker' means any of the following: (i) a person authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power; (ii) a relevant airport operator within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended); (iii) the holder of a licence under the Electricity Act 1989 s 6 (as substituted) (ie an electricity supplier or distributor); (iv) a gas transporter; (v) the holder of a licence under the Telecommunications Act 1984 s 7 (as amended) to whom what is now the electronic communications code (within the meaning of that Act) is applied; (vi) a water or sewerage undertaker; (vii) the Civil Aviation Authority, a body acting on behalf of that authority or a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended) (see AIR LAW vol 2 (2008) PARA 139 et seq); (viii) a universal postal service provider in connection with the provision of a universal postal

service: see the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, Schedule art 5(2) (amended by SI 2001/1149; SI 2001/3266; SI 2001/4050).

10 Ie a felling licence granted under the Forestry Act 1967 Pt II (ss 9-36) (as amended): see FORESTRY vol 52 (2009) PARA 120 et seq.

11 As to the Forestry Commissioners see FORESTRY vol 52 (2009) PARA 34 et seq.

12 Ie entered into under the Forestry Act 1967 s 5 (as amended) (forestry dedication covenants and agreements): see FORESTRY vol 52 (2009) PARA 116 et seq.

13 Ie a grant or loan made under the Forestry Act 1979 s 1 (as amended) (finance for forestry): see FORESTRY vol 52 (2009) PARA 40.

14 As to local planning authorities see PARA 28 et seq ante.

15 For these purposes: (1) where a tree has more than one stem at a point 1.5 metres above the natural ground level its diameter is to be treated for the purposes of the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 10(1)(e)(i), (f) or reg 10(1)(e)(ii) as exceeding 75 millimetres or 100 millimetres respectively, if any stem when measured over its bark at that point exceeds 75 millimetres or 100 millimetres respectively; (2) in any other case, the diameter of a tree is to be ascertained by measurement, over the bark of the tree, at a point 1.5 metres above the natural ground level: reg 10(2).

16 See note 15 supra.

17 Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 10(1). See also note 15 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iii) Trees in Conservation Areas/879. Enforcement of controls.

879. Enforcement of controls.

If any tree to which the statutory provisions relating to the preservation of trees in conservation areas¹ apply:

- 3477 (1) is removed, uprooted or destroyed² in contravention of those provisions; or
- 3478 (2) is removed, uprooted or destroyed or dies at a time when its cutting down or uprooting is authorised only by virtue of the provisions of specified regulations³,

it is the duty⁴ of the owner of the land to plant another tree of an appropriate size and species at the same place as soon as he reasonably can⁵; but this duty does not apply to an owner if, on application by him, the local planning authority⁶ dispenses with it⁷.

1 Ie the Town and Country Planning Act 1990 s 211: see PARA 877 ante.

2 See PARA 850 note 9 ante.

3 Ie such regulations under the Town and Country Planning Act 1990 s 212(1) as are mentioned in s 212(4): see PARA 878 ante.

4 The duty so imposed on the owner of any land attaches to the person who is from time to time the owner of the land and may be enforced as provided by *ibid* s 207 (as amended) (see PARA 874 ante) and not otherwise: s 213(3). For the meaning of 'owner' see PARA 17 note 1 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

5 *Ibid* s 213(1). See also PARA 847 note 7 ante.

6 As to local planning authorities see PARA 28 et seq ante.

7 Town and Country Planning Act 1990 s 213(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iv) Rights of Entry/880. Right of entry without warrant.

(iv) Rights of Entry

880. Right of entry without warrant.

Any person duly authorised in writing by a local planning authority¹ may enter any land² for the purpose of:

- 3479 (1) surveying it in connection with making or confirming a tree preservation order³ with respect to the land;
- 3480 (2) ascertaining whether an offence⁴ has been committed on the land; or
- 3481 (3) determining whether an enforcement notice⁵ should be served on the owner⁶ of the land,

if there are reasonable grounds for entering for the purpose in question⁷.

Any person:

- 3482 (a) duly authorised⁸ in writing by the Secretary of State⁹ or, in relation to Wales, by the National Assembly for Wales¹⁰ may enter any land for the purpose of surveying it in connection with making, amending or revoking a tree preservation order with respect to the land if there are reasonable grounds for entering for that purpose¹¹;
- 3483 (b) duly authorised in writing by the Secretary of State or the Assembly may enter any land in connection with the exercise of any functions¹² conferred on the Secretary of State or the Assembly by or under the statutory provisions¹³ relating to tree preservation orders¹⁴;
- 3484 (c) duly authorised in writing by a local planning authority may enter any land in connection with the exercise of any functions conferred on the authority by or under the statutory provisions relating to tree preservation orders¹⁵.

Any person who is an officer of the Valuation Office¹⁶ may enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation in respect of any land which is payable¹⁷ by the local planning authority¹⁸.

Any right so to enter any land must be exercised at a reasonable hour¹⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'tree preservation order' see PARA 850 ante.

4 Ie an offence under the Town and Country Planning Act 1990 s 210 (as amended) (see PARA 876 ante) or s 211 (as prospectively amended) (see PARA 877 ante).

5 le a notice under *ibid* s 207 (as amended): see PARA 874 ante.

6 For the meaning of 'owner' see PARA 17 note 1 ante.

7 Town and Country Planning Act 1990 s 214B(1) (s 214B added by the Planning and Compensation Act 1991 s 23(7)). See also PARA 847 note 7 ante. Admission may not be demanded as of right by virtue of the Town and Country Planning Act 1990 s 214B(1) (as so added) or s 214B(2) (as so added: see head (a) in the text) to any building used as a dwelling house unless 24 hours' notice of the intended entry has been given to the occupier: s 214B(7)(a) (as so added).

8 The Secretary of State or the Assembly may not so authorise any person without consulting the local planning authority: *ibid* s 214B(6) (as added: see note 7 supra). The local planning authority in England which the Secretary of State is required so to consult is the county planning authority or the district planning authority as he considers appropriate: see s 1(5)(c) (as amended), Sch 1 para 20(1) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 52(8)). The Town and Country Planning Act 1990 Sch 1 para 20(1) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). For the meaning of 'consult' see PARA 2 note 1 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Town and Country Planning Act 1990 s 214B (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 Town and Country Planning Act 1990 s 214B(2) (as added: see note 7 supra).

12 For the meaning of 'functions' see PARA 2 note 1 ante.

13 le the Town and Country Planning Act 1990 Pt VIII Ch I (ss 197-214D) (as amended): see PARA 847 et seq ante, PARAS 881-882 post.

14 *Ibid* s 214B(5) (as added: see note 7 supra). Admission may not be demanded as of right by virtue of s 214B(3) (as so added: see head (c) in the text), s 214B(4) (as so added: see the text and notes 16-18 infra) or s 214B(5) (as so added) to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier: s 214B(7)(b) (as so added).

15 *Ibid* s 214B(3) (as added: see note 7 supra). See also note 14 supra.

16 For the meaning of 'Valuation Office' see PARA 57 note 20 ante.

17 le under the Town and Country Planning Act 1990 Pt VIII Ch I (ss 197-214D) (as amended), other than s 204 (see PARA 865 ante).

18 *Ibid* s 214B(4) (as added: see note 7 supra). See also note 14 supra.

19 *Ibid* s 214B(8) (as added: see note 7 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iv) Rights of Entry/881. Right of entry under warrant.

881. Right of entry under warrant.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

3485 (1) that there are reasonable grounds for entering any land¹ for any of the specified purposes²; and

3486 (2) that:

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315. (a) admission to the land has been refused³ or a refusal is reasonably apprehended; or
 316. (b) the case is one of urgency,

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the justice may issue a warrant authorising any person duly authorised in writing by a local planning authority⁴ or, as the case may be, by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶, to enter the land⁷.

A warrant authorises entry on one occasion only and that entry must be:

- 3487 (i) within one month from the date of the issue of the warrant; and
 3488 (ii) at a reasonable hour unless the case is one of urgency⁸.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 le for any of the purposes mentioned in the Town and Country Planning Act 1990 s 214B(1) or (2) (as added): see PARA 880 ante.

3 For these purposes, admission to land is regarded as having been refused if no reply is received to a request for admission within a reasonable period: *ibid* s 214C(2) (s 214C added by the Planning and Compensation Act 1991 s 23(7)).

4 As to local planning authorities see PARA 28 et seq ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 214C (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 214C(1) (as added: see note 3 supra). See also PARA 847 note 7 ante.

8 *Ibid* s 214C(3) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(iv) Rights of Entry/882. Additional rights and duties.

882. Additional rights and duties.

Any power¹ to enter land² ('a right of entry') is to be construed as including power to take samples from any tree and samples of the soil³.

A person authorised to enter land in exercise of a right of entry:

- 3489 (1) must, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
 3490 (2) may take with him such other persons as may be necessary; and
 3491 (3) on leaving the land must, if the owner⁴ or occupier is not then present, leave it as effectively secured against trespassers as he found it⁵.

If any damage is caused to land or chattels in the exercise of a right of entry, compensation⁶ may be recovered by any person suffering the damage from the authority which gave the

written authority for the entry or, as the case may be, from the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸.

Any person who wilfully obstructs a person acting in the exercise of a right of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 le any power conferred under or by virtue of the Town and Country Planning Act 1990 s 214B (as added) (see PARA 880 ante) or s 214C (as added) (see PARA 881 ante).

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Town and Country Planning Act 1990 s 214D(1) (s 214D added by the Planning and Compensation Act 1991 s 23(7)). See also PARA 847 note 7 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 Town and Country Planning Act 1990 s 214D(2) (as added: see note 3 supra).

6 The provisions of *ibid* s 118 (determination of claims to compensation: see PARA 931 post) apply in relation to such compensation as they apply in relation to compensation under Pt IV (ss 107-118) (as amended) (see PARA 914 et seq post): s 214D(5) (as added: see note 3 supra).

7 As to the Secretary of State see PARA 19 ante.

8 Town and Country Planning Act 1990 s 214D(4) (as added: see note 3 supra). As to the transfer of functions under s 214D (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 214D(3) (as added: see note 3 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(v) Appeals/A. CONSENTS UNDER TREE PRESERVATION ORDERS/883. Right of appeal.

(v) Appeals

A. CONSENTS UNDER TREE PRESERVATION ORDERS

883. Right of appeal.

Where the authority¹:

3492 (1) refuses an application for consent under a tree preservation order² or grants it subject to conditions³;

3493 (2) refuses an application for any consent, agreement or approval of that authority required by a condition imposed on a grant of consent under such an order or grants it subject to conditions;

3494 (3) gives a direction under a tree preservation order, or refuses an application for any consent, agreement or approval of that authority required by such a direction; or

- 3495 (4) fails to determine any such application as is referred to in heads (1) to (3) within the period of eight weeks beginning with the date on which the application was received by the authority,

the applicant may by notice appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵. Any such appeal must be made by notice in writing⁶ addressed to the Secretary of State or the Assembly, specifying the grounds on which the appeal is made⁷. Such notice must be served⁸:

- 3496 (a) in respect of a matter mentioned in any of heads (1) to (3) above, within the period of 28 days from the receipt of notification of the authority's decision or direction or within such longer period as the Secretary of State or the Assembly may allow;

- 3497 (b) in respect of such a failure as is mentioned in head (4) above, at any time after the expiration of the period mentioned in that head, but if the authority has informed the applicant that the application has been refused, or granted subject to conditions, before an appeal has been made, an appeal may only be made against that refusal or grant⁹.

The appellant must serve on the authority a copy of the notice mentioned above¹⁰.

1 For these purposes, 'the authority' means the council making the order: Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 2. See also PARA 858 note 3 ante; and as to the power to make tree preservation orders see PARA 850 et seq ante.

2 As to applications for consent under a tree preservation order see PARA 868 ante.

3 As to the grant of such consent subject to conditions see PARA 869 ante.

4 As to the Secretary of State see PARA 19 ante.

5 Town and Country Planning Act 1990 s 78(1) (s 78 applied for these purposes, s 78(1), (3) amended, s 78(2) omitted and s 78(4), (5) substituted, by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 7, Sch 2 Pt I and set out, as so modified, in Schedule art 7, Sch 2 Pt II). As to the transfer of functions under the Town and Country Planning Act 1990 s 78 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

For the purposes of the application of the Town and Country Planning Act 1990 79(1) (as amended) for these purposes (see PARA 884 post), in relation to an appeal made under s 78(1)(d) (as so amended and applied) (see head (4) in the text), it is to be assumed that the authority decided to refuse the application in question: s 78(5) (as so substituted and applied).

Government advice issued to members of the public living in England is that appeals should be the last resort and that the first tactic should involve an approach to the council to see if a mutually acceptable solution can be found: see *Tree Preservation Order Appeals--How the Process Works* (ODPM, 2005).

6 As to the use of electronic communications see PARA 54 ante.

7 Town and Country Planning Act 1990 s 78(3) (as amended and applied: see note 5 supra).

8 As to the service of notices see PARA 54 ante.

9 Town and Country Planning Act 1990 s 78(3)(a), (b) (as amended and applied: see note 5 supra).

10 Ibid s 78(4) (as substituted and applied: see note 5 supra).

UPDATE

883 Right of appeal

TEXT AND NOTES--Town and Country Planning Act 1990 s 78(4A)-(4D) added: Planning Act 2008 Sch 11 paras 1, 2 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(v) Appeals/A. CONSENTS UNDER TREE PRESERVATION ORDERS/884. Determination of appeal.

884. Determination of appeal.

On an appeal relating to a consent under a tree preservation order¹ the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 3498 (1) allow or dismiss the appeal; or
- 3499 (2) reverse or vary any part of the decision of the authority⁴, whether the appeal relates to that part of it or not,

and may deal with the application as if it had been made to him or to the Assembly in the first instance⁵.

Before determining such an appeal the Secretary of State or the Assembly must, if either the appellant or the authority so wishes, give each of them an opportunity of appearing before and being heard by a person appointed by him or by it for the purpose⁶. Subject to that, he or the Assembly may:

- 3500 (a) grant consent under the order, either unconditionally or subject to such conditions as he or it thinks fit, including conditions limiting the duration of the consent or requiring the replacement of trees; or
- 3501 (b) may refuse consent under the order⁷.

Where an application relates to an area of woodland, the Secretary of State or the Assembly must grant consent so far as accords with the practice of good forestry, unless satisfied that the granting of consent would fail to secure the maintenance of the special character of the woodland or the woodland character of the area⁸; and where he or it grants consent for the felling of trees in a woodland area he or it may not impose conditions requiring replacement where such felling is carried out in the course of forestry operations, but may give directions for securing replanting⁹.

The decision of the Secretary of State or the Assembly on such an appeal is final¹⁰.

1 le an appeal under the Town and Country Planning Act 1990 s 78 (as amended and applied for these purposes): see PARA 883 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'the authority' for these purposes see PARA 883 note 1 ante.

5 Town and Country Planning Act 1990 s 79(1) (s 79 applied for these purposes, s 79(1), (2), (4), (7) amended, and s 79(3), (6), (6A) omitted, by the Town and Country Planning (Trees) Regulations 1999, SI 1999/1892, reg 2(1), Schedule art 7, Sch 2 Pt I and set out, as so modified, in Schedule art 7, Sch 2 Pt II).

6 Town and Country Planning Act 1990 s 79(2) (as amended and applied: see note 5 supra).

Section 79(7), Sch 6 (as amended) (see PARA 621 et seq ante) applies to appeals under s 78 (as amended and applied for these purposes: see PARA 883 ante): s 79(7) (as so amended and applied).

7 See *ibid* s 79(4) (as amended and applied: see note 5 supra) which provides that, subject to s 79(2) (as so amended and applied), the provisions of s 70(1), (1A), (1B) (as so amended and applied: see PARA 869 ante) are to apply, with any necessary modifications, in relation to an appeal to the Secretary of State or the Assembly under s 78 (as so amended and applied) as they apply in relation to an application for consent under a tree preservation order which falls to be determined by the authority. Heads (a)-(b) in the text set out s 70(1) (as so amended, applied and modified).

8 *Ibid* s 70(1A) (as added, applied and modified: see note 7 supra).

9 *Ibid* s 70(1B) (as added, applied and modified: see note 7 supra).

10 *Ibid* s 79(5) (as applied: see note 5 supra). As to challenging such decisions see PARA 601 the text and notes 19-22 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(v) Appeals/B. ENFORCEMENT NOTICES RELATING TO TREES/885. Right of appeal.

B. ENFORCEMENT NOTICES RELATING TO TREES

885. Right of appeal.

A person on whom an enforcement notice requiring him to plant trees¹ is served may appeal to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ against the notice on any of the following grounds:

- 3502 (1) that the statutory provisions relating to the replacement of trees⁴ or, as the case may be, the conditions⁵ of a consent given under a tree preservation order which require the replacement of trees are not applicable or have been complied with;
- 3503 (2) that in all the circumstances of the case the statutory duty to replace trees⁶ should be dispensed with in relation to any tree;
- 3504 (3) that the requirements of the notice are unreasonable in respect of the period or the size or species of trees specified in it;
- 3505 (4) that the planting of a tree or trees in accordance with the enforcement notice is not required in the interests of amenity⁷ or would be contrary to the practice of good forestry;
- 3506 (5) that the place on which the tree is or trees are required to be planted is unsuitable for that purpose⁸.

Such an appeal must be made either:

- 3507 (a) by giving written notice⁹ of the appeal to the Secretary of State or the Assembly before the end of the period after which the enforcement notice is to take effect¹⁰; or

3508 (b) by sending such written notice to him or to it in a properly addressed and prepaid letter posted to him at such time that, in the ordinary course of post, it would be delivered to him before the end of that period¹¹.

The notice must indicate the grounds of the appeal and state the facts on which it is based¹². Where such an appeal is brought, the enforcement notice is of no effect pending the final determination or the withdrawal of the appeal¹³.

1 Ile a notice under the Town and Country Planning Act 1990 s 207(1): see PARA 874 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 208 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ile the Town and Country Planning Act 1990 s 206: see PARA 873 ante.

5 Ile the conditions mentioned in ibid s 207(1)(b): see PARA 874 ante at head (2) in the text.

6 Ile the duty imposed by ibid s 206(1): see PARA 873 ante.

7 As to the meaning of 'amenity' see PARA 158 note 8 ante.

8 Town and Country Planning Act 1990 s 208(1) (s 208(1) amended, and s 208(2) substituted, by the Planning and Compensation Act 1991 s 23(2), (3)). See also PARA 847 note 7 ante.

9 As to the use of electronic communications see PARA 54 ante.

10 Ile the period specified in accordance with the Town and Country Planning Act 1990 s 207(3) (as substituted): see PARA 874 ante.

11 Ibid s 208(2) (as substituted: see note 8 supra).

12 Ibid s 208(4).

13 Ibid s 208(6).

UPDATE

885 Right of appeal

TEXT AND NOTE 12--Town and Country Planning Act 1990 s 202(4), (4A)-(4C) substituted for s 202(4): Planning Act 2008 Sch 11 paras 1, 4(1), (2) (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/ (3) PRESERVATION OF TREES AND HEDGEROWS/(v) Appeals/B. ENFORCEMENT NOTICES RELATING TO TREES/886. Determination of appeal.

886. Determination of appeal.

On any appeal against an enforcement notice requiring the planting of trees¹ the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ must, if either the appellant or

the local planning authority⁴ so desires, give each of them an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for that purpose⁵.

On any such appeal the Secretary of State or the Assembly may:

- 3509 (1) correct any defect, error or misdescription in the enforcement notice; or
- 3510 (2) vary any of its requirements,

if satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority⁶.

Where the Secretary of State or the Assembly determines to allow the appeal, he or it may quash the enforcement notice⁷; and he or the Assembly must give any directions necessary to give effect to his or its determination on the appeal⁸.

Where any person has so appealed to the Secretary of State or the Assembly against an enforcement notice, neither that person nor any other is entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed⁹.

1 I.e. a notice under the Town and Country Planning Act 1990 s 207(1): see PARA 874 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under s 208 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 Town and Country Planning Act 1990 s 208(5). Section 208(9), Sch 6 (as amended) (see PARA 621 et seq ante) applies to appeals under s 208 (as amended): s 208(9). Section 208(5) does not apply to appeals which so fall to be determined by an appointed person: see Sch 6 para 2(2) (as amended); and PARA 623 ante.

6 Ibid s 208(7) (s 208(7), (8), (8A) substituted by the Planning and Compensation Act 1991 s 23(4)).

7 Town and Country Planning Act 1990 s 208(8) (as substituted: see note 6 supra). By virtue of the Planning (Consequential Provisions) Act 1990 s 6, Sch 4 para 1(1)(a), Table, PARA 5, the Town and Country Planning Act 1990 s 208 (as amended) has effect, until a day to be appointed by the Secretary of State, with the addition of the following subsection:

75 '(11) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250'.

The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

8 Town and Country Planning Act 1990 s 208(8A) (as substituted: see note 6 supra).

9 Ibid s 208(10).

UPDATE

886 Determination of appeal

TEXT AND NOTES--Where the Secretary of State has given a decision in proceedings on an appeal under the Town and Country Planning Act 1990 Pt VIII (ss 197-225) against a notice under s 207 (1) the appellant; (2) the local planning authority; or (3) any person (other than the appellant) on whom the notice was served, may appeal to the High Court against the decision on a point of law: CPR 52.20(2) (CPR 52.20 added by SI 2007/2204). In such a statutory appeal, any person may apply for permission to file evidence; or to make representations at the appeal hearing: CPR 52.12A(1) (CPR 52.12A added by SI 2007/2204). Such an application must be made promptly: CPR 52.12A(2) (CPR 52.12A as so added).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(4) LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD/887. Power to require proper maintenance of land.

(4) LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD

887. Power to require proper maintenance of land.

If it appears to the local planning authority¹ that the amenity² of a part of its area, or of an adjoining area, is adversely affected by the condition of land³ in its area, the authority may serve on the owner⁴ and occupier of the land a notice⁵ requiring such steps for remedying the condition of the land as may be specified in the notice to be taken within such period as may be specified in the notice to be taken within such period as may be so specified⁶.

The notice takes effect⁷ at the end of such period as may be specified in the notice⁸; and that period may not be less than 28 days after the service of the notice⁹.

1 As to local planning authorities see PARA 28 et seq ante.

2 As to the meaning of 'amenity' see PARA 158 note 8 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 I.e. under the Town and Country Planning Act 1990 s 215: see the text and notes 6-9 infra.

6 Ibid s 215(1), (2). Electronic communications may not be used for the service of a notice under s 215: see PARA 54 note 4 ante. As to the service of notices generally see PARA 54 ante. In non-metropolitan counties in England, the functions of local planning authorities under the Town and Country Planning Act 1990 s 215 are exercisable by district planning authorities: see s 1(5) (as amended), Sch 1 para 14. Schedule 1 para 14 does not, however, apply in Greater London: Sch 1 para 21(1). As to the exercise of functions under s 215 as respects a National Park see PARA 32 ante. For the meaning of 'functions' see PARA 2 note 1 ante; as to local planning authorities see PARA 28 et seq ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to metropolitan and non-metropolitan counties see PARA 28 note 1 ante; and as to district planning authorities (of which there are none in Wales) see PARA 28 ante.

As to the powers of local authorities and statutory undertakers to contribute towards any expenses incurred by a local planning authority in or in connection with the performance of any of its functions under Pt VIII Ch II (ss 215-219) (as amended) (see the text and notes 7-9 infra; and PARA 888 et seq post) see s 306(2)(b) (as amended); and PARA 50 ante at head (c) in the text; and as to the application of Pt VIII Ch II (as amended) to Crown land see ss 293, 296 (as amended; s 296 prospectively repealed); and PARA 11 ante.

7 I.e. subject to ibid ss 215(4), 216-219 (as amended): see the text and note 9 infra; and PARAS 888-890 post.

8 Ibid s 215(3). As to the need to specify both the period at the expiration of which the notice takes effect and the period within which steps must be taken to abate the injury see *Burgess v Jarvis and Sevenoaks RDC* [1952] 2 QB 41, [1952] 1 All ER 592, CA; *Mead v Chelmsford RDC* [1953] 1 QB 32, [1952] 2 All ER 723, DC; *Swallow and Pearson v Middlesex County Council* [1953] 1 All ER 580, [1953] 1 WLR 422; *Godstone RDC v Brazil* [1953] 2 All ER 763, [1953] 1 WLR 1102, DC. The required steps must be reasonable: see *R (on the application of Keeley) v Canterbury Crown Court* [2003] EWHC 2603 (Admin), [2003] All ER (D) 167 (Nov).

9 Town and Country Planning Act 1990 s 215(4).

UPDATE

887 Power to require proper maintenance of land

TEXT AND NOTES--See also London Local Authorities Act 2007 s 32(1).

NOTE 6--See *Toni & Guy (South) Ltd v Hammersmith and Fulham LBC* [2009] EWHC 203 (Admin), [2009] JPL 1109, [2009] All ER (D) 103 (Feb).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(4) LAND ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD/888. Appeal against notice.

888. Appeal against notice.

A person on whom a notice is served requiring steps to be taken for remedying the condition of any land¹ or any other person having an interest in the land² to which the notice relates may, at any time within the period specified in the notice as the period at the end of which it is to take effect, appeal against the notice on any of the following grounds:

- 3511 (1) that the condition of the land to which the notice relates does not adversely affect the amenity³ of any part of the area of the local planning authority⁴ which served the notice, or of any adjoining area;
- 3512 (2) that the condition of the land to which the notice relates is attributable to, and such as results in the ordinary course of events from, the carrying on of operations or a use⁵ of land which is not in contravention of the statutory provisions relating to control of development⁶;
- 3513 (3) that the requirements of the notice exceed what is necessary for preventing the condition of the land from adversely affecting the amenity of any part of the area of the local planning authority which served the notice, or of any adjoining area;
- 3514 (4) that the period specified in the notice as the period within which any steps required by the notice are to be taken falls short of what should reasonably be allowed⁷.

Any such appeal must be made to a magistrates' court⁸.

Where such an appeal is brought, the notice to which it relates is of no effect pending the final determination or withdrawal of the appeal⁹; and, where any person has so appealed to a magistrates' court against a notice, neither that person nor any other is entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed¹⁰.

On such an appeal the magistrates' court may correct any informality, defect or error in the notice if satisfied that the informality, defect or error is not material¹¹. On the determination of such an appeal the magistrates' court must give directions for giving effect to the court's determination, including, where appropriate, directions for quashing the notice or for varying the terms of the notice in favour of the appellant¹².

Where an appeal has been so brought an appeal against the decision of the magistrates' court on that appeal may be brought to the Crown Court by the appellant or by the local planning authority which served¹³ the notice in question¹⁴.

1 le under the Town and Country Planning Act 1990 s 215: see PARA 887 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 As to the meaning of 'amenity' see PARA 158 note 8 ante.

4 As to local planning authorities see PARA 28 et seq ante.

5 For the meaning of 'use' see PARA 221 note 4 ante.

6 le the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

7 Ibid s 217(1). As to whether the requirements of a notice are excessive, and the difficulties of enforcement when there is a question as to what is normal residential use, see *R (on the application of Keeley) v Canterbury Crown Court* [2003] EWHC 2603 (Admin), [2003] All ER (D) 167 (Nov).

8 Town and Country Planning Act 1990 s 217(2) (prospectively amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 343, Sch 10, as from a day to be appointed under s 110(1); at the date at which this title states the law, no such day had been appointed). Until that amendment comes into force, the Town and Country Planning Act 1990 s 217(2) has effect with the addition, after the words 'magistrates' court', of the words 'acting for the petty sessions area in which the land in question is situated'.

9 Ibid s 217(3).

10 Ibid s 217(6). As to the service of notices see PARA 54 ante.

11 Ibid s 217(4). The magistrates and the Crown Court (see the text and notes 13-14 infra) have power to hear and decide an argument that the notice served under s 215 is ultra vires the local planning authority: *R v Crown Court at Oxford, ex p Smith* (1989) 154 JP 422.

12 Town and Country Planning Act 1990 s 217(5).

13 See note 1 supra.

14 Town and Country Planning Act 1990 s 218. The Crown Court cannot be compelled by a mandatory order to state a case on such an appeal, at least if it has not already granted an application to do so: see *R v Somerset Justices, ex p Ernest J Cole & Partners Ltd* [1950] 1 KB 519, [1950] 1 All ER 264, DC.

UPDATE

888 Appeal against notice

TEXT AND NOTE 7--See also London Local Authorities Act 2007 s 32(2).

NOTE 8--Day now appointed: SI 2005/910.

ADVERSELY AFFECTING AMENITY OF NEIGHBOURHOOD/889. Execution and cost of works required by notice.

889. Execution and cost of works required by notice.

If, within the period specified in a notice¹, or within such extended period as the local planning authority² which served the notice may allow, any steps required by the notice to be taken have not been taken, the local planning authority which served the notice may:

- 3515 (1) enter the land³ and take those steps; and
- 3516 (2) recover from the person who is then the owner⁴ of the land any expenses reasonably incurred by the authority in doing so⁵.

Where a notice has been served⁶:

- 3517 (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice and any sums paid⁷ by the owner of any land in respect of expenses incurred by the local planning authority in taking steps required by such a notice are deemed to be incurred or paid for the use and at the request of the person who caused or permitted the land to come to be in the condition in which it was when the notice was served⁸;
- 3518 (b) any expenses recoverable by a local planning authority⁹ are, until recovered, a charge that is binding on successive owners of the land to which the notice relates, and the charge takes effect as from the date of the completion by that authority of the steps required to be taken by the notice¹⁰.

1 le under the Town and Country Planning Act 1990 s 215: see PARA 887 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'owner' see PARA 17 note 1 ante.

5 Town and Country Planning Act 1990 s 219(1).

6 See note 1 supra.

7 le under the Town and Country Planning Act 1990 s 219(1): see the text and notes 1-5 supra.

8 Ibid s 219(2). Regulations made under the Town and Country Planning Act 1990 may provide that (1) the Public Health Act 1936 s 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale); (2) s 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises); or (3) s 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act), shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a notice under the Town and Country Planning Act 1990 s 215: s 219(3). Any such regulations applying the Public Health Act 1936 s 289 may include adaptations and modifications for the purpose of giving the owner of land to which a notice under the Town and Country Planning Act 1990 s 215 relates the right, as against all other persons interested in the land, to comply with the requirements of the enforcement notice: s 219(4). Any such regulations may also provide for the charging on the land of any expenses recoverable by a local authority under s 219(1): s 219(5). For the meaning of 'enforcement notice' see PARA 44 note 1 ante.

In exercise of the power so conferred, and prior to the transfer of functions in relation to Wales to the National Assembly for Wales (see PARA 20 ante), the Secretary of State made the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(1) (see PARA 568 note 7 ante), reg 14(3) (as added) (see the text and notes 9-10 infra). As to the making of regulations generally see PARA 3 ante.

9 See note 7 supra.

10 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(3) (added by SI 1997/3006).

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890. Penalty for non-compliance with notice.

Where a notice has been served requiring steps to be taken for remedying the condition of any land¹, then, if any owner² or occupier of the land³ on whom the notice was served fails to take steps required by the notice within the period specified in it for compliance with it, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

Where proceedings have been so brought⁵ against a person:

- 3519 (1) as the owner of the land; or
- 3520 (2) as the occupier of the land,

and he has, at some time before the end of the compliance period⁶, ceased to be the owner or occupier of the land, as the case may be, then, if he duly lays information to that effect and gives the prosecution not less than three clear days' notice of his intention, he is entitled:

- 3521 (a) in a case falling under head (1) above, to have the person who then became the owner of the land brought before the court in the proceedings⁷; or
- 3522 (b) in a case falling under head (2) above, to have brought before the court in the proceedings the person who then became the occupier of the land or, if nobody then became the occupier, the person who is the owner at the date of the notice⁸.

Where in such proceedings it has been proved that any steps required by the notice⁹ have not been taken within the compliance period, and the original accused proves that the failure to take those steps was attributable, in whole or in part, to the default of a person specified in a notice under the above provisions¹⁰, then:

- 3523 (i) that person may be convicted of the offence; and
- 3524 (ii) if the original accused also proves that he took all reasonable steps to ensure compliance with the notice, he must be acquitted of the offence¹¹.

If, after a person has been convicted under the above provisions, he does not as soon as practicable do everything in his power to secure compliance with the notice, he is guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day following his first conviction on which any of the requirements of the notice remain unfulfilled¹².

1 le a notice under the Town and Country Planning Act 1990 s 215: see PARA 887 ante.

2 For the meaning of 'owner' see PARA 17 note 1 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Town and Country Planning Act 1990 s 216(1), (2). For the meaning of 'the standard scale' see PARA 53 note 10 ante; and as to offences by corporations see PARA 55 ante.

5 le under ibid s 216(2): see the text and notes 1-4 supra.

6 For these purposes, any reference to the compliance period, in relation to a notice, is a reference to the period specified in the notice for compliance with it or such extended period as the local planning authority which served the notice may allow for compliance: ibid s 216(7). As to local planning authorities see PARA 28 et seq ante.

7 Ibid s 216(3).

8 Ibid s 216(4).

9 See note 1 supra.

10 le under the Town and Country Planning Act 1990 s 216(3) or (4): see the text and notes 7-8 supra.

11 Ibid s 216(5).

12 Ibid s 216(6) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 35).

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(5) DEVELOPMENT BY LOCAL PLANNING AUTHORITIES

891. Land of interested planning authorities; development by such authorities.

The statutory provisions relating to control over development¹, enforcement² and the special controls on trees, land adversely affecting the amenity of a neighbourhood and advertisements³ apply in relation to:

3525 (1) land⁴ of interested planning authorities⁵; and

3526 (2) the development⁶ of any land by interested planning authorities or by such authorities jointly with any other persons,

subject to regulations made by virtue of these provisions⁷.

The regulations may, in relation to such land or such development:

3527 (a) provide for any of those provisions to apply subject to prescribed exceptions or modifications or not to apply;

3528 (b) make new provision as to any matter dealt with in any of those provisions;

3529 (c) make different provision in relation to different classes of land or development⁸.

The regulations may⁹ provide:

3530 (i) for applications for planning permission to develop such land, or for such development, to be determined¹⁰ by the authority concerned, by another interested planning authority or by the Secretary of State¹¹ or, in relation to Wales, by the National Assembly for Wales¹²; and

3531 (ii) for the procedure to be followed on such applications;

and, in the case of applications falling to be determined by an interested planning authority, they may¹³ regulate the authority's arrangements for the discharge of the authority's functions¹⁴.

In the case of any application for planning permission to develop land of an interested planning authority where:

3532 (A) the authority does not intend to develop the land itself or jointly with any other person; and

3533 (B) if it were not such land, the application would fall to be determined by another body,

the regulations must provide for the application to be determined by that other body, unless the application is referred¹⁵ to the Secretary of State or the Assembly¹⁶.

1 le the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

2 le ibid Pt VII (ss 171A-196C) (as amended): see PARA 551 et seq ante.

3 le ibid Pt VIII (ss 197-225) (as amended): see PARA 769 et seq ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For these purposes, 'interested planning authority', in relation to any land, means any body which exercises any of the functions of a local planning authority in relation to that land; and land is land of an authority if the authority has any interest in it: Town and Country Planning Act 1990 s 316(6) (s 316 substituted by the Planning and Compensation Act 1991 s 20). For the meaning of 'functions' see PARA 2 note 1 ante; and as to local planning authorities see PARA 28 et seq ante.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning Act 1990 s 316(1) (as substituted: see note 5 supra). Section s 316(1) (as so substituted) does not apply to s 76 (as amended; prospectively repealed) (see PARA 535 ante), s 90(2), (5) (see PARA 238 ante) and s 223 (see PARA 832 ante): s 316(8) (as so substituted). Section 316 (as so substituted) applies to any consent required in respect of any land as it applies to planning permission to develop land: s 316(7) (as so substituted).

The regulations must (1) provide for s 71(3) (see PARA 473 ante), and any provision made by virtue of s 65 (as substituted and amended) (see PARA 468 ante) or s 71 (as amended) (see PARA 473 ante) by a development order, to apply to applications for planning permission to develop such land, or for such development, subject to prescribed exceptions or modifications; or (2) make corresponding provision: s 316(4) (as so substituted).

References in the planning Acts to any of the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended), and Pt VII (ss 171A-196C) (as amended) and Pt VIII (ss 197-225) (as amended) include, except where the context otherwise requires, references to those provisions as modified under s 316 (as so substituted): s 336(9) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 52(3)).

For the meaning of 'development order' see PARA 252 ante; for the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'prescribed' see PARA 16 note 5 ante; and for the meaning of 'the planning Acts' see PARA 2 ante.

In exercise of the powers so conferred, and prior to the transfer of functions in relation to Wales to the National Assembly for Wales (see note 12 infra) the Secretary of State made the Town and Country Planning General Regulations 1992, SI 1992/1492, regs 2-11A (as amended) (see PARA 892 et seq post) which came into force on 17 July 1992: reg 1(1). As to the making of regulations generally see PARA 3 ante.

8 Town and Country Planning Act 1990 s 316(2) (as substituted: see note 5 supra).

9 le without prejudice to ibid s 316(2) (as substituted): see the text and note 8 supra.

10 le subject to ibid s 316(5) (as substituted): see the text and notes 15-16 infra.

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Town and Country Planning Act 1990 s 316 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Ie notwithstanding anything in the Local Government Act 1972 s 101 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 370.

14 Town and Country Planning Act 1990 s 316(3) (as substituted: see note 5 supra).

15 Ie under ibid s 77 (as amended): see PARA 483 ante.

16 Ibid s 316(5) (as substituted: see note 5 supra).

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892. Application of statutory provisions.

In relation to:

3534 (1) land¹ of an interested planning authority² other than:
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317. (a) land in England any part of which is within a National Park³ and which is land of a planning authority which is a non-metropolitan district council⁴; and

318. (b) land in respect of which an urban development corporation⁵ is a local planning authority⁶ and which is vested in another local planning authority; and

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3535 (2) development⁷ of any land by an interested planning authority or such authority jointly with any person other than development, whether or not jointly with any person:

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319. (a) by an interested planning authority which is a non-metropolitan district council in England of land any part of which is in a National Park; and

320. (b) by another local planning authority of land in respect of which an urban development corporation is a local planning authority,

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the provisions of Parts III, VII and VIII of the Town and Country Planning Act 1990⁸ apply, with prescribed exceptions⁹, subject to specified provisions of the Town and Country Planning General Regulations 1992¹⁰ and with prescribed modifications¹¹.

Where an environmental impact assessment may be required¹², the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999¹³ apply with prescribed modifications¹⁴.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'interested planning authority' see PARA 891 note 5 ante.

- 3 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.
- 4 For the meaning of 'non-metropolitan district' and as to non-metropolitan district councils in England see PARA 28 note 2 ante.
- 5 As to urban development corporations see PARA 1426 et seq post.
- 6 As to local planning authorities generally see PARA 28 et seq ante; and for the meaning of references in the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) to 'local planning authority', in relation to development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) applies see PARA 893 note 8 post. As to urban development corporations as local planning authorities see PARA 35 ante.
- 7 For the meaning of 'development' see PARA 217 ante.
- 8 Ie the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante), Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante) and Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq ante).
- 9 Ie with the exception of ibid s 76 (as amended) (see PARA 535 ante), s 90(2), (5) (see PARA 238 ante) and s 223 (see PARA 832 ante).
- 10 Town and Country Planning General Regulations 1992, SI 1992/1492, regs 1(2), 2(1). The provisions of the Town and Country Planning Act 1990 Pts III, VIII and VIII (as amended) apply subject to the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 (see PARA 893 post) and reg 11A (as added) (see PARA 870 ante): regs 1(2), 2(1) (reg 2 amended by SI 1999/1892). In the case of land falling within reg 2(1)(a)(i) (see head (1)(a) in the text), the provisions of the Town and Country Planning Act 1990 Pt VIII (as amended) apply subject to the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11 (as amended) (see PARA 897 post) and reg 11A (as added): reg 2(2) (as so amended).
- 11 See ibid regs 3-11A (as amended); and PARA 870 ante, PARA 893 et seq post.
- 12 Ie in the case of a Schedule 1 or Schedule 1 application, or proposed application, within the meaning of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended). For the meanings of 'Schedule 1 application' and 'Schedule 2 application' see PARA 495 notes 3-4 ante.
- 13 Ie the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 488 et seq ante.
- 14 See ibid reg 22; and PARA 509 ante.

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893. Applications for planning permission.

An application for planning permission¹ by an interested planning authority² to develop³ any land⁴ of that authority, or for development of any land by an interested planning authority jointly with any other person, must be determined by the authority concerned unless the application is referred⁵ to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷ for determination⁸.

The above provisions do not, however, apply in the case of an application for planning permission to develop land of an interested planning authority where:

- 3536 (1) the authority does not intend to develop the land itself or jointly with any person; and

3537 (2) if it were not such land, the application would fall to be determined by another body⁹.

1 For these purposes, 'planning permission', except in the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 7 (see PARA 894 post), reg 8 (see PARA 894 post) and reg 9 (as amended) (see PARA 895 post), includes any consent of a local planning authority required under a development order: reg 1(2). For the meaning of 'planning permission' generally see PARA 43 note 6 ante; and for the meaning of 'development order' see PARA 252 ante.

2 For the meaning of 'interested planning authority' see PARA 891 note 5 ante.

3 For the meaning of 'develop' see PARA 217 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 le under the Town and Country Planning Act 1990 s 77 (as amended): see PARA 483 ante. If an application for planning permission for development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies is referred to the Secretary of State or the National Assembly for Wales under the Town and Country Planning Act 1990 s 77 (as amended) for determination, s 77 (as amended) has effect subject to the modification that in s 77(5) for the words 'if either the applicant or the local planning authority wish, give each of them an opportunity' there must be substituted the words 'if the interested planning authority wish, give them an opportunity': Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(2).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3. In the case of applications for planning permission for development to which reg 3 applies: (1) the Town and Country Planning Act 1990 s 70A (as added) (prospectively substituted) (see PARA 516 ante), s 78 (as amended) (see PARA 598 ante) and s 79 (as amended) (see PARA 601 ante) do not apply; (2) s 94 (see PARA 538 ante) and s 95 (see PARA 539 ante) do not apply except to the extent that they apply to a completion notice served under s 96 (see PARA 540 ante) by the Secretary of State or the Assembly; and (3) s 62 (prospectively substituted) (see PARA 448 ante), s 93 (see PARA 519 ante), s 95 (see PARA 539 ante), s 96 (see PARA 540 ante), s 98 (see PARA 542 ante), s 100 (as amended) (see PARA 544 ante), s 103 (see PARAS 548-477 ante), s 104 (see PARA 550 ante) and Sch 5 (as amended) (see PARA 711 et seq ante) have effect subject to specified modifications: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 5(1), Sch 1. The relevant modifications are noted in the paragraphs of this title where the provisions in question are discussed.

In the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) any reference to 'local planning authority', in relation to development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies, is a reference to the interested planning authority concerned; and references to 'the authority', except in the Town and Country and Planning Act 1990 s 71(3) (see PARA 473 ante), are to be construed accordingly: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 6.

9 Ibid reg 4(1). In the case of an application to which reg 4(1) applies, the application must be determined by that other body unless the application is referred to the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 77 (as amended) for determination: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 4(2).

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894. Publicity and consultation.

Any provision relating to notices of applications for planning permission¹ or consultations in connection with the determination of such applications² made by a development order³ applies

to applications for planning permission for development⁴ of land⁵ by an interested planning authority⁶, subject to prescribed modifications⁷.

Before determining such an application for planning permission⁸, an urban development corporation⁹ in Greater London¹⁰ must consult¹¹ the council of the London borough¹² for the area in which the land which is the subject of the application, or any part of it, is situated¹³.

1 le any provision made by virtue of the Town and Country Planning Act 1990 s 65 (as substituted and amended): see PARA 468 ante. For the meaning of 'planning permission' see PARA 43 note 6 ante. The extended meaning of 'planning permission' (see PARA 893 note 1 ante) does not apply for these purposes: Town and Country Planning Regulation 1992, SI 1992/1492, reg 1(2).

2 le any provision made by virtue of the Town and Country Planning Act 1990 s 71 (as amended): see PARA 473 ante.

3 For the meaning of 'development order' see PARA 252 ante. Any reference in such a development order to 'local planning authority' is a reference to the interested planning authority concerned; and references to 'the authority' are to be construed accordingly: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 7(2). For the meaning of 'interested planning authority' see PARA 891 note 5 ante.

4 le development to which ibid reg 3 applies: see PARA 893 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 7(1).

7 Ibid reg 7(1) is subject to the modifications prescribed by reg 7(2) (see note 3 supra): reg 7(1).

8 le an application for planning permission falling within ibid reg 3.

9 As to urban development corporations see PARA 1426 et seq post.

10 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

11 For the meaning of 'consult' see PARA 2 note 1 ante.

12 For the meaning of 'London borough' see PARA 28 note 7 ante.

13 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 8.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(5) DEVELOPMENT BY LOCAL PLANNING AUTHORITIES/895. Effect of planning permission.

895. Effect of planning permission.

Any grant of planning permission¹ by an interested planning authority² of development³ of any land⁴ by that interested planning authority enures for the benefit of the applicant interested planning authority, except in the case of development of any land by an interested planning authority jointly with any other person where that person is specified in the application for planning permission as a joint developer, in which case the permission enures for the benefit of the applicant interested planning authority and that other person⁵.

The above provision does not, however, apply where:

3538 (1) in England, the interested planning authority is:

327

321. (a) the council of a district⁶ for which there is no county council⁷;

322. (b) the council of a county in which there are no district councils; or
 323. (c) the council of a London borough⁸;
- 328
 3539 (2) in Wales, the interested planning authority is:
 329
324. (a) the council of a county; or
 325. (b) the council of a county borough⁹.
- 330

1 For the meaning of 'planning permission' see PARA 43 note 6 ante. The extended meaning of 'planning permission' (see PARA 893 note 1 ante) does not apply for these purposes: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 1(2).

2 For the meaning of 'interested planning authority' see PARA 891 note 5 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 9 (amended by SI 1992/1982).

6 As to district councils (of which there are none in Wales) see PARA 28 ante.

7 As to county councils see PARA 28 ante.

8 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 9A (regs 9A, 9B added by SI 1998/2800). For the meaning of 'London borough' see PARA 28 note 7 ante.

9 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 9B (as added: see note 8 supra). As to county borough councils in Wales see PARA 28 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(5) DEVELOPMENT BY LOCAL PLANNING AUTHORITIES/896. Arrangements for discharge of functions.

896. Arrangements for discharge of functions.

Notwithstanding the statutory provisions relating to arrangements for the discharge of functions by local authorities¹, no application for planning permission² for development by an interested planning authority³ may be determined:

- 3540 (1) by a committee or sub-committee of the interested planning authority concerned if that committee or sub-committee is responsible, wholly or partly, for the management of any land⁴ or buildings⁵ to which the application relates; or
 3541 (2) by an officer of the interested planning authority concerned if his responsibilities include any aspect of the management of any land or buildings to which the application relates⁶.

1 ie notwithstanding anything in the Local Government Act 1972 s 101 (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 370.

2 For the meaning of 'planning permission' for these purposes see PARA 893 note 1 ante.

3 le development to which the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 3 applies: see PARA 893 ante. For the meaning of 'development' see PARA 217 ante; and for the meaning of 'interested planning authority' see PARA 891 note 5 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'building' see PARA 2 note 10 ante.

6 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 10.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(5) DEVELOPMENT BY LOCAL PLANNING AUTHORITIES/897. Other consents.

897. Other consents.

Where an interested planning authority¹ is seeking a consent of a local planning authority² under Part III, Part VII or Part VIII of the Town and Country Planning Act 1990³ other than:

- 3542 (1) planning permission⁴ to develop⁵ land⁶; or
- 3543 (2) a consent under the Electricity Act 1989 in respect of any operation or change of use that constitutes development⁷; or
- 3544 (3) or a consent to display an advertisement pursuant to the relevant regulations⁸;

and that authority is itself the local planning authority by which such consent would be given, then unless the consent sought is under a tree preservation order⁹, that authority must make an application for such consent to the Secretary of State¹⁰ or, in relation to Wales, to the National Assembly for Wales¹¹.

Applications by interested planning authorities for consents under tree preservation orders have already been discussed¹².

1 For the meaning of 'interested planning authority' see PARA 891 note 5 ante.

2 For the meaning of 'local planning authority' for these purposes see PARA 893 note 6 ante.

3 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante), Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante) or Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq ante).

4 For the meaning of 'planning permission' for these purposes see PARA 893 note 1 ante.

5 For the meaning of 'develop' see PARA 217 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 le a consent under the Town and Country Planning Act 1990 s 90(2): see PARA 238 ante.

8 le pursuant to regulations under ibid s 220 (as amended): see PARA 769 ante.

9 For the meaning of 'tree preservation order' see PARA 850 ante.

10 As to the Secretary of State see PARA 19 ante.

11 Town and Country Planning General Regulations 1992, SI 1992/1492, reg 11(1), (2) (reg 11(1) numbered as such, and reg 11(2) added, by SI 1999/1892; the Town and Country Planning General Regulations 1992, SI

1992/1492, reg 11(1) amended by SI 1999/1810). As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 See the Town and Country Planning General Regulations 1992, SI 1992/1492, regs 11(2), (3), 11A (as added); and PARA 870 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(5) DEVELOPMENT BY LOCAL PLANNING AUTHORITIES/898. Local planning authorities as statutory undertakers.

898. Local planning authorities as statutory undertakers.

In relation to statutory undertakers¹ who are local planning authorities² the statutory provisions relating to the display of advertisements on operational land³ have effect subject to such exceptions and modifications as may be prescribed⁴.

1 For the meaning of 'statutory undertakers' see PARA 1009 post.

2 As to local planning authorities see PARA 28 et seq ante.

3 I.e. the Town and Country Planning Act 1990 s 283 and the provisions specified therein: see PARAS 1013-1017, 1027 post.

4 Ibid s 316A (added by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 48). For the meaning of 'prescribed' see PARA 16 note 5 ante. At the date at which this title states the law, no such exceptions and modifications had been prescribed.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(i) In general/899. War-time breaches; in general.

(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN

(i) In general

899. War-time breaches; in general.

Where during the war period¹:

- 3545 (1) works² not complying with planning control³ were carried out on land; or
- 3546 (2) a use of land not complying with planning control was begun by or on behalf of the Crown,

then, if at any time after the end of the war period there subsists in the land a permanent or long-term interest⁴ which is neither held by or on behalf of the Crown nor subject to any interest or right to possession so held, the planning control is enforceable⁵, so long as such an interest subsists in the land, in respect of those works or that use notwithstanding:

- 3547 (a) that the works were carried out or the land used by or on behalf of the Crown; or
- 3548 (b) the subsistence in the land of any interest held by or on behalf of the Crown in reversion, whether immediate or not, expectant on the termination of that permanent or long-term interest⁶.

Where, however, any works on land carried out, or use of land begun, during the war period remain or continues after the relevant date⁷ and no determination⁸ has been given, the works or use are or is treated for all purposes as complying with that control unless steps for enforcing the control have been begun before that date⁹.

1 For these purposes, 'war period' means the period extending from 3 September 1939 to 26 March 1946: Town and Country Planning Act 1990 s 302(6).

2 For these purposes, 'works' includes any building, structure, excavation or other work on land: *ibid* s 302(6). For the meanings of 'building' and 'land' see PARA 2 note 10 ante.

3 For these purposes, references to non-compliance with planning control mean (1) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to a resolution to prepare a scheme under the Town and Country Planning Act 1932 (repealed), that the works were carried out or the use begun otherwise than in accordance with the terms of an interim development order or of permission granted under such an order; (2) in relation to works on land carried out, or a use of land begun, at a time when the land was subject to such a scheme, that the works were carried out or the use begun otherwise than in conformity with the provisions of the scheme; and references in the Town and Country Planning Act 1990 to compliance with planning control are to be construed accordingly: s 302(7). For the meaning of 'use' see PARA 221 note 4 ante.

4 For these purposes, 'permanent or long-term interest', in relation to land, means the fee simple in the land, a tenancy of the land granted for a term of more than ten years and not subject to a subsisting right of the landlord to determine the tenancy at or before the expiration of ten years from the beginning of the term, or a tenancy granted for a term of ten years or less with a right of renewal which would enable the tenant to prolong the term of the tenancy beyond ten years; and 'tenancy' includes a tenancy under an underlease, and a tenancy under an agreement for a lease or underlease, but does not include an option to take a tenancy and does not include a mortgage: *ibid* s 302(6). For the normal meaning of 'tenancy' see PARA 16 note 9 ante; and for the meaning of 'mortgage' see PARA 38 note 6 ante.

5 *Ie* subject to *ibid* s 302(4): see the text and notes 7-9 *infra*.

6 *Ibid* s 302(1), (2). As to the purpose of these provisions see *R v Secretary of State for the Environment, ex p Bulk Storage Ltd* [1985] JPL 35; and as to the power to require information in respect of interests in land see PARA 53 ante.

The Town and Country Planning Act 1990 Pt XIV (ss 303-314) (as amended) (see PARAS 19, 48 *et seq*, 458 ante, PARAS 913, 933, 994 post) and Pt XV (ss 315-337) (as amended) do not, however, apply to s 302 and Sch 15: Sch 15 para 16.

7 For these purposes, 'the relevant date', in relation to any land, means the date with which the period of five years from the end of the war period ends, but for the purposes of this definition any time during which, notwithstanding *ibid* s 302(2) (see the text and notes 1-6 *supra*), planning control is unenforceable by reason of the subsistence in or over the land of any interest or right to possession held by or on behalf of the Crown must be disregarded: s 302(6).

8 *Ie* a determination under *ibid* s 302(3): see PARA 902 post.

9 *Ibid* s 302(4).

UPDATE

899 War-time breaches; in general

NOTES 1-6--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 302, Sch 15: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(f).

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900. Exercise of functions.

In England, elsewhere than in a metropolitan county¹ or a National Park² the functions³ conferred under the statutory provisions relating to enforcement in respect of war-time breaches of planning control by the Crown⁴ on the authority responsible for enforcing planning control⁵ must be exercised⁶:

- 3549 (1) in the case of works⁷ on or a use⁸ of land⁹ which in the opinion of the district planning authority¹⁰ relates to a county matter¹¹, by the county planning authority¹²;
3550 (2) in any other case, by the district planning authority¹³.

As respects the area of any National Park for which a National Park authority is the local planning authority those functions must be exercised by that authority¹⁴.

Every application for a determination¹⁵ to an authority responsible for enforcing planning control must be made to the district planning authority which, in the case of an application falling to be determined by the county planning authority, must send it on to the latter¹⁶. A county planning authority determining any such application must give the district planning authority for the area in which the land to which the application relates is situated an opportunity to make recommendations to the county planning authority as to the manner in which the application should be determined and must take any such recommendations into account¹⁷. A county or district planning authority which has dealt with any such application must notify the district or, as the case may be, the county planning authority of the terms of its determination or, in a case where the application has been referred to the Secretary of State, the date when it was so referred¹⁸.

1 As to metropolitan counties see PARA 28 note 1 ante.

2 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

3 For the meaning of 'functions' see PARA 2 note 1 ante.

4 Ie the Town and Country Planning Act 1990 s 302, Sch 15: see PARA 901 et seq post.

5 For the meaning of 'authority responsible for enforcing planning control' for these purposes see PARA 902 note 4 post.

6 Ie subject to the Town and Country Planning Act 1990 s 1(5)(c) (as amended), Sch 1 para 19(3): see the text and notes 15-16 infra.

7 For the meaning of 'works' for these purposes see PARA 899 note 2 ante.

8 For the meaning of 'use' see PARA 221 note 4 ante.

9 For the meaning of 'land' see PARA 2 note 10 ante.

- 10 As to district planning authorities see PARA 28 ante.
- 11 For the meaning of 'county matter' see PARA 38 ante.
- 12 As to county planning authorities see PARA 28 ante.
- 13 See the Town and Country Planning Act 1990 s 1(5)(c) (as amended), Sch 1 para 19(1). As to district planning authorities (of which there are none in Wales) see PARA 28 ante. Schedule 1 para 19 (as amended) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 14 Ibid Sch 1 para 19(2A) (added by the Environment Act 1995 s 78, Sch 10 para 32).
- 15 Ie under the Town and Country Planning Act 1990 s 302(3): see PARA 902 post.
- 16 Ibid Sch 1 para 19(3). See also note 13 supra.
- 17 Ibid Sch 1 para 19(4). See also note 13 supra.
- 18 Ibid Sch 1 para 19(5). See also note 13 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(i) In general/901. Notice of proposed enforcement.

901. Notice of proposed enforcement.

Where before the relevant date¹ any person proposes to take steps for enforcing a planning control in the case of a war-time breach by the Crown², then, unless a compliance determination application³ has been made in relation to the land which has not finally been determined⁴, that person must serve on every owner⁵ and occupier of the land⁶ not less than 28 days' notice of the proposal; and, if within that period any person makes such an application in relation to the land and within seven days of making it serves on the person proposing so to take steps notice that the application has been made, no steps for enforcing the control may be taken until the final determination of the application⁷. No such notice is, however, required if steps for enforcing a planning control in the case of any works on land are begun within 28 days of the final determination of a compliance determination application in relation to the land⁸.

If such an application has been made which has not been finally determined, no such steps may be taken until the final determination of it⁹.

- 1 For the meaning of 'the relevant date' see PARA 899 note 7 ante.
- 2 Ie steps for enforcing a planning control in the case of such works or such a use as mentioned in the Town and Country Planning Act 1990 s 302(1): see PARA 899 ante. For the meaning of 'works' see PARA 899 note 2 ante; and for the meaning of 'use' see PARA 221 note 4 ante.
- 3 For these purposes, 'a compliance determination application' means an application under ibid s 302(3) (see PARA 902 post): s 302(5), Sch 15 para 1.
- 4 For these purposes, a compliance determination application is treated as having been finally determined notwithstanding that a subsequent application may be made under ibid Sch 15 para 9 (see PARA 910 post): Sch 15 para 13(5).
- 5 For these purposes, 'owner' has the same meaning as in the Housing Act 1985 and 'owned' is to be construed accordingly: Town and Country Planning Act 1990 s 302(6).

- 6 For the meaning of 'land' see PARA 2 note 10 ante.
- 7 Town and Country Planning Act 1990 Sch 15 para 13(1), (2).
- 8 Ibid Sch 15 para 13(4).
- 9 Ibid Sch 15 para 13(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/A. IN GENERAL/902. Right to apply for determination.

(ii) Compliance Determination Applications

A. IN GENERAL

902. Right to apply for determination.

A person entitled to make a compliance determination application¹ with respect to any land² may apply at any time before the relevant date³ to an authority responsible for enforcing any planning control⁴ for a determination:

- 3551 (1) whether works on the land carried out, or a use of the land begun, during the war period⁵ fail to comply with any planning control⁶ which the authority is responsible for enforcing; and
- 3552 (2) if so, whether the works or use should be deemed to comply with that control⁷.

1 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante; and as to persons entitled to make such applications see PARA 906 post.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'the relevant date' see PARA 899 note 7 ante.

4 For these purposes, 'authority responsible for enforcing planning control' means, in relation to any works on land or use of land, the authority empowered by virtue of the Town and Country Planning Act 1947 s 75 (repealed) or of the Town and Country Planning Act 1971 s 292(1), Sch 24 para 34, including Sch 24 para 34 as it continues in effect by virtue of the Planning (Consequential Provisions) Act 1990 ss 3(3), 4, 5(1), Sch 3 (see PARA 561 note 2 ante) to serve an enforcement notice in respect of it or the authority which would be so empowered if the works had been carried out, or the use begun, otherwise than in compliance with planning control: Town and Country Planning Act 1990 s 302(6). For the meaning of 'works' see PARA 899 note 2 ante; for the meaning of 'use' see PARA 221 note 4 ante; and for the meaning of 'enforcement notice' see PARA 44 note 1 ante. As to the authorities responsible for enforcing planning control see PARA 900 ante.

References to the enforcement of planning control are to be construed as references to the exercise of the powers conferred by the Town and Country Planning Act 1947 s 75 (repealed) or by the Town and Country Planning Act 1971 Sch 24 para 34, including Sch 24 para 34 as it continues in effect by virtue of the Planning (Consequential Provisions) Act 1990 Sch 3: Town and Country Planning Act 1990 s 302(8).

5 For the meaning of 'war period' see PARA 899 note 1 ante.

6 For the meaning of references to non-compliance with planning control see PARA 899 note 3 ante.

7 Town and Country Planning Act 1990 s 302(3). Applications under s 302 are, however, excluded in relation to Wales for the purposes of s 303 (as amended): see s 303(6) (repealed in relation to England and prospectively repealed in relation to Wales); and PARA 458 ante. As to powers of entry see PARA 904 post.

The validity of any determination made or purporting to have been made by a local planning authority in respect of a determination under s 302 or Sch 15 may not be called into question in any legal proceedings on the ground that the determination should have been made by some other local planning authority: see s 286(1) (e); and PARA 45 ante at head (4) in the text. As to local planning authorities see PARA 28 et seq ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/A. IN GENERAL/903. Service of notices.

903. Service of notices.

Any notice or other document required or authorised to be served¹ may be served on any person either by delivering it to him, or by leaving it at his proper address² or by post³.

Any such document required or authorised to be served upon an incorporated company or body is duly served if it is served upon the secretary or clerk of the company or body⁴.

If it is not practicable after reasonable inquiry to ascertain the name or address of an owner⁵ or occupier of land⁶ on whom any such document is to be served, the document may be served by addressing it to him by the description of 'owner' or 'occupier' of the premises, describing them, to which it relates, and by delivering it to some person on the premises or, if there is no person on the premises to whom it can be delivered, by affixing it, or a copy of it, to some conspicuous part of the premises⁷.

1 le under the Town and Country Planning Act 1990 s 302(5), Sch 15: see PARAS 901 ante, 904 et seq post.

2 For these purposes and for the purposes of the Interpretation Act 1978 s 7 (see STATUTES vol 44(1) (Reissue) PARA 1388), the proper address of any person upon whom any document is to be served is (1) in the case of the secretary or clerk of any incorporated company or body, that of the registered or principal office of the company or body; and (2) in any other case, the last known address of the person to be served: Town and Country Planning Act 1990 Sch 15 para 15(3).

3 Ibid Sch 15 para 15(1).

4 Ibid Sch 15 para 15(2).

5 For the meaning of 'owner' for these purposes see PARA 901 note 5 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 Town and Country Planning Act 1990 Sch 15 para 15(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/A. IN GENERAL/904. Power of entry.

904. Power of entry.

At any time before the relevant date¹ any officer of an authority responsible for enforcing planning control² has a right, on producing, if so required, some duly authenticated document showing his authority to act for these purposes, to enter any premises at all reasonable hours:

- 3553 (1) for the purpose of ascertaining whether there are on the premises any works³ carried out during the war period⁴ which do not comply with planning control⁵, or whether a use⁶ of the premises continues which was begun during that period and does not comply with it;
- 3554 (2) where a compliance determination application⁷ has been made to the authority, for the purpose of obtaining any information required by the authority for the exercise of its functions⁸ in relation to the application⁹.

Admission to any premises which are occupied may not be demanded as of right unless 24 hours' notice of the intended entry has been served on the occupier¹⁰.

Any person who wilfully obstructs any officer of an authority acting in the exercise of the above powers is liable on summary conviction to a fine not exceeding level 1 on the standard scale¹¹.

If any person who, in compliance with the above provisions, is admitted into a factory, workshop or workplace¹² discloses to any person any information obtained by him in it with regard to any manufacturing process or trade secret, he is liable, unless such disclosure was made in the performance of his duty, on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding level 3 on the standard scale¹³.

1 For the meaning of 'the relevant date' see PARA 899 note 7 ante.

2 For the meaning of 'authority responsible for enforcing planning control' see PARA 902 note 4 ante.

3 For the meaning of 'works' see PARA 899 note 2 ante.

4 For the meaning of 'war period' see PARA 899 note 1 ante.

5 For the meaning of references to non-compliance with planning control see PARA 899 note 3 ante.

6 For the meaning of 'use' see PARA 221 note 4 ante.

7 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

8 le for the exercise of the authority's functions under the Town and Country Planning Act 1990 s 302 and Sch 15: see PARA 899 et seq ante, PARA 905 et seq post. For the meaning of 'functions' see PARA 2 note 1 ante.

9 Ibid Sch 15 para 14(1).

10 Ibid Sch 15 para 14(2). As to the service of notices see PARA 903 ante.

11 Ibid Sch 15 para 14(3). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

12 As to the meaning of 'factory, workshop or workplace' see PARA 58 note 5 ante.

13 Town and Country Planning Act 1990 Sch 15 para 14(4) (prospectively amended by the Criminal Justice Act 2003 ss 280(1), 332, Sch 25 para 86, Sch 37 Pt 9, as from a day to be appointed under s 336(3), (4); at the date at which this title states the law, no such day had been appointed). Until that amendment is brought into force, the Town and Country Planning Act 1990 Sch 15 para 14(4) has effect with the addition, after the words 'on the standard scale' of the words 'or to imprisonment for a term not exceeding three months'.

BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/A. IN GENERAL/905. Opportunity for hearing.

905. Opportunity for hearing.

On any compliance determination application¹ or any appeal², the applicant or, in the case of an application referred³ to the Secretary of State⁴ (or, in relation to Wales, to the National Assembly for Wales⁵) for decision or an appeal to him or to the Assembly, the applicant or the authority responsible for enforcing the planning control⁶ in question, may require the authority by which the application is to be determined or, as the case may be, the Secretary of State or the Assembly to give the applicant or authority an opportunity before the application or appeal is determined of appearing before, and being heard by, a person appointed by the authority or, as the case may be, by the Secretary of State or the Assembly for the purpose⁷.

1 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

2 In any appeal under the Town and Country Planning Act 1990 s 302(5), Sch 15: see PARA 899 et seq ante, PARA 906 et seq post.

3 As to reference of applications to the Secretary of State or the National Assembly for Wales see PARA 907 post.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 For the meaning of 'authority responsible for enforcing planning control' see PARA 902 note 4 ante.

7 Town and Country Planning Act 1990 Sch 15 para 12. As to powers of entry see PARA 904 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/B. PROCEDURE/906. Making of application.

B. PROCEDURE

906. Making of application.

A compliance determination application¹ may be made with respect to any land²:

3555 (1) by the owner³ or occupier of the land; or

3556 (2) by any person who proves that he has or intends to acquire an interest in the land which will be affected by a compliance determination⁴ or that he has borne any of the cost of carrying out works⁵ on the land during the war period⁶.

In the case of land owned or occupied by or on behalf of the Crown, or leased to, or to a person acting on behalf of, the Crown, or with respect to which it is proved that there is held, or intended to be acquired, by or on behalf of the Crown an interest in the land which will be so affected⁷ or that any such cost⁸ has been borne by the Crown, a compliance determination application may be made by any person acting on behalf of the Crown⁹.

A compliance determination application must be accompanied by such plans and other information as are necessary to enable the application to be determined¹⁰.

The authority to which a compliance determination application is made must, within 14 days from the receipt of the application, publish notice of it in one or more local newspapers circulating in the area in which the land is situated and must serve notice of it on any person appearing to the authority to be specially affected by the application¹¹.

The authority must take into consideration any representations made to it in connection with the application within 14 days from the publication of the notice¹².

1 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'owner' see PARA 901 note 5 ante.

4 For these purposes, 'compliance determination' means a determination given (see PARA 909 post) on an application under the Town and Country Planning Act 1990 s 302(3) (see PARA 902 ante); s 302(5), Sch 15 para 1.

5 For the meaning of 'works' see PARA 899 note 2 ante.

6 Town and Country Planning Act 1990 Sch 15 para 2(1). For the meaning of 'war period' see PARA 899 note 1 ante.

7 le affected as mentioned in ibid Sch 15 para 2(1): see the text and notes 1-6 supra.

8 le any of the cost mentioned in ibid Sch 15 para 2(1): see the text and notes 1-6 supra.

9 Ibid Sch 15 para 2(2).

10 Ibid Sch 15 para 3.

11 Ibid Sch 15 para 4(1). As to the service of notices see PARA 903 ante.

12 Ibid Sch 15 para 4(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/B. PROCEDURE/907. Reference of application to the Secretary of State or the Assembly.

907. Reference of application to the Secretary of State or the Assembly.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that it is expedient, having regard to considerations affecting the public interest, whether generally or in the locality concerned, that any compliance determination application³ to an authority or any class or description of such applications should instead of being determined⁴ by the authority be referred to him or to the Assembly for decision, he or it may give directions to the authority requiring that application, or applications of that class or description, to be so referred⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

4 As to the determination of applications see PARA 909 post.

5 Town and Country Planning Act 1990 s 302(5), Sch 15 para 10(1). Schedule 15 applies to any such reference as if it were an appeal under Sch 15 para 6(2) (see PARA 911 post) following failure of the authority to entertain the application: Sch 15 para 10(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/B. PROCEDURE/908. Information to be supplied to the Secretary of State or the Assembly.

908. Information to be supplied to the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions to any authority responsible for enforcing planning control³ requiring that authority to furnish him or the Assembly with such information with respect to compliance determination applications⁴ received by the authority as he or the Assembly considers necessary or expedient in connection with the exercise of his or its statutory⁵ functions⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meanings of 'authority responsible for enforcing planning control' and of references to the enforcement of planning control see PARA 902 note 4 ante.

4 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

5 I.e. under the Town and Country Planning Act 1990 s 302(5), Sch 15: see PARA 899 et seq ante, PARAS 909-910 post.

6 Ibid Sch 15 para 11. For the meaning of 'functions' see PARA 2 note 1 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/B. PROCEDURE/909. Determination of applications.

909. Determination of applications.

Where a compliance determination application¹ is made to an authority, the authority must determine whether the works² or use³ in question fail to comply with any planning control⁴ which the authority is responsible for enforcing⁵ and, if so, must specify the control in question⁶.

Where the authority determines that works or a use fail or fails so to comply, the authority must further determine whether, having regard to all relevant circumstances, the works or use shall, notwithstanding the failure, be deemed so to comply, either unconditionally or subject to such conditions as to the time for which the works or use may be continued, the carrying out of alterations, or other matters, as the authority thinks expedient⁷.

Any compliance determination⁸ is⁹ final¹⁰.

1 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante.

2 For the meaning of 'works' see PARA 899 note 2 ante.

3 For the meaning of 'use' see PARA 221 note 4 ante.

4 For the meaning of references to non-compliance with planning control see PARA 899 note 3 ante.

5 For the meanings of 'authority responsible for enforcing planning control' and of references to the enforcement of planning control see PARA 902 note 4 ante.

6 Town and Country Planning Act 1990 s 302(5), Sch 15 para 5(1). As to appeals against compliance determinations see PARA 911 post.

7 Ibid Sch 15 para 5(2). As to the validity of such determinations see PARA 902 note 7 ante.

8 For the meaning of 'compliance determination' see PARA 906 note 4 ante.

9 ie subject to the Town and Country Planning Act 1990 Sch 15 para 9 (see PARA 910 post) and to any determination or decision of the Secretary of State or the National Assembly for Wales on an appeal under Sch 15 para 7 (see PARA 911 post).

10 Ibid Sch 15 para 8.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/B. PROCEDURE/910. Fresh applications where alteration in circumstances.

910. Fresh applications where alteration in circumstances.

Where a compliance determination¹ has been given that works² on land³ or a use⁴ of land shall not be deemed to comply with planning control⁵ or shall be deemed to comply⁶ with it subject to conditions, then, if a person entitled to make a compliance determination application⁷ with respect to the land satisfies the authority, or on appeal⁸ the Secretary of State⁹ or, in relation to Wales, the National Assembly for Wales¹⁰, that there has been a material change of circumstances since the previous application was determined, he may make a subsequent application and, on such an application, the authority, or on appeal the Secretary of State or the Assembly, may substitute for the compliance determination such determination as appears proper having regard to all relevant circumstances¹¹.

1 For the meaning of 'compliance determination' see PARA 906 note 4 ante.

2 For the meaning of 'works' see PARA 899 note 2 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'use' see PARA 221 note 4 ante.

- 5 For the meaning of references to non-compliance with planning control see PARA 899 note 3 ante.
- 6 For the meaning of references to compliance with planning control see PARA 899 note 3 ante.
- 7 For the meaning of 'a compliance determination application' see PARA 901 note 3 ante; and as to persons entitled to make such applications see PARA 906 ante.
- 8 As to appeals see PARA 911 post.
- 9 As to the Secretary of State see PARA 19 ante.
- 10 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 11 Town and Country Planning Act 1990 s 302(5), Sch 15 para 9.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/8. CONTROL OF PARTICULAR TYPES OF DEVELOPMENT/(6) WAR-TIME BREACHES OF PLANNING CONTROL BY THE CROWN/(ii) Compliance Determination Applications/C. APPEALS/911. In general.

C. APPEALS

911. In general.

Where the applicant is aggrieved¹ by a compliance determination², or where a person by whom representations have been made³ is aggrieved by such a determination, he may appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵.

The applicant may also appeal if he is aggrieved by the failure of the authority responsible for enforcing planning control⁶ to determine the application within two months from the last day on which representations may be made⁷ and has served notice on the authority that he appeals to the Secretary of State or the Assembly⁸.

Any such appeal must be made within the period of 28 days after the applicant has notice of the determination or, in the case of an appeal against the failure of the authority duly to determine an application⁹, after the applicant has served notice on the authority of the appeal, or within such extended period as the Secretary of State or the Assembly may allow¹⁰.

On such an appeal the Secretary of State or the Assembly may give, in substitution for the determination, if any, given by the authority, such determination as appears to him or to it to be proper having regard to all relevant circumstances, or, if he or it is satisfied that the applicant was not a person entitled to make the application, may decide that the application is not to be entertained¹¹.

At any stage of the proceedings on such an appeal to him or to the Assembly the Secretary of State or the Assembly may, and must if so directed by the High Court, state in the form of a special case for the opinion of the High Court any question of law arising in connection with the appeal¹².

Any determination or decision of the Secretary of State or the Assembly on such an appeal¹³ is final¹⁴.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

- 2 For the meaning of 'compliance determination' see PARA 906 note 4 ante.
- 3 Ie as mentioned in the Town and Country Planning Act 1990 s 302(5), Sch 15 para 4: see PARA 906 ante.
- 4 As to the Secretary of State see PARA 19 ante.
- 5 Town and Country Planning Act 1990 Sch 15 para 6(1). As to the transfer of functions under Sch 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 6 For the meaning of 'authority responsible for enforcing planning control' see PARA 902 note 4 ante.
- 7 Ie under the Town and Country Planning Act 1990 Sch 15 para 4: see PARA 906 ante.
- 8 Ibid Sch 15 para 6(2). Any failure so to give a determination is taken on the service of such notice of appeal as a final refusal by the authority to entertain the application: Sch 15 para 8. As to the mode of serving notices see PARA 903 ante.
- 9 Ie in the case of an appeal under ibid Sch 15 para 6(2): see the text to notes 6-8 supra.
- 10 Ibid Sch 15 para 6(3).
- 11 Ibid Sch 15 para 7(1).
- 12 Ibid Sch 15 para 7(2).
- 13 Ie any determination or decision on an appeal under ibid Sch 15 para 7: see the text to notes 11-12 supra.
- 14 Ibid Sch 15 para 8.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(1) EXERCISE OF FUNCTIONS/912. Authority to which claims for compensation to be made.

9. COMPENSATION

(1) EXERCISE OF FUNCTIONS

912. Authority to which claims for compensation to be made.

Claims for payment of compensation¹ must² be made to and paid by the local planning authority³ which took the action by virtue of which the claim arose or, where that action was taken by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵, the local planning authority from which the appeal was made to him or to the Assembly or which referred the matter to him or to it or, in the case of an order made or notice served⁶ by him or by the Assembly, the appropriate authority⁷; and references for those purposes to a local planning authority are to be construed accordingly⁸.

After consultation⁹ with all the authorities concerned, the Secretary of State or the Assembly may, however, direct that, where a local planning authority is liable to pay compensation¹⁰ in any particular case or class of case, that authority shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he or the Assembly may direct from one or more authorities specified in the direction¹¹.

In England, the local planning authority by which compensation is to be paid and to which claims for compensation are to be made where a purchase notice is served¹² is the district planning authority¹³.

- 1 le (1) in England, claims for payment of compensation under the Town and Country Planning Act 1990 s 107 (as amended) (see PARA 914 post) (including s 107 (as amended) as applied by s 108 (as amended) (see PARA 915 post)), s 115(1)-(4) (see PARA 923 post), s 186 (as amended) (see PARA 581 ante) and s 223 (see PARA 832 ante); (2) in Wales, claims for payment of compensation under s 107 (as amended), (including s 107 (as amended) as applied by s 108 (as amended), s 115(1)-(4) and s 186 (as amended).
- 2 le subject to *ibid* s 1(5)(c) (as amended), Sch 1 para 16(3), s 1(6), Sch 1A para 8(3) (as added: see the text and notes 9-11 *infra*).
- 3 As to local planning authorities see PARA 28 *et seq* ante.
- 4 As to the Secretary of State see PARA 19 ante.
- 5 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 1A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 6 le by virtue of the Town and Country Planning Act 1990 s 100 (as amended) (see PARA 544 ante), s 104 (see PARA 550 ante) or s 185 (see PARA 580 ante).
- 7 For these purposes, 'appropriate authority' means: (1) in England, (a) in the case of a claim for compensation under *ibid* s 107 (as amended) or s 108 (as amended), the local planning authority which granted, or is to be treated for the purposes of s 107 (as amended) as having granted, the planning permission the revocation or modification of which gave rise to the claim; (b) in the case of a claim for compensation under s 115(1)-(4) or s 186 (as amended), the local planning authority named in the relevant order or stop notice of the Secretary of State; (c) in the case of a claim for compensation under s 223, the district planning authority; (2) in Wales, (a) in the case of a claim for compensation under *ibid* s 107 (as amended) or s 108 (as amended), the local planning authority which granted, or is to be treated for the purposes of s 107 (as amended) as having granted, the planning permission the revocation or modification of which gave rise to the claim; (b) in the case of a claim for compensation under s 115(1)-(4) or s 186 (as amended), the local planning authority named in the relevant order or stop notice of the National Assembly for Wales: Sch 1 para 16(2), Sch 1A para 8(2) (Sch 1A added by the Local Government (Wales) Act 1994 s 18, Sch 4). In relation to Wales, the Town and Country Planning Act 1990 Sch 1A para 8 (as so added) applies only in relation to any area for which, by virtue of any provision made under s 6, s 7 or s 8 (see PARAS 34-36 ante), there is more than one local planning authority: Sch 1A para 3 (as so added). In relation to England, Sch 1 para 16 does not apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; for the meaning of 'stop notice' see PARA 577 ante; and for the meaning of 'planning permission' see PARA 43 note 6 ante. As to district planning authorities (of which there are none in Wales) see PARA 28 ante.
- 8 *Ibid* Sch 1 para 16(1) (amended by the Planning and Compensation Act 1991 ss 31, 84 (6), Sch 6 paras 8, 39, Sch 19 Pt II); Town and Country Planning Act 1990 Sch 1A para 8(1) (as added: see note 7 *supra*).
- 9 For the meaning of 'consult' see PARA 2 note 1 ante.
- 10 le under the provisions specified in the Town and Country Planning Act 1990 Sch 1 para 16(1) (as amended) or Sch 1A para 8(1) (as added): see note 1 *supra*.
- 11 *Ibid* Sch 1 para 16(3), Sch 1A para 8(3) (as added: see note 7 *supra*).
- 12 le under *ibid* s 144(2) (as amended): see PARA 977 post.
- 13 *Ibid* Sch 1 para 16(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(1) EXERCISE OF FUNCTIONS/913. Contributions by ministers towards compensation paid by local authorities.

913. Contributions by ministers towards compensation paid by local authorities.

Where compensation is payable¹ by a local authority² or National Park authority³ in consequence of any specified decision or order⁴ and that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department⁵ and the cost of which is defrayed out of money provided by Parliament, the minister⁶ responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine⁷.

1 le under the Town and Country Planning Act 1990.

2 For the meaning of 'local authority' see PARA 3 note 3 ante.

3 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 le any decision or order given or made under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante), the provisions of Pt VI (ss 137-171) (as amended) (see PARA 966 et seq post) relating to purchase notices, Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante), Pt VIII (ss 197-225) (as amended) (see PARA 769 et seq ante) or Sch 5 (as amended) (see PARA 711 et seq ante), Sch 6 (as amended) (see PARA 621 et seq ante) or Sch 9 (as amended) (see PARA 757 et seq ante). For the meaning of 'purchase notice' see PARA 966 post.

Where compensation is payable by a local authority under the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990 (see PARA 1072 et seq post) or the Planning (Hazardous Substances) Act 1990 (see PARA 1212 et seq post) in consequence of any decision or order given or made under the Town and Country Planning Act 1990 Pt III (as amended), Pt VIII (as amended) or the provisions of Pt VI (as amended) relating to purchase notices or the Planning (Listed Buildings and Conservation Areas) Act 1990 or the Planning (Hazardous Substances) Act 1990, then, if that decision or order was given or made wholly or partly in consequence of the land to which it relates being likely to be required for the provision in England of a terminal for, or of other works for the purposes of, a railway linking England with France and passing under the English Channel, the minister may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine: see the Transport Act 1968 s 142(2) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 22(5)). See further RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 324.

5 For the meaning of 'government department' see PARA 3 note 5 ante.

6 In relation to Wales, the functions formerly exercised by the Secretary of State for Wales under s 305 are transferred to the National Assembly for Wales, but not the functions of other ministers mentioned therein: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 305(1), (2). Any expenses incurred by any government department, including the Secretary of State, under s 305 must be paid out of money provided by Parliament: see s 311(2) (d); and PARA 51 ante at head (d) in the text. This does not, however, apply in relation to any expenses incurred by the National Assembly for Wales: see the Government of Wales Act 1998 s 89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

913 Contributions by ministers towards compensation paid by local authorities

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 4--Transport Act 1968 s 142 repealed: Statute Law (Repeals) Act 2008.

PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/914. Compensation where planning permission revoked or modified.

(2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC

914. Compensation where planning permission revoked or modified.

Where planning permission¹ is revoked or modified², then, if, on a claim made to the local planning authority³ within the prescribed time⁴ and in the prescribed manner⁵, it is shown that a person interested in the land⁶ or in minerals⁷ in, on or under it:

- 3557 (1) has incurred expenditure in carrying out work⁸ which is rendered abortive by the revocation or modification; or
- 3558 (2) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the local planning authority must pay that person compensation in respect of that expenditure, loss or damage⁹.

No such compensation may be paid, however, in respect of:

- 3559 (a) any work carried out before the grant of the permission which is revoked or modified; or
- 3560 (b) any other loss or damage arising out of anything done or omitted to be done before the grant of that permission, other than loss or damage consisting of depreciation of the value of an interest in land¹⁰.

Furthermore, where planning permission for development consisting of the winning and working of minerals¹¹ or involving the depositing of mineral waste¹² is revoked or modified, no compensation may be paid under the above provisions in respect of any buildings¹³, plant or machinery, unless the claimant can prove that he is unable to put them to a reasonably beneficial use or to put them to a reasonably beneficial use except at the loss claimed¹⁴. Where a claim for compensation under the above provisions includes a claim for expenditure or loss in respect of buildings, plant or machinery to which this restriction applies, the Lands Tribunal¹⁵ may give directions that that part of the claim be severed from the remainder of the claim and be dealt with at such later date as may be fixed by the tribunal, either in such directions or subsequently on application by either party¹⁶.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 I.e. by an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante. In Pt IV (ss 107-118) (as amended) (see the text and notes 3-10 infra; and PARA 915 et seq post), any reference to an order under s 97 (as amended) includes a reference to an order under the provisions of s 97 (as amended) as applied by s 102(3) (see PARA 547 ante) or, subject to s 116 (as substituted) (see PARA 925 post), by s 102(8) (as amended), Sch 9 para 1(3) (as substituted) (see PARA 758 ante): s 107(5) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 para 1, 8).

3 As to local planning authorities see PARA 28 et seq ante

4 As to the time so prescribed see PARA 581 note 13 ante. For the meaning of 'prescribed' see PARA 16 note 5 ante.

5 As to the manner so prescribed see PARA 581 note 14 ante.

6 'Person interested in the land' includes any person who has an enforceable interest as against the owner to use the land: *Pennine Raceway Ltd v Kirklees Metropolitan Borough Council* [1983] QB 382, [1982] 3 All ER 628, CA (contractual licence). For the meaning of 'land' see PARA 2 note 10 ante.

7 For the meaning of 'minerals' see PARA 16 note 2 ante.

8 For these purposes, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar matters preparatory to it, is to be taken to be included in the expenditure incurred in carrying out that work: Town and Country Planning Act 1990 s 107(2). The test whether matters qualify is whether they are such that without them an architect would lack the necessary information to carry out his instructions; legal costs in connection with a provisional contract for purchase of the land may be included, and so may proper recompense for time and out-of-pocket expenses incurred in collecting all information necessary to the submission of the planning application: *Evans v Cheshire County Council* (1952) 3 P & CR 50, Lands Tribunal. As to the claimant's labour see *Biggs v Buckinghamshire County Council* (1953) 3 P & CR 404, Lands Tribunal. However, in construing a similar enactment now repealed, the tribunal held that 'other similar matters' must be construed ejusdem generis with 'plans' and directly associated with the physical work on the site, so that specifications and bills of quantities may be included but not the cost of raising capital: *Southern Olympia (Syndicate) Ltd v West Sussex County Council* (1952) 3 P & CR 60, Lands Tribunal. The cost of plans may be claimed even though they were prepared for a previous application for permission which was refused: *Holmes v Bradfield Rural District Council* [1949] 2 KB 1, [1949] 1 All ER 381, DC.

9 Town and Country Planning Act 1990 s 107(1). As to the authority to which claims for compensation under s 107 (as amended) must be made see PARA 912 ante.

Compensation payable under s 107(1) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the order under the Town and Country Planning Act 1990 s 97 (as amended) (see PARA 541 ante) until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

The Lands Tribunal has allowed, subject to an allowance for deferment, loss of anticipated future profits under a specific contract which the claimants would almost certainly have been awarded (*Hobbs (Quarries) Ltd v Somerset County Council* (1975) 30 P & CR 286, Lands Tribunal), but loss of profit and goodwill from a business which would have been established, but never in fact existed, is too remote (*Halford v Oxfordshire County Council* (1952) 2 P & CR 358, Lands Tribunal; *Evans v Cheshire County Council* (1952) 3 P & CR 50, Lands Tribunal); and the costs of an appeal against the revocation order do not qualify (*Evans v Cheshire County Council* supra at 56). The claimant was held to have suffered no loss where the development was carried out under a later permission (*Ellis v Worcestershire County Council* (1961) 12 P & CR 178, Lands Tribunal), nor where planning permission for an agricultural cottage was modified by the imposition of a condition restricting occupation to persons employed or last employed in agriculture (*Wilson v West Sussex County Council* [1963] 2 QB 764, [1963] 1 All ER 751, CA).

10 Town and Country Planning Act 1990 s 107(3). In calculating for these purposes the amount of any loss or damage consisting of depreciation of the value of an interest in land, it is to be assumed that planning permission would be granted:

- 331 (1) subject to the condition set out in s 111(5) (as substituted), Sch 10 (see PARA 921 post), for any development of the land of a class specified in s 107(4) (as amended), Sch 3 para 1 (see PARA 920 post) (s 107(4) (amended, in relation to claims made on or after 16 November 1990, by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 13(1), (2)));
- 332 (2) for any development of a class specified in the Town and Country Planning Act 1990 Sch 3 para 2 (see PARA 920 post) (s 107(4) (as so amended)).

The Town and Country Planning Act 1990 s 107(4) (as so amended) is to be given its plain meaning notwithstanding that such a construction could result in anomalies: see *Canterbury City Council v Colley* [1993] AC 401, [1993] 1 All ER 591, HL (decided under the Town and Country Planning Act 1971 s 164(4) (repealed; re-enacted in the Town and Country Planning Act 1990 s 107(4) (as originally enacted)).

11 For the meaning of 'development consisting of the winning and working of minerals' for these purposes see PARA 221 note 4 ante.

12 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

13 For the meaning of 'building' see PARA 2 note 10 ante.

14 Town and Country Planning Act 1990 s 107(3A) (s 107(3A), (3B) added by the Town and Country Planning (Minerals) Regulations 1995, SI 1995/2863, reg 3, Schedule). As to the meaning of 'reasonably beneficial use' cf the Town and Country Planning Act 1990 s 138 (as amended); and PARA 968 post.

15 As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq.

16 Town and Country Planning Act 1990 s 107(3B) (as added: see note 14 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/915. Compensation for refusal or conditional grant of planning permission formerly granted by development order.

915. Compensation for refusal or conditional grant of planning permission formerly granted by development order.

The statutory provisions relating to compensation set out in the previous paragraph¹ apply, where:

- 3561 (1) planning permission² granted by a development order³ or a local development order⁴ is withdrawn, whether by the revocation or amendment of the order or by the issue of directions under powers conferred by the order; and
- 3562 (2) on an application made under the relevant statutory provisions⁵ planning permission for development⁶ formerly permitted by that order is refused, or is granted subject to conditions other than those imposed by that order,

as if the planning permission granted by the development order had been granted⁷ by the local planning authority⁸ and had been revoked or modified by an order⁹ made by the local planning authority¹⁰.

The above provisions do not, however, apply in relation to planning permission for the development of operational land¹¹ of statutory undertakers¹². Nor, as from a day to be appointed¹³, do they apply if:

- 3563 (a) development authorised by planning permission granted by a development order or local development order is started before the permission is withdrawn; and
- 3564 (b) the order includes provision¹⁴ permitting the development to be completed after the permission is withdrawn¹⁵.

Furthermore, regulations¹⁶ may provide that those provisions do not apply where planning permission granted by a development order for demolition of buildings¹⁷ or any description of buildings is withdrawn by the issue of directions under powers conferred by the order¹⁸.

1 le the Town and Country Planning Act 1990 s 107 (as amended): see PARA 914 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development order' see PARA 252 ante.

4 As to local development orders see PARA 419 et seq ante.

5 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

6 For the meaning of 'development' see PARA 217 ante.

7 See note 5 supra.

8 As to local planning authorities see PARA 28 et seq ante

9 le by an order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.

10 Ibid s 108(1) (s 108(1), (2), (4) amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(h), partly as from a day to be appointed under s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante). As to the authority to which claims for payment of compensation under the Town and Country Planning Act 1990 s 107 (as amended) (see PARA 914 ante) as applied by s 108 (as amended) must be made see PARA 912 ante; and as to the time within which and the manner in which claims must be made see PARA 581 ante at notes 13-14 respectively. Compensation payable under s 107(1) (see PARA 914 ante) (as applied by s 108(1) (as so amended)) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date planning permission is refused or granted subject to conditions until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

There is no requirement in the Town and Country Planning Act 1990 s 108(1) (as amended) that an application must relate solely to development formerly permitted by a development order (see *Slot v Guildford Borough Council* (1992) 64 P & CR 329, [1993] 1 EGLR 213, Lands Tribunal); but an application for development substantially different from that formerly permitted does not satisfy the statutory requirements (*Strandmill Ltd v Epping Forest District Council* (1992) 64 P & CR 370, Lands Tribunal).

Where planning permission granted by a development order or a local development order is withdrawn by revocation or amendment of the order, the Town and Country Planning Act 1990 s 108 (as amended) applies only if the application referred to in s 108(1)(b) (see head (2) in the text) is made before the end of the period of 12 months beginning with the date on which the revocation or amendment came into operation: s 108(2) (as so amended). The date when an application is made is the earliest date when it is received by the local planning authority, not the date when it is posted: *Camden London Borough Council v ADC Estates Ltd* (1990) 88 LGR 956, CA.

11 For the meaning of 'operational land' see PARA 1010 post.

12 Town and Country Planning Act 1990 s 108(3). For the meaning of 'statutory undertakers' see PARA 1009 post.

13 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

14 le in pursuance of the Town and Country Planning Act 1990 s 61D (as added): see PARA 425 ante.

15 Ibid s 108(3A) (prospectively added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 6, as from a day to be appointed: see note 13 supra).

16 le made by virtue of the Town and Country Planning Act 1990 s 108(4) (as added: see note 18 infra). At the date at which this title states the law no such regulations had been made. As to the making of regulations generally see PARA 3 ante.

17 For the meaning of 'building' see PARA 2 note 10 ante.

18 Town and Country Planning Act 1990 s 108(4) (added by the Planning and Compensation Act 1991 s 13(3); amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(h)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/916. Apportionment of compensation for depreciation.

916. Apportionment of compensation for depreciation.

Where compensation becomes payable¹ which includes compensation for depreciation² of an amount exceeding £20, the local planning authority³ must:

- 3565 (1) if it appears to the authority to be practicable to do so, apportion the amount of the compensation for depreciation between different parts of the land to which the claim for that compensation relates; and
- 3566 (2) give particulars of any such apportionment to the claimant and to any other person entitled to an interest in land which appears to the authority to be substantially affected by the apportionment⁴.

In carrying out an apportionment under head (1) above, the local planning authority must divide the land into parts, and must distribute the compensation for depreciation between those parts according to the way in which different parts of the land appear to the authority to be differently affected by the order or, in a case where planning permission formerly granted by a development order has been withdrawn, refused, or granted subject to conditions⁵, the relevant planning decision⁶, in consequence of which the compensation is payable⁷.

Regulations for these purposes must make provision⁸ for:

- 3567 (a) enabling the claimant and any other person to whom particulars of an apportionment have been so given, or who establishes that he is entitled to an interest in land which is substantially affected by such an apportionment, if he wishes to dispute the apportionment, to require it to be referred to the Lands Tribunal;
- 3568 (b) enabling the claimant and every other person to whom particulars of any such apportionment have been so given to be heard by the tribunal on any such reference of that apportionment; and
- 3569 (c) requiring the tribunal, on any such reference, either to confirm or to vary the apportionment and to notify the parties of the decision of the tribunal⁹.

Where, however, on such a reference to the Lands Tribunal it is shown that an apportionment relates wholly or partly to the same matters as a previous apportionment, and is consistent with that previous apportionment in so far as it relates to those matters, the tribunal may not vary the apportionment in such a way as to be inconsistent with the previous apportionment so far as it relates to those matters¹⁰.

1 Ie under the Town and Country Planning Act 1990 s 107 (as amended): see PARA 914 ante.

2 For these purposes, and for the purposes of *ibid* s 110 (as amended) (see PARA 917 post), 'compensation for depreciation' means so much of any compensation payable under s 107 (as amended) as is payable in respect of loss or damage consisting of depreciation of the value of an interest in land; and 'interest', where the reference is to an interest in land, means the fee simple or a tenancy of the land and does not include any other interest in it: s 109(6) (amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 para 8, 14). For the meaning of 'land' see PARA 2 note 10 ante; and for the meaning of 'tenancy' see PARA 16 note 9 ante.

3 As to local planning authorities see PARA 28 et seq ante

4 Town and Country Planning Act 1990 s 109(1).

5 Ie a case falling within *ibid* s 108 (as amended): see PARA 915 ante.

6 For these purposes, and for the purposes of *ibid* s 110 (as amended) (see PARA 917 post), 'relevant planning decision' means the planning decision by which planning permission is refused, or is granted subject to conditions other than those previously imposed by the development order or local development order: s 109(6) (as amended (see note 2 supra); further amended by the Planning and Compulsory Purchase Act 2004 s 40(2) (i), partly as from a day to be appointed under s 121). For the meaning of 'development order' see PARA 252 ante; and as to local development orders see PARA 419 et seq ante.

Except in so far as the context otherwise requires, 'planning decision' means a decision made on an application under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante): s

336(1). With respect to references in the Town and Country Planning Act 1990 to planning decisions: (1) in relation to a decision altered on appeal by the reversal or variation of the whole or part of it, such references are to be construed as references to the decision as so altered; (2) in relation to a decision upheld on appeal, such references are to be construed as references to the decision of the local planning authority and not to the decision of the Secretary of State or, in relation to Wales, of the National Assembly for Wales on the appeal; (3) in relation to a decision given on an appeal in the circumstances mentioned in s 78(2) (as amended) (see PARA 598 ante), such references are to be construed as references to the decision so given; (4) the time of a planning decision, in a case where there is or was an appeal, is to be taken to be or have been the time of the decision as made by the local planning authority, whether or not that decision is or was altered on that appeal, or, in the case of a decision given on an appeal in the circumstances mentioned in s 78(2) (as amended), the end of the period there mentioned: s 336(5). As to the Secretary of State see PARA 19 ante; as to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

For the meaning of 'planning permission' see PARA 43 note 6 ante.

7 Town and Country Planning Act 1990 s 109(2).

8 le subject to *ibid* s 109(4): see the text and note 10 *infra*.

9 *Ibid* s 109(3). At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Compensation and Certificates) Regulations 1974, SI 1974/1242, reg 7 has effect as if so made. As to the making of regulations generally see PARA 3 ante.

If the claimant or any other person to whom particulars of an apportionment have been given, or who claims that he is entitled to an interest in land which is substantially affected by such apportionment, wishes to dispute the apportionment, he may within 30 days of the issue of the notice give notice in writing to the Lands Tribunal that he disputes the apportionment, and thereupon the dispute must be referred to the tribunal: see reg 7(1). The claimant and any other person to whom particulars of the apportionment have been given or who establishes that he is entitled to an interest in land which is substantially affected by the apportionment must, on compliance with the rules of the Lands Tribunal for the time being in force, be afforded an opportunity to be heard in any dispute before the tribunal under reg 7: reg 7(3). The Lands Tribunal must by its decision either confirm or vary the apportionment, and must notify the parties of its decision: reg 7(4).

On a reference to the Lands Tribunal by virtue of the Town and Country Planning Act 1990 s 109(3), s 109(1), (2), so far as it relates to the making of an apportionment, applies with the substitution, for references to the local planning authority, of references to the Lands Tribunal: s 109(5).

10 *Ibid* s 109(4).

UPDATE

916 Apportionment of compensation for depreciation

NOTE 6--Amendment made by Planning and Compulsory Purchase Act 2004 s 40(2)(i) fully in force in relation to England: SI 2006/1061.

TEXT AND NOTES 8-10--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 109(3)-(5) amended: SI 2009/1307.

NOTE 9--SI 1974/1242 reg 7 amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/917. Registration of compensation for depreciation.

917. Registration of compensation for depreciation.

Where compensation becomes payable¹ which includes compensation for depreciation² of an amount exceeding £20, the local planning authority³ must give notice to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ that such compensation has become payable, specifying the amount of the compensation for depreciation and any apportionment⁶ of it⁷.

Where the Secretary of State or the Assembly is given such notice, he or it must cause notice of that fact to be deposited:

- 3570 (1) with the council of the district⁸, Welsh county, county borough or London borough⁹ in which the land¹⁰ is situated; and
- 3571 (2) if that council is not the local planning authority, with the local planning authority¹¹.

Notices so deposited:

- 3572 (a) must specify the order or, in a case where planning permission formerly granted by a development order has been withdrawn, refused, or granted subject to conditions¹², the relevant planning decision¹³, and the land to which the claim for compensation relates, and the amount of compensation and any apportionment of it¹⁴; and
- 3573 (b) are local land charges¹⁵.

1 Ie under the Town and Country Planning Act 1990 s 107 (as amended): see PARA 914 ante.

2 For the meaning of 'compensation for depreciation' see PARA 916 note 2 ante.

3 As to local planning authorities see PARA 28 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 110 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie under the Town and Country Planning Act 1990 s 109 (as amended): see PARA 916 ante.

7 Ibid s 110(1).

8 As to district councils (of which there are none in Wales) see PARA 28 ante.

9 For the meaning of 'London borough' see PARA 28 note 7 ante.

10 For the meaning of 'land' see PARA 2 note 10 ante.

11 Town and Country Planning Act 1990 s 110(2) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 24(2)).

12 Ie in a case falling within the Town and Country Planning Act 1990 s 108 (as amended): see PARA 915 ante.

13 For the meaning of 'relevant planning decision' see PARA 916 note 6 ante.

14 Town and Country Planning Act 1990 s 110(3).

15 Ibid s 110(4). For the purposes of the Local Land Charges Act 1975 (see generally LAND CHARGES), the council with which any such notice is deposited is to be treated as the originating authority as respects the charge constituted by it: Town and Country Planning Act 1990 s 110(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/918. Recovery of compensation on subsequent development.

918. Recovery of compensation on subsequent development.

No person may carry out any development¹:

- 3574 (1) which is development of a residential, commercial or industrial character and consists wholly or mainly of the construction of houses, flats, shop or office premises, or industrial buildings including warehouses, or any combination of them; or
- 3575 (2) which consists in the winning and working of minerals²; or
- 3576 (3) to which, having regard to the probable value of the development, it is in the opinion of the Secretary of State³ or, in relation to Wales, of the National Assembly for Wales⁴ reasonable that these provisions should apply,

on land⁵ in respect of which a notice ('a compensation notice') is registered⁶ until any amount which is recoverable⁷ in respect of the compensation specified in the notice has been paid or secured to the satisfaction of the Secretary of State or the Assembly⁸.

These provisions do not, however, apply:

- 3577 (a) to any development by virtue of head (3) above if, on an application made to him or to it for the purpose, the Secretary of State or the Assembly has certified that, having regard to the probable value of the development, it is not in his or the Assembly's opinion reasonable that these provisions should apply to it⁹;
- 3578 (b) to development in specified circumstances¹⁰ in accordance with modified or conditional planning permission¹¹;
- 3579 (c) to any development of a specified¹² class¹³.

If any person initiates any development to which these provisions apply in contravention of them, the Secretary of State or the Assembly may serve a notice on him:

- 3580 (i) specifying the amount appearing to the Secretary of State or the Assembly to be the amount recoverable¹⁴ in respect of the compensation in question; and
- 3581 (ii) requiring him to pay that amount to the Secretary of State or the Assembly within such period as may be specified¹⁵ in the notice¹⁶.

1 For the meaning of 'development' see PARA 217 ante.

2 For the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 111 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 le under the Town and Country Planning Act 1990 s 110 (as amended): see PARA 917 ante.

7 le under *ibid* s 111 (as amended) in accordance with s 112 (as amended): see PARA 919 post.

8 *Ibid* s 111(1), (2) (amended by the Planning and Compensation Act 1991 ss 31 (4), 84 (6), Sch 6 paras 8, 15(a), (b), Sch 19 Pt II). As to compensation payable to the Church Commissioners see the Town and Country Planning Act 1990 s 318(3) (as amended); and PARA 17 ante.

The purposes authorised for the application of capital money by (1) the Settled Land Act 1925 s 73 (as amended) (see SETTLEMENTS vol 42 (Reissue) PARA 808); (2) the Universities and College Estates Act 1925 s 26 (as amended) (see EDUCATION vol 15(2) (2006 Reissue) PARA 1379), include the payment of any sum recoverable under the Town and Country Planning Act 1990 s 111 (as amended) or s 112 (as amended) (see PARA 919 post): s 328(1) (s 328 amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4; the Town and Country Planning Act 1990 s 328(1) amended by the Planning and Compensation Act 1991 s 31 (4), Sch 6 paras 8, 37). The purposes authorised as purposes for which money can be raised by mortgage by (a) the Settled Land Act 1925 s 71 (as amended) (see SETTLEMENTS vol 42 (Reissue) PARAS 849-850) and (b) the Universities and College Estates Act 1925 s 30 (as amended) (see EDUCATION vol 15(2) (2006 Reissue) PARA 1379), include the payment of any sum so recoverable: Town and Country Planning Act 1990 s 328(2) (as so amended).

9 *Ibid* s 111(3).

10 le where the compensation under *ibid* s 107 (as amended) (see PARA 914 ante) specified in the notice registered under s 110 (as amended) became payable in respect of an order modifying planning permission or, in a case falling within s 108 (as amended) (see PARA 915 ante) of a relevant planning decision within the meaning of s 109 (as amended) (see PARA 916 note 6 ante) granting conditional planning permission, development in accordance with that permission as modified by the order or, as the case may be, in accordance with those conditions: s 111(4). For the meaning of 'planning permission' see PARA 43 note 6 ante.

11 *Ibid* s 111(4).

12 le any development of a class specified (1) in *ibid* s 107(4) (as amended), Sch 3 para 1 (see PARA 920 post) which is carried out in accordance with the condition set out in s 111(5) (as substituted), Sch 10 (see PARA 921 post); or (2) in Sch 3 para 2 (see PARA 920 post).

13 *Ibid* s 111(5) (substituted by the Planning and Compensation Act 1991 Sch 6 para 15(c)).

14 As to the amount recoverable see PARA 919 post.

15 The period so specified must not be less than three months after the service of the notice: Town and Country Planning Act 1990 s 112(10). As to the service of notices see PARA 54 ante.

16 *Ibid* s 112(9) (amended by the Planning and Compensation Act 1991 Sch 6 para 16(a), Sch 19 Pt II).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/919. Amount recoverable on subsequent development; payment or remission.

919. Amount recoverable on subsequent development; payment or remission.

The amount recoverable¹ in respect of the compensation specified in a compensation notice² which is registered³ is:

3582 (1) if the land⁴ on which the development⁵ is to be carried out ('the development area') is identical with, or includes, with other land, the whole of the land comprised in the notice, the amount of compensation specified in the notice;

3583 (2) if the development area forms part of the land comprised in the notice, or includes part of that land together with other land not comprised in the notice, so

much of the amount of the compensation specified in the notice as is attributable to land comprised in the notice and falling within the development area⁶.

Where, in the case of any land in respect of which such a notice has been so registered, the Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸ is satisfied, having regard to the probable value of any proper development of that land, that no such development is likely to be carried out unless he exercises his or its powers under this provision, he or the Assembly may, in the case of any particular development, remit the whole or part of any amount otherwise so recoverable⁹; and, where part only of any such amount has been remitted in respect of any land, the Secretary of State or the Assembly must cause the notice registered¹⁰ to be amended by substituting in it, for the statement of the amount of the compensation, in so far as it is attributable to that land, a statement of the amount which has been so remitted¹¹. Where, in connection with the development of any land, an amount becomes recoverable¹² in respect of the compensation specified in such a notice, then, except where, and to the extent that, payment of that amount has been so remitted, no amount is recoverable in respect of that compensation in so far as it is attributable to that land in connection with any subsequent development of it¹³.

An amount recoverable¹⁴ in respect of any compensation is payable to the Secretary of State or the Assembly either:

- 3584 (a) as a single capital payment; or
- 3585 (b) as a series of instalments of capital and interest combined; or
- 3586 (c) as a series of other annual or periodical payments, of such amounts, and payable at such times, as the Secretary of State or the Assembly may direct¹⁵;

and, except where the amount so payable is payable as a single capital payment, it must be secured by the person by whom the development is to be carried out in such manner, whether by mortgage¹⁶, covenant or otherwise, as the Secretary of State or the Assembly may direct¹⁷.

Any sum recovered¹⁸ by the Secretary of State or the Assembly must be paid to the local planning authority¹⁹ which paid the compensation to which that sum relates²⁰; but, in paying any such sum to the local planning authority, the Secretary of State or the Assembly must deduct from it the amount of any grant paid by him or by it²¹ in respect of that compensation²². If, however, the sum recovered by the Secretary of State or the Assembly is an instalment of the total sum recoverable, or is recovered by reference to development of part of the land in respect of which the compensation was payable, any deduction to be so made is a deduction of such amount as the Secretary of State or the Assembly may determine to be the proper proportion of the amount of grant paid²³.

1 le under the Town and Country Planning Act 1990 s 111 (as amended): see PARA 918 ante.

2 For the meaning of 'a compensation notice' see PARA 918 ante.

3 le under the Town and Country Planning Act 1990 s 110 (as amended): see PARA 917 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'development' see PARA 217 ante.

6 Town and Country Planning Act 1990 s 112(1). As to compensation payable to the Church Commissioners see PARA 17 ante; and as to the application of capital money by certain trustees see PARA 918 note 8 ante.

In relation to compensation specified in a notice registered under s 110 (as amended), references in Pt IV (ss 107-118) (as amended) (see PARA 914 et seq ante; the text and notes 7-23 infra; and PARA 923 et seq post) to so much of the compensation as is attributable to a part of the land to which the notice relates are to be construed as follows: (1) if the notice does not include an apportionment under s 109 (as amended) (see PARA 916 ante), the amount of the compensation is treated as distributed rateably according to area over the land to which the

notice relates; (2) if the notice includes such an apportionment (a) the compensation is treated as distributed in accordance with that apportionment as between the different parts of the land by reference to which the apportionment is made; and (b) so much of the compensation as, in accordance with the apportionment, is attributed to a part of the land is treated as distributed rateably according to area over that part: s 110(5).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 s 112 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 112(2).

10 *Ie* under *ibid* s 110 (as amended): see PARA 917 ante.

11 *Ibid* s 112(3).

12 See note 1 *supra*.

13 Town and Country Planning Act 1990 s 112(4). No amount is recoverable under s 111 (as amended) in respect of any compensation by reference to which a sum has become recoverable by the Secretary of State or the Assembly under s 308 (as amended) (see PARA 933 post): s 112(5).

14 See note 1 *supra*.

15 Town and Country Planning Act 1990 s 112(6). Before giving a direction under s 112(6)(c) (as so modified) (see head (c) in the text), the Secretary of State or the Assembly must take into account any representations made by the person by whom the development is to be carried out: s 112(7).

16 For the meaning of 'mortgage' see PARA 38 note 6 ante.

17 Town and Country Planning Act 1990 s 112(8).

18 See note 1 *supra*.

19 As to local planning authorities see PARA 28 et seq ante

20 Town and Country Planning Act 1990 s 112(11).

21 *Ie* under *ibid* Pt XIV (ss 303-314) (as amended): see PARAS 48 et seq, 458, 913 ante, PARAS 933, 994 post.

22 *Ibid* s 112(12) (s 112(12), (13) amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 paras 8, 16, Sch 19 Pt II).

23 Town and Country Planning Act 1990 s 112(13) (as amended: see note 22 *supra*).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/920. Specified classes of development.

920. Specified classes of development.

The following classes of development are specified classes for the purposes of certain provisions relating to compensation¹:

3587 (1) the carrying out of:

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1. (a) the rebuilding, as often as occasion may require, of any building² which was in existence on 1 July 1948, or of any building which was in existence before that date

but was destroyed or demolished after 7 January 1937, including the making good of war damage sustained by any such building³;

2. (b) the rebuilding, as often as occasion may require, of any building erected after 1 July 1948 which was in existence at a material date⁴;
3. (c) the carrying out, for the maintenance, improvement or other alteration of any building, of works which affect only the interior of the building, or do not materially affect the external appearance of the building, and are works for making good war damage⁵, so long as the cubic content⁶ of the original building⁷ is not substantially exceeded⁸;

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- 3588 (2) the use as two or more separate dwelling houses of any building which at a material date was used as a single dwelling house⁹.

Where after 1 July 1948:

- 3589 (i) any buildings or works¹⁰ have been erected or constructed, or any use of land has been instituted; and
- 3590 (ii) any condition imposed¹¹ limiting the period for which those buildings or works may be retained, or that use may be continued, has effect in relation to those buildings or works or that use,

the above provisions do not operate except as respects the period specified in that condition¹².

1. le for the purposes of the Town and Country Planning Act 1990 s 107(4) (as amended), Sch 3 Pt I (paras 1, 2): see PARA 914 note 10 ante.

2. For the meaning of 'building' see PARA 2 note 10 ante.

3. Town and Country Planning Act 1990 Sch 3 para 1(a). Where the top floors of a building were destroyed by war damage, the restoration of those floors was held to be in substance a rebuilding of the top floors within Sch 3 para 1 and not an enlargement, improvement or alteration of the building remaining after the war damage within Sch 3 para 3 (repealed): *National Provincial Bank Ltd v Portsmouth Corpn* (1959) 11 P & CR 6, CA. Where permission was granted for the rebuilding of a demolished shop subject to approval of design for the shop front, and subsequently permission was granted for a shop front subject to conditions, the second permission, as well as the first, was held to relate to rebuilding and not to the alteration or improvement of an existing building: *Burman v St Albans Corpn* (1961) 12 P & CR 360, Lands Tribunal. See also *Old England Properties Ltd v Telford and Wrekin Council* [2001] RVR 175, Lands Tribunal (land previously used as railway station; planning permission restricted to rebuilding on foundations of original buildings and not permitting merger of individual buildings).

There is no compulsion on rebuilding a building to create a slavish copy of dimensions, appearance and materials: see *Sorrell v Maidstone Rural District Council* (1961) 13 P & CR 57, Lands Tribunal (land previously used as a hutted camp; notional planning permission was given to erect bungalows provided rebuilding was restricted to the sites of the former huts). Where the level of land formerly occupied by a dwelling house had been raised by 20 feet, it was held that the notional right to rebuild was not exercisable: *Ivens & Sons (Timber Merchants) Ltd v Daventry District Council* (1975) 31 P & CR 480, Lands Tribunal.

4. Town and Country Planning Act 1990 Sch 3 para 1(b). For these purposes, 'at a material date' means at either (1) 1 July 1948; or (2) the date by reference to which Sch 3 (as amended) falls to be applied to the particular case in question; but head (2) supra does not apply in relation to any buildings, works or use of land in respect of which, whether before or after the date therein mentioned, an enforcement notice served before that date has become or becomes effective: Sch 3 para 12(1)(a), (b), (2). For the meaning of 'use' see PARA 221 note 4 ante; for the meaning of 'land' see PARA 2 note 10 ante; and for the meaning of 'enforcement notice' see PARA 561 ante.

5. Ibid Sch 3 para 1(c).

6. For these purposes, any reference to the cubic content of a building is to be construed as a reference to that content as ascertained by external measurement: *ibid* Sch 3 para 10(1).

7 In relation to a building erected after 1 July 1948 which results from the carrying out of any such works as are described in *ibid* Sch 3 para 1, any reference in Sch 3 (as amended) to the original building is a reference to the building in relation to which those works were carried out and not to the building resulting from the carrying out of those works: Sch 3 para 13(1). Schedule 3 para 13(1) does not, however, apply for the purposes of s 111 (as amended) (see PARA 918 ante) and s 138 (as amended) (see PARA 968 post): Sch 3 para 13(2) (substituted by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 40(3)).

8 Town and Country Planning Act 1990 Sch 3 para 1. For the purposes of Sch 3 para 1, the cubic content of a building is substantially increased or exceeded (1) in the case of a dwelling house, if it is increased or exceeded by more than one-tenth or 1,750 cubic feet, whichever is the greater; and (2) in any other case, if it is increased or exceeded by more than one-tenth: Sch 3 para 10(2) (amended by the Planning and Compensation Act 1991 Sch 6 paras 8, 40(2)).

9 Town and Country Planning Act 1990 Sch 3 para 2.

10 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

11 *Ie* under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

12 *Ibid* Sch 3 para 9.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/921. Condition treated as applicable to rebuilding and alterations.

921. Condition treated as applicable to rebuilding and alterations.

The following statutory condition is treated as applicable for the purposes of certain provisions relating to compensation¹:

3591 (1) where the building² to be rebuilt or altered is the original building³, the amount of gross floor space⁴ in the building as rebuilt or altered which may be used for any purpose may not exceed by more than 10% the amount of gross floor space which was last used for that purpose in the original building⁵;

3592 (2) where the building to be rebuilt or altered is not the original building, the amount of gross floor space in the building as rebuilt or altered which may be used for any purpose may not exceed the amount of gross floor space which was last used for that purpose in the building before the rebuilding or alteration⁶.

1 *Ie* for the purposes of the Town and Country Planning Act 1990 s 111(5) (as substituted), Sch 10: see PARA 918 ante at head (c) in the text. A claim for compensation is defeated merely if a prospective use exceeds the conditions stated: *Peaktop Properties Hampstead Ltd v Camden London Borough Council* (1983) 46 P & CR 177, CA.

2 For the meaning of 'building' see PARA 2 note 10 ante.

3 In relation to a building erected after 1 July 1948 which is a building resulting from the carrying out of any such works as are described in the Town and Country Planning Act 1990 s 107(4) (as amended), Sch 3 para 1 (see PARA 920 ante), any reference for these purposes to the original building is a reference to the building in relation to which those works were carried out and not to the building resulting from the carrying out of those works: Sch 10 para 5.

4 For these purposes, gross floor space must be ascertained by external measurement; and, where different parts of a building are used for different purposes, floor space common to those purposes must be apportioned rateably: *ibid* Sch 10 para 4(1), (2).

5 Ibid Sch 10 para 1. In determining under Sch 10 the purpose for which floor space was last used in any building, no account may be taken of any use in respect of which an effective enforcement notice has been or could be served or, in the case of a use which has been discontinued, could have been served immediately before the discontinuance: Sch 10 para 3. See also note 4 supra. For the meaning of 'enforcement notice' see PARA 561 ante; and for the meaning of 'use' see PARA 221 note 4 ante.

6 Ibid Sch 10 para 2. See also notes 4-5 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/ (2) COMPENSATION FOR REVOCATION OF PLANNING PERMISSION ETC/922. Application of compensation provisions to Crown land.

922. Application of compensation provisions to Crown land.

Where, in accordance with an agreement relating to Crown land¹, the approval of a local planning authority² is required in respect of any development³ of land in which there is a Crown interest⁴ or a Duchy interest⁵, specified statutory provisions relating to compensation⁶ have effect in relation to the withholding of that approval, or the giving of it subject to conditions, as if it were a refusal of planning permission⁷ or, as the case may be, a grant of planning permission subject to conditions⁸. Until a day to be appointed⁹, however, the reference above to a Crown interest is omitted and the following provisions have effect¹⁰.

At the date at which this title states the law, where there is a Crown interest¹¹ in any land¹², the specified statutory provisions relating to compensation¹³ have effect in relation to any private interest¹⁴ or Duchy interest as if the Crown interest were a private interest¹⁵; and, where there is a Duchy interest in any land, those provisions have effect in relation to that interest or any private interest as if the Duchy interest were a private interest¹⁶. As from a day to be appointed¹⁷, however, these provisions are repealed by the Planning and Compulsory Purchase Act 2004¹⁸.

1 Ie an agreement under ibid s 297 (as prospectively repealed): see PARA 250 ante. For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

2 As to local planning authorities see PARA 28 et seq ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'Crown interest' for these purposes see PARA 14 ante at heads (a)-(c) in the text.

5 For the meaning of 'Duchy interest' see PARA 11 note 1 ante.

6 Ie the Town and Country Planning Act 1990 ss 109-112 (as amended): see PARAS 916-919 ante.

7 For the meaning of 'planning permission' see PARA 43 note 6 ante.

8 Town and Country Planning Act 1990 s 298(3) (amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 25(2), (3); further prospectively amended by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 24(1), (3), as from a day to be appointed under s 121; at the date at which this title states the law, no such day had been appointed). The earlier amendment does not affect the operation of the Planning (Consequential Provisions) Act 1990 ss 3-5, Sch 3 in relation to any private interest or Duchy interest: Planning and Compensation Act 1991 Sch 6 para 25(3).

9 Ie under the Planning and Compulsory Purchase Act 2004 s 121: see note 8 supra.

10 That reference is inserted by the second amendment set out in note 8 supra.

11 For the meaning of 'Crown interest' for these purposes see PARA 11 note 1 ante.

12 For the meaning of 'land' see PARA 2 note 10 ante.

13 See note 6 supra.

14 For the meaning of 'private interest' for these purposes see PARA 11 note 19 ante.

15 Town and Country Planning Act 1990 s 298(1) (s 298(1), (2) substituted by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 25; prospectively repealed by the Planning and Compulsory Purchase Act 2004 ss 79(4), 120, Sch 3 para 24(1), (2), Sch 9 as from a day to be appointed: see notes 8-9 supra).

16 Town and Country Planning Act 1990 s 298(2) (as substituted and prospectively repealed: see note 8 supra).

17 See note 9 supra.

18 See note 15 supra.

UPDATE

922 Application of compensation provisions to Crown land

NOTE 8--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(i) In general/923. Compensation in respect of certain orders.

(3) COMPENSATION FOR OTHER PLANNING DECISIONS

(i) In general

923. Compensation in respect of certain orders.

Where an order is made¹:

- 3593 (1) requiring a use² of land³ to be discontinued;
- 3594 (2) imposing conditions on the continuance of it; or
- 3595 (3) requiring any buildings or works⁴ on land to be altered or removed,

the following provisions have effect⁵. If, on a claim made to the local planning authority⁶ within the prescribed time⁷ and in the prescribed manner⁸, it is shown that any person has suffered damage in consequence of the order:

- 3596 (a) by depreciation of the value of an interest to which he is entitled in the land or in minerals⁹ in, on or under it; or
- 3597 (b) by being disturbed in his enjoyment of the land or of such minerals,

that authority must pay to that person compensation in respect of that damage¹⁰; and any person who carries out any works in compliance with the order is entitled¹¹ to recover from the local planning authority compensation in respect of any expenses reasonably incurred by him in that behalf¹².

Any compensation so payable to a person by virtue of such an order must be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order¹³.

- 1 le under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 ante.
- 2 For the meaning of 'use' see PARA 221 note 4 ante.
- 3 For the meaning of 'land' see PARA 2 note 10 ante.
- 4 For the meaning of 'buildings or works' see PARA 43 note 9 ante.
- 5 Town and Country Planning Act 1990 s 115(1). Subject to s 116 (as substituted) (see PARA 925 post), s 115 applies where such an order as is mentioned in s 115(6) is made as it applies where an order is made under s 102 (as amended): s 115(5). The orders so referred to are (1) an order under s 102(8), Sch 9 para 1 (as amended) (see PARA 757 ante): (a) requiring a use of land to be discontinued; or (b) imposing conditions on the continuance of it; or (c) requiring any buildings or works or plant or machinery on land to be altered or removed; or (2) an order under Sch 9 para 3 (as amended) (see PARA 759 ante), Sch 9 para 5 (as amended) (see PARA 762 ante) or Sch 9 para 6 (see PARA 763 ante): s 115(6). As to compensation for restrictions on mineral working etc see further PARA 925 et seq post.
- 6 As to the authority to which claims for compensation under ibid s 115 must be made see PARA 912 ante. As to local planning authorities see PARA 28 et seq ante.
- 7 As to the time so prescribed see PARA 581 note 13 ante.
- 8 As to the procedure so prescribed see PARA 581 note 14 ante.
- 9 For the meaning of 'minerals' see PARA 16 note 2 ante.
- 10 Town and Country Planning Act 1990 s 115(2). The appropriate date for the assessment of compensation is the date when the relevant order is confirmed, not the date when it was made: *K & B Metals Ltd v Birmingham City Council* (1976) 33 P & CR 135, Lands Tribunal.
Compensation payable under the Town and Country Planning Act 1990 s 115 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the damage is suffered or the expenses are incurred until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.
- 11 le without prejudice to the Town and Country Planning Act 1990 s 115(2) and on a claim made as therein mentioned.
- 12 Ibid s 115(3).
- 13 Ibid s 115(4).

UPDATE

923 Compensation in respect of certain orders

NOTE 10--See *R (on the application of Usk Valley Conservation Group) v Brecon Beacons National Park Authority* [2010] EWHC 71 (Admin), [2010] All ER (D) 194 (Jan), DC; and TOWN AND COUNTRY PLANNING vol 46(1) (Reissue) PARA 546.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(i) In general/924. Other circumstances where compensation payable.

924. Other circumstances where compensation payable.

Special provision is made under the Town and Country Planning Act 1990 for the payment of compensation in relation to:

- 3598 (1) advertisements¹;
- 3599 (2) blight notices²;
- 3600 (3) purchase notices³;
- 3601 (4) statutory undertakers⁴;
- 3602 (5) stop notices⁵; and
- 3603 (6) tree preservation orders⁶.

Compensation is not, however, payable for:

- 3604 (a) restrictions on new development where land had an unexpended balance of development value⁷ unless a claim for the compensation was made⁸ before 25 September 1991⁹; or
- 3605 (b) planning decisions¹⁰ restricting development other than new development¹¹.

1 See the Town and Country Planning Act 1990 s 223; and PARA 832 ante.

2 See *ibid* s 157; and PARA 1008 post.

3 See *ibid* s 144 (as amended); and PARA 977 post.

4 See *ibid* ss 279-282 (as amended); and PARAS 1027-1030 post.

5 See *ibid* s 186 (as amended); and PARA 581 ante.

6 See *ibid* ss 203-205; and PARAS 864-867 ante.

7 *Ie* under *ibid* Pt V (ss 119-136) (repealed). Any amount recoverable under s 133 (repealed) which had not been paid, including any interest on any such amount, ceased to be recoverable; and any mortgage, covenant or other obligation by which the payment of any such amount, or interest on it, was secured, was discharged: Planning and Compensation Act 1991 s 31(6).

8 *Ie* in accordance with the Town and Country Planning Act 1990 s 127 (repealed).

9 See the Planning and Compensation Act 1991 s 31(1), (5); the Planning and Compensation Act 1991 (Commencement No 1 and Transitional Provisions) Order 1991, SI 1991/2067, art 3.

10 *Ie* under the Town and Country Planning Act 1990 s 114 (repealed).

11 See the Planning and Compensation Act 1991 s 31(2). The repeal of the Town and Country Planning Act 1990 s 114 has effect, or is treated as having effect, where the application for planning permission was made on or after 16 November 1990: Planning and Compensation Act 1991 s 31(7). For the meaning of 'planning permission' see PARA 43 note 6 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(ii) Restrictions on Mineral Working and Mineral Waste Depositing/925. Modification of compensation provisions in respect of mineral working etc.

(ii) Restrictions on Mineral Working and Mineral Waste Depositing

925. Modification of compensation provisions in respect of mineral working etc.

Regulations made by virtue of the following provisions¹ may provide that, where a specified order² is made, the statutory provisions relating to compensation³ shall have effect subject, in such cases as may be prescribed⁴, to such modifications as may be prescribed⁵.

Any such regulations may make provision:

- 3606 (1) as to circumstances in which compensation is not to be payable;
- 3607 (2) for the modification of the basis on which any amount to be paid by way of compensation is to be assessed;
- 3608 (3) for the assessment of any such amount on a basis different from that on which it would otherwise have been assessed,

and may also make different provision for different cases and incidental or supplementary provisions⁶.

No such regulations may be made unless a draft of the instrument is laid before and approved by a resolution of each House of Parliament⁷.

Before making any such regulations the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ must consult¹⁰ such persons as appear to him or to it to be representative of:

- 3609 (a) persons carrying out mining operations;
- 3610 (b) owners of interests in land¹¹ containing minerals¹²; and
- 3611 (c) mineral planning authorities¹³.

1 Ie by virtue of the Town and Country Planning Act 1990 s 116 (substituted by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 9): see the text and notes 2-13 infra. In relation to England, the making of such regulations requires the consent of the Treasury: s 116(1) (as so substituted).

2 Ie an order made under (1) the Town and Country Planning Act 1990 s 97 (as amended) (see PARA 541 ante) modifying planning permission for development consisting of the winning and working of minerals or involving the depositing of mineral waste; or (2) s 102(8), Sch 9 paras 1, 3, 5 (as amended) (see PARAS 757, 759, 762 ante) or Sch 9 para 6 (see PARA 763 ante) with respect to such winning and working or depositing. For the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'development' see PARA 217 ante; for the meaning of 'the winning and working of minerals' see PARA 16 note 2 ante; and for the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

3 Ie *ibid* s 107 (as amended) (see PARA 914 ante), s 115 (see PARA 923 ante), s 117 (as amended) (see PARA 930 post), s 279 (as amended) (see PARA 1027 post) and s 280 (as amended) (see PARA 1028 post).

4 For the meaning of 'prescribed' see PARA 16 note 5 ante.

5 Town and Country Planning Act 1990 s 116(1) (as substituted: see note 1 supra). As to the exercise of this power see the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111; and PARA 926 et seq post.

6 Town and Country Planning Act 1990 s 116(2) (as substituted: see note 1 supra).

7 Ibid s 116(3) (as substituted: see note 1 supra). As to the making of regulations generally see PARA 3 ante.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990 s 116 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 For the meaning of 'consult' see PARA 2 note 1 ante.

11 For the meaning of 'land' see PARA 2 note 10 ante.

12 For the meaning of 'minerals' see PARA 16 note 2 ante.

13 Town and Country Planning Act 1990 s 116(4) (as substituted: see note 1 supra). For the meaning of 'mineral planning authority' see PARA 29 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(ii) Restrictions on Mineral Working and Mineral Waste Depositing/926. Compensation for modification of planning permission not payable in specified circumstances.

926. Compensation for modification of planning permission not payable in specified circumstances.

Where an order is made¹ modifying planning permission² for development³ consisting of the winning and working of minerals⁴ or involving the depositing of mineral waste⁵, no compensation is payable if the specified conditions are met⁶. The specified conditions are:

3612 (1) that the order does not:

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4. (a) impose any restriction on working rights⁷; or
5. (b) modify or replace any such restriction, other than a restoration or aftercare condition⁸, subject to which the planning permission was granted or which was imposed by an earlier modification, discontinuance or prohibition order⁹;

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3613 (2) that either:

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6. (a) the planning permission was granted not less than five years before the day on which the order was made; or
7. (b) that the planning permission which is modified by the order was granted before 22 February 1982; and

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3614 (3) that in respect of the land to which the order¹⁰ relates, within the period of five years immediately preceding the day on which that order was made:

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8. (a) the mineral planning authority¹¹ has not made any other modification order, or any discontinuance or prohibition order; and
9. (b) no application to determine conditions¹² was finally determined¹³.

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1 ie under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'winning and working of minerals' see PARA 16 note 2 ante.

5 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

6 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 3(1).

7 For these purposes, 'restriction on working rights', in relation to any land, means that there is imposed on the land in question a restriction which has the effect that: (1) the size of the area which may be used for the winning and working of minerals or the depositing of mineral waste; (2) the depth to which operations for the winning and working of minerals may extend; (3) the height of any deposit of mineral waste; (4) the rate at which any particular mineral may be extracted; (5) the rate at which any particular mineral waste may be deposited; (6) the period at the expiry of which any winning and working of minerals or depositing of mineral waste is to cease; or (7) the total quantity of minerals which may be extracted from, or of mineral waste which may be deposited on, the land, is restricted or reduced: *ibid* reg 2(1).

8 For the meanings of 'restoration condition' and 'aftercare condition' see PARA 712 ante.

9 As to discontinuance orders see PARAS 756-758 ante; and as to prohibition orders see PARAS 759-761 ante.

10 *Ie* the order under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.

11 For the meaning of 'mineral planning authority' see PARA 29 ante.

12 *Ie* no application under the Planning and Compensation Act 1991 s 22, Sch 2 para 2 (old mining permissions: see PARA 720 ante) or under the Environment Act 1995 s 96(1), Sch 13 (as amended) (old mineral planning permissions: see PARA 726 et seq ante) or Sch 14 (as amended) (periodic review of mineral permissions: see PARA 746 et seq ante).

13 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 3(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(ii) Restrictions on Mineral Working and Mineral Waste Depositing/927. Compensation following discontinuance order not payable in specified circumstances.

927. Compensation following discontinuance order not payable in specified circumstances.

Where an order requiring the discontinuance of mineral working¹ is made, no compensation is payable if the specified conditions are met². The specified conditions are:

3615 (1) that the order does not:

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10. (a) impose any restriction on working rights³; or

11. (b) modify or replace any such restriction, other than a restoration or aftercare condition⁴, subject to which the planning permission⁵ was granted or which was imposed by an earlier modification⁶, discontinuance or prohibition order⁷;

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3616 (2) that the order:

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12. (a) imposes a condition on the continuance of the use⁸ of the land; or

13. (b) requires the alteration or removal of any buildings⁹, works, plant or machinery used in connection with the development¹⁰;

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3617 (3) that the development was begun not less than five years before the day on which the order was made; and

3618 (4) that in respect of the land to which the discontinuance order¹¹ relates, and within the period of five years immediately preceding the day on which that order was made:

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14. (a) the mineral planning authority¹² has not made any other discontinuance order, or any modification or prohibition order; and
15. (b) no application to determine conditions¹³ was finally determined¹⁴.
- 258

1 Is an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 1 (as amended): see PARA 757 ante.

2 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 4(1).

3 For the meaning of 'restriction on working rights' for these purposes see PARA 926 note 7 ante.

4 For the meanings of 'restoration condition' and 'aftercare condition' see PARA 712 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 As to modification orders see the Town and Country Planning Act 1990 s 97 (as amended); and PARA 541 ante.

7 As to prohibition orders see PARAS 759-761 ante.

8 For the meaning of 'use' see PARA 221 note 4 ante.

9 For the meaning of 'building' see PARA 2 note 10 ante.

10 For the meaning of 'development' see PARA 217 ante.

11 Is the order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 1 (as amended): see PARA 757 ante.

12 For the meaning of 'mineral planning authority' see PARA 29 ante.

13 Is no application under the Planning and Compensation Act 1991 s 22, Sch 2 para 2 (old mining permissions: see PARA 720 ante) or under the Environment Act 1995 s 96(1), Sch 13 (as amended) (old mineral planning permissions: see PARA 726 et seq ante) or Sch 14 (as amended) (periodic review of mineral permissions: see PARA 746 et seq ante).

14 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 4(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(ii) Restrictions on Mineral Working and Mineral Waste Depositing/928. Compensation following prohibition order.

928. Compensation following prohibition order.

Where an order is made¹ prohibiting the resumption of the winning and working of minerals² or the depositing of mineral waste³, and the specified conditions⁴ are met, the general statutory provisions relating to compensation⁵ apply subject to the following modifications⁶.

If on a claim made to the mineral planning authority⁷ within the time and in the manner prescribed by regulations⁸ it is shown that a person with an interest in the land to which the order relates or in the minerals in, on or under it:

- 3619 (1) has incurred expenditure in carrying out work⁹ which is rendered abortive by the provisions of the order; or

3620 (2) has otherwise sustained loss or damage which is directly attributable to the provisions of the order¹⁰,

the local planning authority¹¹ must pay to that person compensation in respect of the expenditure, loss or damage¹². In calculating, for these purposes, the amount of any loss or damage attributable to a prohibition order, no account is to be taken of:

- 3621 (a) the value of any mineral which cannot be won or worked;
- 3622 (b) the value of any mineral waste which cannot be deposited;
- 3623 (c) the value of any void which cannot be filled; or
- 3624 (d) the cost of complying with any restoration or aftercare condition¹³,

in consequence of that order¹⁴.

1 Ie under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 3 (as amended): see PARA 759 ante.

2 For the meaning of 'winning and working of minerals' see PARA 16 note 2 ante.

3 For the meaning of 'depositing of mineral waste' see PARA 16 note 3 ante.

4 Ie the conditions specified in the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 5(2). The conditions so specified are (1) that the development was begun not less than five years before the day on which the order was made; and (2) that the mineral planning authority has not made any other prohibition order, or any discontinuance or modification order, in respect of the land to which the order relates within the period of five years immediately preceding the day on which that order was made: reg 5(2). As to discontinuance orders see PARAS 756-758 ante; and as to modification orders see the Town and Country Planning Act 1990 s 97 (as amended); and PARA 541 ante.

5 Ie ibid s 115: see PARA 923 ante.

6 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 5(1).

7 For the meaning of 'mineral planning authority' see PARA 29 ante.

8 Ie regulations under the Town and Country Planning Act 1990. As to the prescribed time and manner see PARA 581 notes 13-14 ante. As to the making of regulations generally see PARA 3 ante.

9 For these purposes, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar preparatory matters, is to taken to be included in the expenditure incurred in carrying out that work: ibid s 115(3) (s 115(2), (3) substituted for these purposes, and s 115(3A), (3B) added, by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 5(3)).

10 For these purposes, works carried out for the purpose of removing or alleviating any injury to amenity caused by the winning and working of minerals on the land to which a prohibition order relates are, unless included in another claim for compensation, to be treated as loss or damage directly attributable to the provisions of the order: Town and Country Planning Act 1990 s 115(3A) (as added: see note 9 supra).

11 As to local planning authorities see PARA 28 et seq ante.

12 Town and Country Planning Act 1990 s 115(2) (as substituted for these purposes: see note 9 supra).

13 For the meanings of 'restoration condition' and 'aftercare condition' see PARA 712 ante.

14 Town and Country Planning Act 1990 s 115(3B) (as added: see note 9 supra).

PARAS 1009-1508)/9. COMPENSATION/(3) COMPENSATION FOR OTHER PLANNING DECISIONS/(ii) Restrictions on Mineral Working and Mineral Waste Depositing/929. Compensation following suspension order or supplementary suspension order.

929. Compensation following suspension order or supplementary suspension order.

Where a suspension order¹ or a supplementary suspension order² is made, the general statutory provisions relating to compensation³ apply subject to the following modifications⁴.

If on a claim made to the mineral planning authority⁵ within the time and in the manner prescribed by regulations⁶ it is shown that a person with an interest in the land to which the order relates or in the minerals in, on or under it:

3625 (1) has incurred expenditure in carrying out work⁷ which is rendered abortive by the provisions of the order; or

3626 (2) has otherwise sustained loss or damage which is directly attributable to the provisions of the order⁸,

the local planning authority⁹ must pay to that person compensation in respect of the expenditure, loss or damage¹⁰. In calculating, for these purposes, the amount of any loss or damage attributable to a suspension order or supplementary suspension order, no account is to be taken of:

3627 (a) the value of any mineral which cannot be won or worked;

3628 (b) the value of any mineral waste which cannot be deposited; or

3629 (c) the value of any void which cannot be filled,

in consequence of that order¹¹.

1 Ie an order under the Town and Country Planning Act 1990 s 102(8), Sch 9 para 5 (as amended): see PARA 762 ante.

2 Ie an order under ibid Sch 9 para 6: see PARA 763 ante.

3 Ie ibid s 115: see PARA 923 ante.

4 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 6(1).

5 For the meaning of 'mineral planning authority' see PARA 29 ante.

6 Ie regulations under the Town and Country Planning Act 1990. As to the prescribed time and manner see PARA 581 notes 13-14 ante. As to the making of regulations generally see PARA 3 ante.

7 For these purposes, any expenditure incurred in the preparation of plans for the purposes of any work, or upon other similar preparatory matters, is to be taken to be included in the expenditure incurred in carrying out that work: ibid s 115(3) (s 115(2), (3) substituted for these purposes, and s 115(3A), (3B) added, by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 6(2)).

8 For these purposes, works carried out for the purpose of removing or alleviating any injury to amenity caused by the winning and working of minerals on the land to which a suspension order or supplementary suspension order relates are unless included in another claim for compensation, to be treated as loss or damage directly attributable to the provisions of the order: Town and Country Planning Act 1990 s 115(3A) (as added: see note 7 supra). As to the meaning of 'amenity' see PARA 158 note 8 ante; and for the meaning of 'winning and working of minerals' see PARA 16 note 2 ante.

9 As to local planning authorities see PARA 28 et seq ante.

10 Town and Country Planning Act 1990 s 115(2) (as substituted: see note 7 supra).

11 Ibid s 115(3B) (as added: see note 7 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(4) ASSESSMENT OF COMPENSATION/930. Assessment of compensation; in general.

(4) ASSESSMENT OF COMPENSATION

930. Assessment of compensation; in general.

For the purpose of assessing any compensation which is payable¹ in respect of depreciation of the value of an interest in land², the general statutory rules³ have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition⁴ of an interest in land⁵.

Where an interest in land is subject to a mortgage⁶:

- 3630 (1) any compensation to which these provisions apply which is payable in respect of depreciation of the value of that interest must be assessed as if the interest were not subject to the mortgage;
- 3631 (2) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- 3632 (3) no compensation to which these provisions apply is payable in respect of the interest of the mortgagee, as distinct from the interest which is subject to the mortgage; and
- 3633 (4) any compensation to which these provisions apply which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by him as if it were proceeds of sale⁷.

1 Ie under the provisions of the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended) (see PARA 914 et seq ante) and subject to regulations by virtue of s 116 (as substituted) (see PARA 925 ante). As to such regulations see PARA 932 post.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Ie the rules set out in the Land Compensation Act 1961 s 5 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754 et seq.

4 For these purposes, except in so far as the context otherwise requires, 'compulsory acquisition' does not include the vesting in a person by an Act of Parliament of property previously vested in some other person: Town and Country Planning Act 1990 s 336(1).

5 Ibid s 117(1), (2) (amended by the Planning and Compensation Act 1991 s 21, Sch 1 paras 1, 10). This does not mean that compensation for loss due to the revocation or modification of permission is to be assessed as if it were loss due to acquisition under compulsory powers; the assumptions set out in the Land Compensation Act 1961 ss 14-16 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 762, 764 et seq) do not apply: *John Laing & Son Ltd v Buckinghamshire County Council* (1960) 11 P & CR 114; *Burlin v Manchester City Council* (1976) 32 P & CR 115, Lands Tribunal; cf *Loromah Estates Ltd v Haringey London Borough Council* (1978) 38 P & CR 234, Lands Tribunal.

6 For the meaning of 'mortgage' see PARA 38 note 6 ante.

7 Town and Country Planning Act 1990 s 117(3). Compensation is taxable in the hands of the recipient and should therefore be paid gross: *Pennine Raceway Ltd v Kirklees Metropolitan Council (No 2)* (1988) 58 P & CR 482, [1989] STC 122, CA.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(4) ASSESSMENT OF COMPENSATION/931. Determination of claims for compensation.

931. Determination of claims for compensation.

Except in so far as may be otherwise provided by any regulations¹, any question of disputed compensation² must be referred to, and determined by, the Lands Tribunal³.

1 Ie made under the Town and Country Planning Act 1990. As to the making of regulations generally see PARA 3 ante.

2 Ie under ibid Pt IV (ss 107-118) (as amended): see PARA 914 et seq ante.

3 Ibid s 118(1). In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply subject to any necessary modifications and to the provisions of any regulations made under the Town and Country Planning Act 1990: s 118(2).

UPDATE

931 Determination of claims for compensation

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Land Compensation Act 1961 s 2 omitted: Town and Country Planning Act 1990 s 118(1), (2) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(4) ASSESSMENT OF COMPENSATION/932. Assessment and apportionment of compensation following prohibition order, suspension order or supplementary suspension order.

932. Assessment and apportionment of compensation following prohibition order, suspension order or supplementary suspension order.

Where compensation is payable following a prohibition order¹, the amount to be paid by way of compensation must be assessed in accordance with the general statutory provisions as modified for those purposes² and then abated by the appropriate portion³ of the sum of £7,800⁴. Similarly, where compensation is payable following a suspension order or supplementary suspension order⁵, the amount to be paid by way of compensation must be assessed in accordance with the general statutory provisions as modified for those purposes⁶ and then abated by the appropriate portion of the sum of £7,800⁷.

1 le where the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 5 applies: see PARA 928 ante.

2 le in accordance with the Town and Country Planning Act 1990 s 115 (see PARA 923 ante) as modified by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 5(3) (see PARA 928 ante) and the Town and Country Planning Act 1990 s 117 (as amended) (see PARA 930 ante).

3 For these purposes, 'appropriate portion' has the meaning given by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 7: reg 2(1). Where the mineral planning authority is satisfied, at the time of assessing the amount of compensation to be paid following the making of a prohibition, suspension or supplementary suspension order, that the claimant is the only person entitled to claim compensation, the appropriate portion is £7,800: reg 7(1). Where the mineral planning authority is not so satisfied: (1) it must assess the value of the claimant's interest in the land and in the minerals to which the order relates; (2) it must assess the value attributable to the aggregate of the land and of the minerals in, on or under it, on the assumption that a single person were entitled to all of the interests in the land and minerals; and (3) it must treat as the appropriate portion the sum which bears to £7,800 the same proportion as the value assessed under head (1) supra bears to the value assessed under head (2) supra: reg 7(2).

4 Ibid reg 5(1)(b).

5 le where ibid reg 6 applies: see PARA 929 ante.

6 le in accordance with the Town and Country Planning Act 1990 s 115 (see PARA 923 ante) as modified by the Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 6(2) (see PARA 929 ante) and the Town and Country Planning Act 1990 s 117 (as amended) (see PARA 930 ante).

7 Town and Country Planning (Compensation for Restrictions on Mineral Working and Mineral Waste Depositing) Regulations 1997, SI 1997/1111, reg 6(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/9. COMPENSATION/(5) RECOVERY FROM ACQUIRING AUTHORITIES OF SUMS PAID/933. Recovery from acquiring authorities of sums paid by way of compensation.

(5) RECOVERY FROM ACQUIRING AUTHORITIES OF SUMS PAID

933. Recovery from acquiring authorities of sums paid by way of compensation.

The following provisions apply where:

- 3634 (1) an interest in land¹ is compulsorily acquired or is sold to an authority possessing compulsory purchase powers²; and
- 3635 (2) a notice is registered³ in respect of any of the land acquired or sold, whether before or after the completion of the acquisition or sale, in consequence of a planning decision⁴ or order made before the service of the notice to treat⁵, or the making of the contract⁶, in pursuance of which the acquisition or sale is effected⁷.

Where these provisions apply, the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ is entitled¹⁰ to recover from the acquiring authority¹¹ a sum equal to so much of the amount of the compensation specified in the notice as is to be treated¹² as attributable to that land¹³. If, however, immediately after the completion of the acquisition or sale, there is outstanding some interest in the land acquired or sold to which a person other than the acquiring authority is entitled, the sum referred to above does not accrue until that

interest either ceases to exist or becomes vested in the acquiring authority¹⁴; and no sum is recoverable under these provisions in the case of a compulsory acquisition or sale where the Secretary of State or the Assembly is satisfied that the interest in question is being acquired for the purposes of the use¹⁵ of the land as a public open space¹⁶.

Where a sum is so recoverable from any authority by reference to an acquisition or purchase of an interest in land and a grant became or becomes payable to that or some other authority under an enactment in respect of that acquisition or purchase or of a subsequent appropriation of the land, the power conferred by that enactment to pay the grant includes, and is deemed always to have included, power to pay a grant in respect of that sum as if it had been expenditure incurred by the acquiring authority in connection with the acquisition or purchase¹⁷.

1 For these purposes, 'interest', where the reference is to an interest in land, means the fee simple or a tenancy of the land and does not include any other interest in it: Town and Country Planning Act 1990 s 308(6) (s 308(1), (2), (6) amended by the Planning and Compensation Act 1991 ss 31(4), 84 (6), Sch 6 paras 8, 26, Sch 19 Pt II). For the meaning of 'land' see PARA 2 note 10 ante; and for the meaning of 'tenancy' see PARA 16 note 9 ante.

2 For these purposes, except in so far as the context otherwise requires, 'authority possessing compulsory purchase powers', in relation to the compulsory acquisition of an interest in land, means the person or body of persons effecting the acquisition and, in relation to any other transaction relating to an interest in land, means any person or body of persons who could be or have been authorised to acquire that interest compulsorily for the purposes for which the transaction is or was effected or a body, being a parish council, community council or parish meeting, on whose behalf a district council or county council or county borough council could be or has been so authorised: Town and Country Planning Act 1990 s 336(1) (definition amended by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(13)). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante. As to district councils and county and county borough councils see PARA 28 ante; and as to parish councils and community councils see LOCAL GOVERNMENT vol 69 (2009) PARAS 27 et seq, 41 et seq.

3 *Ie* under *ibid* s 110(2) (as amended): see PARA 917 ante.

4 For the meaning of 'planning decision' see PARA 916 note 6 ante.

5 Words in the Town and Country Planning Act 1990 importing a reference to service of a notice to treat are to be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served: s 336(4). For the meaning of 'enactment' see PARA 2 note 11 ante. As to the service of notices generally see PARA 54 ante.

6 In relation to the sale or acquisition of an interest in land: (1) in a case where the interest is or was conveyed or assigned without a preliminary contract, references to a contract are references to the conveyance or assignment; and (2) references to the making of the contract are references to the execution of it: *ibid* s 336(7).

7 *Ibid* s 308(1) (as amended: see note 1 *supra*).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990 s 308 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 *Ie* subject to the Town and Country Planning Act 1990 s 308(2)-(6) (as amended): see the text and notes 11-17 *infra*.

11 For these purposes, except in so far as the context otherwise requires, 'acquiring authority', in relation to the acquisition of an interest in land, whether compulsorily or by agreement, or to a proposal so to acquire such an interest, means the government department, local authority or other body by which the interest is, or is proposed to be, acquired: *ibid* s 336(1). For the meaning of 'government department' see PARA 3 note 5 ante; and for the meaning of 'local authority' see PARA 3 note 3 ante.

12 *Ie* in accordance with *ibid* s 110(5): see PARA 919 note 6 ante.

13 *Ibid* s 308(2) (as amended: see note 1 *supra*). Where the Secretary of State or the Assembly so recovers a sum in respect of any land, by reason that it is land in respect of which a notice is registered under the

provisions of the Town and Country Planning Act 1990 s 110 (as amended), s 112(11)-(13) (as amended) (see PARA 919 ante) has effect in relation to that sum as if it were a sum recovered as mentioned in s 112(11): s 308(5).

14 Ibid s 308(3).

15 For the meaning of 'use' see PARA 221 note 4 ante.

16 Town and Country Planning Act 1990 s 308(4). For these purposes, except in so far as the context otherwise requires, 'open space' means any land laid out as a public garden, or used for the purposes of public recreation, or land which is a disused burial ground: s 336(1). For a discussion as to whether land in the course of being so laid out can constitute an open space see *Wilcock v Secretary of State for the Environment* [1975] JPL 150. See also *R v Plymouth City Council and Cornwall County Council, ex p Freeman* [1988] RVR 89, CA (lodge cottage set in country park used for country recreation formed part of 'open space' even though public had no access to cottage or its garden).

17 Town and Country Planning Act 1990 s 310 (amended by the Planning and Compensation Act 1991 Sch 6 paras 8, 28, Sch 19 Pt II).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/934. Compulsory acquisition for development and other planning purposes.

10. ACQUISITION AND APPROPRIATION OF LAND

(1) ACQUISITION OF LAND

(i) Acquisition of Land by Local Authorities and National Park Authorities

934. Compulsory acquisition for development and other planning purposes.

A local authority¹ to which these provisions apply² has power, on being authorised to do so by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴, to acquire compulsorily any land⁵ in its area:

- 3636 (1) if the authority thinks that the acquisition will facilitate the carrying out of development⁶, redevelopment or improvement on or in relation to the land; or
- 3637 (2) which is required for a purpose which it is necessary to achieve in the interests of the proper planning of an area in which the land is situated⁷;

but a local authority must not exercise the power under head (1) above unless it thinks that the development, redevelopment or improvement is likely to contribute to the achievement of any one or more of the following objects:

- 3638 (a) the promotion or improvement of the economic well-being of its area;
- 3639 (b) the promotion or improvement of the social well-being of its area;
- 3640 (c) the promotion or improvement of the environmental well-being of its area⁸.

Where a local authority exercises its power under heads (1) and (2) above in relation to any land, it has power, on being authorised to do so by the Secretary of State or the Assembly, to acquire compulsorily:

- 3641 (i) any land adjoining that land which is required for the purpose of executing works for facilitating its development or use⁹; or
- 3642 (ii) where that land forms part of a common¹⁰ or open space¹¹ or fuel or field garden allotment¹², any land which is required for the purpose of being given in exchange¹³ for the land which is being acquired¹⁴.

It is immaterial by whom the local authority proposes that any activity or purpose mentioned in heads (1) and (2) above or in head (i) above should be undertaken or achieved, and in particular the local authority need not propose to undertake an activity or to achieve that purpose itself¹⁵.

A National Park authority¹⁶, on being authorised to do so by the Secretary of State or the Assembly, has the same power to acquire land compulsorily as the local authorities to which the above provisions apply have under them¹⁷.

1 For the meaning of 'local authority' see PARA 3 note 3 ante; but see note 2 infra.

2 The local authorities to which the Town and Country Planning Act 1990 s 226 (as amended) (see the text and notes 3-15 infra; and PARA 935 post) applies are the councils of counties, county boroughs, districts and London boroughs: s 226(8) (amended by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(6)). As to its application to the Isles of Scilly see PARA 2 ante. The power so to acquire land also extends to joint planning boards: see the Town and Country Planning Act 1990 s 244(3); and PARA 942 post. For the meaning of 'London borough' see PARA 28 note 7 ante. As to county, county borough and district councils see PARA 28 ante; and as to joint planning boards see PARA 30 ante. As to the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 226 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante. As to Crown land, however, see PARA 941 post. The power of the local authority to acquire land also extends to the acquisition of new rights, ie rights not in existence when the order is made: see the Local Government (Miscellaneous Provisions) Act 1976 s 13(1); and LOCAL GOVERNMENT vol 69 (2009) PARA 511.

6 For the meaning of 'development' see PARA 217 ante.

7 Town and Country Planning Act 1990 s 226(1) (s 226(1) amended, s 226(1A) added, and s 226(2) repealed, by the Planning and Compulsory Purchase Act 2004 ss 99(1)-(4), 120, Sch 9). Nothing in s 99(1)-(4) affects a compulsory purchase order made before 31 October 2004 (ie the day when s 99 came into force: see PARA 4 ante): s 99(5).

As to the meaning of 'required' in the context of the Town and Country Planning Act 1990 s 226(1) (as originally enacted) and previous legislation see *Company Developments (Property) Ltd v Secretary of State for the Environment and Salisbury District Council* [1978] JPL 107; *R v Secretary of State for the Environment, ex p Leicester City Council* [1987] JPL 787; *Sharkey v Secretary of State for the Environment and South Buckinghamshire District Council* (1990) 62 P & CR 126. The Town and Country Planning Act 1990 s 226(1)(a) (as originally enacted) did not require proof that the development in question would actually be carried out before an order for the compulsory acquisition of land could be made: *Chesterfield Properties plc v Secretary of State for the Environment* (1997) 76 P & CR 117.

Dealing with dilapidated properties is a planning purpose and lack of maintenance of a domestic dwelling can constitute grounds for a compulsory purchase order under the Town and Country Planning Act 1990 s 226 (as amended): see *Monen v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 81 (Admin), [2002] All ER (D) 94 (Jan).

The Acquisition of Land Act 1981 (see generally COMPULSORY ACQUISITION OF LAND) applies to the compulsory acquisition of land under the Town and Country Planning Act 1990 s 226 (as amended): s 226(7). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante. As to Crown land generally see PARA 11 et seq ante; as to interests in Crown land not held by the Crown see PARA 941 post; as to powers to acquire land for the purposes of a new town see PARA 1333 et seq post; as to powers to acquire buildings of special architectural or

historic interest see PARA 1154 et seq post; as to powers to acquire land for providing or improving a highway in pursuance of a stopping-up order in relation to development see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq; and as to acquisition powers in urban development areas see PARA 1454 et seq post. As to the acquisition by a local authority of a private cemetery see eg *R (on the application of Arnos Vale Cemetery Ltd) v First Secretary of State* [2003] EWHC 981 (Admin), [2003] All ER (D) 137 (May). As to whether the Secretary of State is justified in confirming a compulsory purchase order so as to achieve a better scheme of development in the public interest when there is an alternative planning application not requiring the use of such an order see eg *Bexley London Borough Council v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 323, [2001] 18 EGCS 172, [2001] All ER (D) 152 (Apr); and see generally COMPULSORY ACQUISITION OF LAND.

8 Town and Country Planning Act 1990 s 226(1A) (as added: see note 7 supra).

9 For the meaning of 'use' see PARA 221 note 4 ante.

10 For these purposes, except in so far as the context otherwise requires, 'common' includes any land subject to be inclosed under the Inclosure Acts 1845-1882 (see COMMONS vol 13 (2009) PARA 418 et seq) and any town or village green: Town and Country Planning Act 1990 s 336(1).

11 For the meaning of 'open space' see PARA 933 note 16 ante.

12 For these purposes, except in so far as the context otherwise requires, 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: Town and Country Planning Act 1990 s 336(1).

13 As to the circumstances in which exchange land is required see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 609.

14 Town and Country Planning Act 1990 s 226(3).

15 Ibid s 226(4); and see eg *Alliance Spring Co Ltd v First Secretary of State* [2005] EWHC 18 (Admin), [2005] All ER (D) 112 (Jan) (compulsory purchase order for purposes of regeneration scheme led by, and largely dependent on, private developer).

16 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

17 Town and Country Planning Act 1990 s 244A(1) (s 244A added by the Environment Act 1995 s 65, Sch 8 para 2(1)). The Town and Country Planning Act 1990 226(1) (as amended: see note 7 supra) s 226(7), s 227 (as amended) (see PARA 937 post), s 229 (see PARA 947 post), s 230 (see PARA 938 post), s 232 (see PARA 945 post), s 233 (see PARA 948 post) and ss 235-242 (as amended) (see PARA 952 et seq post) apply with the necessary modifications as if a National Park authority were a local authority to which those provisions applied and as if the Park in relation to which it carries out functions were the authority's area: s 244A(3) (as so added). As to the transfer of functions under s 244A (as so added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

UPDATE

934 Compulsory acquisition for development and other planning purposes

NOTE 8--The well-being benefits referred to in the Town and Country Planning Act 1990 s 226(1A) can include benefits deriving from the development of a site other than the site subject to the compulsory acquisition order: *R (on the application of Sainsbury's Supermarkets Ltd) v Wolverhampton City Council* [2009] EWCA Civ 835, [2009] 44 EG 210, [2009] All ER (D) 339 (Jul) (development of subject site linked to development of addition site).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/935. Acquisition of land by another authority.

935. Acquisition of land by another authority.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² has power³ to authorise a local authority⁴ to acquire any land⁵ compulsorily, he or the Assembly may, after the requisite consultation⁶, authorise the land to be so acquired by another⁷ local authority⁸. Before so giving an authorisation, the Secretary of State must consult:

- 3643 (1) if the land is in a non-metropolitan county in England⁹, with the councils of the county and the district¹⁰;
- 3644 (2) if the land is in a metropolitan district, with the council of the district; and
- 3645 (3) if the land is in a London borough¹¹, with the council of the borough¹²;

and the Assembly, if the land is in Wales, must consult with the council of the county or county borough¹³.

1 As to the Secretary of State see PARA 19 ante.

2 As to transfer of functions under the Town and Country Planning Act 1990 s 226 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie under Town and Country Planning Act 1990 s 226(1) (as amended): see PARA 934 ante.

4 Ie a local authority to which ibid s 226 (as amended) applies: see PARA 934 note 2 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 For the meaning of 'consult' see PARA 2 note 1 ante.

7 Ie another authority, being a local authority within the meaning of the Town and Country Planning Act 1990. For the meaning of 'local authority' see PARA 3 note 3 ante; but see note 4 supra.

8 Ibid s 226(5). The Acquisition of Land Act 1981 (see generally COMPULSORY ACQUISITION OF LAND) applies to the compulsory acquisition of land under the Town and Country Planning Act 1990 s 226: s 226(7). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

9 For the meaning of 'non-metropolitan county' see PARA 28 note 1 ante.

10 As to county and district councils see PARA 28 ante.

11 For the meaning of 'London borough' see PARA 28 note 7 ante.

12 Town and Country Planning Act 1990 s 226(6)(a), (b), (c).

13 Ibid s 226(6)(bb) (added by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(6)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/936. Secretary of State's or Assembly's power to require acquisition of land.

936. Secretary of State's or Assembly's power to require acquisition of land.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied, after holding a local inquiry³, that the council of a county, county borough, district or London borough⁴ has failed to take steps for the acquisition of any land⁵ which in his or the Assembly's opinion ought to be acquired by that authority⁶, he or the Assembly may by order require the council to take such steps as may be specified in the order for acquiring the land⁷.

Any such order is enforceable on the application of the Secretary of State or the Assembly by mandatory order⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 231 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to local inquiries see PARA 651 et seq ante.

4 As to county, county borough and district councils see PARA 28 ante; and for the meaning of 'London borough' see PARA 28 note 7 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Ie under the Town and Country Planning Act 1990 s 226 (as amended): see PARAS 934-935 ante.

7 Ibid s 231(1) (amended by the Planning and Compensation Act 1991 ss 70, 84(6), Sch 15 para 29, Sch 19 Pt III; and by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 24(8)). As to the making of orders generally see PARA 3 ante.

8 Town and Country Planning Act 1990 s 231(3) (amended by virtue of the Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033, art 3). As to mandatory orders see JUDICIAL REVIEW vol 61 (2010) PARA 703.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/937. Acquisition of land by agreement.

937. Acquisition of land by agreement.

The council of any county, county borough, district or London borough¹ may acquire by agreement any land² which it requires for any purpose for which a local authority³ may be authorised under the statutory provisions relating to compulsory acquisition⁴ to acquire land⁵.

A National Park authority⁶ has the same power to acquire land by agreement as the local authorities mentioned above have under the above provisions⁷.

1 As to county, county borough and district councils see PARA 28 ante; and for the meaning of 'London borough' see PARA 28 note 7 ante. The power also extends to joint planning boards: see the Town and Country Planning Act 1990 s 244(3); and PARA 942 post. As to joint planning boards see PARA 30 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'local authority' see PARA 3 note 3 ante; but see also PARA 934 note 2 ante.

4 Ie the Town and Country Planning Act 1990 s 226 (as amended): see PARAS 934-935 ante.

5 Ibid s 227(1) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 24(7)). The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended), so far as applicable, other than ss 4-8 (as amended), s 10 (as amended) and s 31 (as amended), apply in relation to the acquisition of land under the Town and Country Planning Act 1990 s 227: s 227(2). See generally COMPULSORY ACQUISITION OF LAND.

6 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

7 Town and Country Planning Act 1990 s 244A(2) (added by the Environment Act 1995 s 65, Sch 8 para 2(1)). As to the application of the Town and Country Planning Act 1990 s 227 (as amended) and other relevant statutory provisions to National Park authorities see PARA 934 note 17 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/938. Acquisition of land for purposes of exchange.

938. Acquisition of land for purposes of exchange.

Any power of a local authority¹ to acquire land², whether compulsorily or by agreement, under the statutory provisions relating to such acquisition³, includes⁴ power to acquire land required for giving in exchange:

3646 (1) for land appropriated under the statutory provisions relating to parts of commons⁵; or

3647 (2) for Green Belt land⁶ appropriated⁷ for any purpose specified in a development plan⁸.

1 For the meaning of 'local authority' see PARA 3 note 3 ante; but see also PARA 934 note 2 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Ie under the Town and Country Planning Act 1990 ss 226, 227 (as amended): see PARAS 934-935, 937 ante.

4 Ie without prejudice to the generality of the powers conferred by ibid ss 226, 227 (as amended).

5 Ie under ibid s 229: see PARA 947 post.

6 For these purposes, 'Green Belt land' has the same meaning as in the Green Belt (London and Home Counties) Act 1938: Town and Country Planning Act 1990 s 230(2).

7 Ie in accordance with the Green Belt (London and Home Counties) Act 1938.

8 Town and Country Planning Act 1990 s 230(1). As to the application of s 230 to joint planning boards see PARA 942 post; as to its application to National Park authorities see PARA 934 note 17 ante; for the meaning of 'development plan' see PARA 91 ante; and as to joint planning boards see PARA 30 ante.

UPDATE

938 Acquisition of land for purposes of exchange

TEXT AND NOTES--As to green belt land generally see PARA 938A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(i) Acquisition of Land by Local Authorities and National Park Authorities/938A. The Green Belt.

938A. The Green Belt.

1. The establishment of the Green Belt

For the purpose of establishing a Green Belt round London¹, provision is made for owners of land within the prescribed area² to declare land to be part of the Green Belt³, and for local authorities to enter into restrictive covenants for the use of land⁴, and pay compensation in respect of it⁵, to acquire land by purchase, gift, lease, exchange or otherwise⁶, and to contribute towards the costs of other authorities⁷; but the alienation of Green Belt land by local authorities is restricted⁸.

1 'Green Belt round London' means the aggregate of all land which is for the time being Green Belt land: Green Belt (London and Home Counties) Act 1938 ss 1, 2(1). 'Green Belt land' means: (1) any land which for the time being is the subject of an express declaration under s 3(a) (see PARA 938A.2); or (2) is deemed to be Green Belt land (see ss 7, 16; and PARAS 938A.11, 938A.16); or (3) is acquired by a local authority under s 3 (see PARA 938A.2 et seq), but does not include any land freed from restrictions imposed upon it under the Green Belt (London and Home Counties) Act 1938 (see PARAS 938A.2-938A.13): s 2(1). 'Local authority' means a London borough council or the council of any county or district wholly or partly within the prescribed area: s 2(1) (definition substituted by the Local Authorities etc (Miscellaneous Provisions) (No 2) Order 1974, SI 1974/595, art 3(6)(a)). The definition in the Green Belt (London and Home Counties) Act 1938 s 2(1) (as substituted) refers to the Greater London Council (as to the abolition of which see LOCAL GOVERNMENT vol 69 (2009) PARA 17. As to the prescribed area see NOTE 2.

2 'The area' means Greater London, the counties of Buckinghamshire, Hertfordshire and Surrey, the county of Essex other than the borough of Southend-on-Sea, the county of Kent other than the area of the former county borough of Canterbury, in the county of Berkshire the borough of Slough, in the borough of Windsor and Maidenhead the parishes of Datchet, Eton, Horton and Wraybury, and in the county of West Sussex so much of the borough of Crawley as was immediately before 1 April 1974 comprised in the administrative county of Surrey: Green Belt (London and Home Counties) Act 1938 s 2(1) (definition substituted by the Local Authorities etc (Miscellaneous Provisions) (No 2) Order 1974, SI 1974/595, art 3(6)(a)).

3 See **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 575.

4 See PARA 938A.3.

5 See PARA 938A.4.

6 See PARAS 938A.4, 938A.12.

7 See PARA 938A.4.

8 See PARA 938A.11.

2. Express declaration by owner of land

The owner¹ of any land within the area², including for this purpose a parish council, may, by deed entered into with a local authority, expressly declare that such land is part of the Green Belt round London³, and, if thought fit, by such deed or otherwise may enter into any covenant⁴ with a local authority restrictive of the user of that land⁵.

Where a lessee makes any such declaration, the statutory provisions⁶ cease to apply to the land affected on the expiration or earlier determination of the lessee's term⁷. However, a lessee may not make any declaration or enter into any covenant inconsistent with the terms of his lease without the reversioner's written consent⁸.

No restriction imposed by a covenant entered into for the purposes of the statutory provisions, or by those provisions in consequence of any express declaration, has effect in derogation of the existing rights of any lessee, tenant or licensee of the person making the declaration or of persons claiming under such lessee or tenant⁹.

1 'Owner' means a person (other than a mortgagee not in possession or a lessee the unexpired terms of whose lease is less than 21 years) who is for the time being entitled to a legal estate in land within the meaning of the Law of Property Act 1925 s 1(1), and includes a local authority; but, except where otherwise expressly provided, does not include a parish council: Green Belt (London and Home Counties) Act 1938 s 2(1). 'Parish council' means the parish council or community council of any parish within the area: s 2(1); Local Government Act 1972 s 179(4). For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

2 For the meaning of 'the area' see PARA 938A.1 NOTE 2. As to the establishment of the Green Belt see PARA 938A.1.

3 For the meaning of 'Green Belt round London' see PARA 938A.1 NOTE 1.

4 'Covenant' includes agreement: Green Belt (London and Home Counties) Act 1938 s 2(1).

5 Green Belt (London and Home Counties) Act 1938 s 3(a). If Green Belt land vested in a local authority or parish council is acquired compulsorily by a local authority, highway authority or statutory undertakers, the restrictions imposed by any covenant or declaration, or by the statutory provisions, must not be taken into account in ascertaining the purchase price or compensation: s 9. For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1. 'Statutory undertakers' means persons authorised by any enactment or provisional order confirmed by Parliament, or any order, rule or regulation made under one, to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking: s 2(1). For the statutory restrictions see PARAS 938A.11-938A.13; and as to the payment of compensation see PARA 938A.4. County council approval may be required: see PARA 938A.5. As to highway authorities see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

Any deed entered into before 29 July 1938 (ie the date of commencement of the Green Belt (London and Home Counties) Act 1938) and expressly declaring land to be part of the Green Belt round London has and is deemed from its date to have had effect as if entered into under and for the purposes of that Act: see s 21.

6 In the provisions of the Green Belt (London and Home Counties) Act 1938: s 14.

7 Green Belt (London and Home Counties) Act 1938 s 14.

8 Green Belt (London and Home Counties) Act 1938 s 3 proviso.

9 Green Belt (London and Home Counties) Act 1938 s 29. Nothing in the Green Belt (London and Home Counties) Act 1938 may limit the nature or extent of the restrictions which may be placed on the use of land by a covenant entered into for the purposes of the Act: s 28.

3. Covenant by local authority

With regard to any land vested in it in the area¹, a local authority² or a parish council³ may enter into any covenant⁴ restrictive of the user of that land with the owner⁵, not being a local authority, of any other land within the area⁶, and, in respect of any land in the area not vested in it, enter into any covenant with any contributing local authority⁷ restrictive of the user of that land in the event of its becoming vested in the covenanting local authority or parish council⁸.

1 For the meaning of 'the area' see PARA 938A.1 NOTE 2. As to the establishment of the Green Belt see PARA 938A.1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1. The powers conferred on a local authority (or parish council) by the Green Belt (London and Home Counties) Act 1938 are in addition to and not in substitution for or in derogation of any powers conferred on it by any other enactment: s 34.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

4 For the meaning of 'covenant' see PARA 938A.2 NOTE 4.

5 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

6 Green Belt (London and Home Counties) Act 1938 s 3(b)(i). County council approval may be required: see PARA 938A.5.

7 In relation to any land within the area, 'contributing local authority' means any local authority which for purposes of the Green Belt (London and Home Counties) Act 1938 has either before or after 29 July 1938 (ie the date of commencement of the Green Belt (London and Home Counties) Act 1938) contributed or agreed to contribute towards the cost incurred (whether under the powers conferred by the Act or otherwise and whether by the payment of cash or otherwise) in the acquisition of that land or in the provision of any consideration or compensation for a covenant restrictive of the user of that land and includes the local authority by which such cost was incurred (s 2(1)); and, in relation to any land for which any council existing before 1 April 1974 but abolished by the Local Government Act 1972 s 1(10), would have been such an authority, includes the council of any county or district whose area includes the whole or any part of the area of the existing council: Local Authorities etc (Miscellaneous Provisions) (No 2) Order 1974, SI 1974/595, art 3(6)(b). In London the London borough council may be a contributing local authority: London Government Act 1963 s 59(2)(c) (amended by the Local Government Act 1985 s 102(2), Sch 17).

8 Green Belt (London and Home Counties) Act 1938 s 3(b)(ii). County council approval may be required: see PARA 938A.5. However, nothing in s 3 enables an owner who is a lessee of land to make any declaration or to enter into any covenant in breach of any of the covenants or conditions contained in the lease under which he holds that land without the written consent of the person entitled for the time being to the reversion immediately expectant on the lease: s 3 proviso.

4. Acquisition of land by local authority; payment and contribution

A local authority¹ may acquire by agreement any land within the area² by purchase, gift, lease, exchange or otherwise³.

Where an owner⁴ of land within the area, including a parish council⁵, has entered into a covenant⁶ restrictive of the user of his land⁷, a local authority may pay such sum as it thinks fit and subject to such terms and conditions as it may determine as consideration or compensation for the covenant⁸. A local authority may also contribute or agree to contribute such sum as it thinks fit, and subject to such terms and conditions as it thinks fit, towards the cost incurred or to be incurred by any other local authority in the acquisition of land within the area for the purpose of establishing the Green Belt or in the provision of consideration or compensation for any covenant restrictive of the user of land for that purpose⁹.

1 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

2 For the meaning of 'the area' see PARA 938A.1 NOTE 2. As to the establishment of the Green Belt see PARA 938A.1.

3 Green Belt (London and Home Counties) Act 1938 s 3(c)(i). County council approval may be required: see PARA 938A.5.

4 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

5 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

6 For the meaning of 'covenant' see PARA 938A.2 NOTE 4.

7 See PARA 938A.3.

8 Green Belt (London and Home Counties) Act 1938 s 3(c)(ii). County council approval may be required: see PARA 938A.5. All costs and expenses of a county council in the execution of the Act must be defrayed as payments for general or special county purposes within the meaning of the Local Government Act 1933 (see LOCAL GOVERNMENT VOL 69 (2009) PARA 4): Green Belt (London and Home Counties) Act 1938 s 35 (amended by the London Government Act 1963 s 93(1), Sch 18 Pt II (repealed)). For the meaning of 'county council' see PARA 938A.5 note 2.

9 Green Belt (London and Home Counties) Act 1938 s 3(c)(iii).

5. County council approval

The powers of declaring land to be part of the Green Belt, of entering into covenants, of acquiring land and of paying compensation¹ may not be exercised in relation to any land wholly in one ownership and in the same right, but not wholly situate in one county, unless the county council² of the county in which at least half of the land is situate so approves by resolution or by deed under its common seal³, and those powers may not be exercised in relation to any other land unless the county council so approves by resolution or by deed under its common seal⁴.

1 le the powers conferred by the Green Belt (London and Home Counties) Act 1938 s 3(a), (b), (c)(i), (ii) (see PARAS 938A.1-938A.4): s 32(1).

2 In relation to any land within the area (for the meaning of which see PARA 938A.1 note 2), 'county council' means the county council of the administrative county in which that land is situate: Green Belt (London and Home Counties) Act 1938 s 2(2) (amended by the Local Authorities etc (Miscellaneous Provisions) (No 2) Order 1974, SI 1974/595, art 3(6)(b)); Local Government Act 1972 s 179(2).

3 Green Belt (London and Home Counties) Act 1938 s 32(1)(a).

4 Green Belt (London and Home Counties) Act 1938 s 32(1)(b). Any approval under s 32 may be given subject to such terms and conditions as may be agreed between the county council and the person seeking the approval: s 32(2). However, no such approval is required, except in the case of land in Middlesex, in relation to any land which on 29 July 1938 (ie the date of commencement of the Green Belt (London and Home Counties) Act 1938) was either vested in or was the subject of an agreement for purchase by the local authority exercising the powers: s 32(1) proviso. Note that Middlesex ceased to exist as an administrative area on 1 April 1965: see the London Government Act 1963 s 3(1)(b) (repealed); and LOCAL GOVERNMENT vol 69 (2009) PARA 35.

6. Deposit of plans

Where an owner¹ of land has made a declaration in respect of his land² or land has been acquired by a local authority³ or is deemed to be Green Belt land⁴, it is the duty of the local authority with which the deed embodying the declaration was entered into, or which acquired the land, within one month after the date of the deed or the acquisition to deposit at the offices of the Secretary of State⁵ a plan indicating the boundaries of the land concerned and a statement giving: (1) in the case of a declaration, the date of the deed, the name of the local authority and of every contributing local authority⁶ and the name of the local authority or parish council⁷, if any, in which the land is vested⁸; and (2) in the case of an acquisition, the name of the local authority or parish council, the date the land became Green Belt land and the name of every contributing local authority⁹.

1 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

2 See PARA 938A.2.

3 For the meaning of 'local authority' see PARA 938A.1 NOTE 1. As to the acquisition of land by a local authority see PARA 938A.4.

4 As to land deemed to be Green Belt land see PARAS 938A.12, 938A.16. For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

5 The Green Belt (London and Home Counties) Act 1938 s 4 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

6 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

7 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

8 Green Belt (London and Home Counties) Act 1938 s 4(1). Where, under the provisions of that Act or of any order or consent of the Secretary of State, any Green Belt land is freed from all the restrictions imposed upon it by the Act or by a declaration, the local authority which deposited the plan and statement in respect of that

land must, within a month after the freeing of the land from the restrictions, deposit a further plan indicating the boundaries of the land and a statement of the date on which it was so freed: s 4(3).

9 Green Belt (London and Home Counties) Act 1938 s 4(2).

7. Enforcement of covenants

Where the owner¹ of Green Belt land² or a parish council³ in which Green Belt land is vested has entered into or becomes subject to a covenant⁴ with a local authority⁵ restrictive of the user of that land, the local authority may enforce the covenant against persons deriving title under the owner or parish council in the same way and to the same extent as if the local authority were possessed of adjacent land capable of being benefited by the covenant and as if the covenant had been expressed to have been entered into for the benefit of the adjacent land⁶. The statutory power to discharge or modify restrictive covenants⁷ does not apply to these covenants⁸.

1 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

2 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

4 For the meaning of 'covenant' see PARA 938A.2 NOTE 4.

5 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

6 Green Belt (London and Home Counties) Act 1938 s 22(1). In order to bind a purchaser from the covenantor, a restrictive covenant must be registered under the Land Charges Act 1972 as a Class D(ii) land charge: see s 2(1), (5)(ii); and **LAND CHARGES** vol 26 (2004 Reissue) PARAS 622, 633-646. Nothing in the Green Belt (London and Home Counties) Act 1938 prejudices or affects the operation of the Land Charges Act 1972: see the Green Belt (London and Home Counties) Act 1938 s 31; and the Land Charges Act 1972 s 18(6). As to restrictive covenants generally see **EQUITY** vol 16(2) (Reissue) PARA 613 et seq.

7 The power conferred by the Law of Property Act 1925 s 84 (as amended) (see **EQUITY** vol 16(2) (Reissue) PARA 630 et seq); Green Belt (London and Home Counties) Act 1938 s 22(2).

8 Green Belt (London and Home Counties) Act 1938 s 22(2).

8. Power of private owners to bind their successors

An owner¹ (not being a local authority²) of Green Belt land³ has power to enter into an agreement with a local authority that in the event of his or his successors in title desiring to sell his estate or interest in the land or any part of it, the estate or interest should first be offered to the local authority at a price provided for in the agreement⁴. Such an agreement binds the owner and his successors in title notwithstanding any rule of law to the contrary⁵.

1 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

3 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

4 Green Belt (London and Home Counties) Act 1938 s 18. In order to bind a purchaser for value from the original owner, the agreement must be registered as a Class C(iv) land charge under the Land Charges Act 1972 s 2(1), (4)(iv): see **LAND CHARGES** vol 26 (2004 Reissue) PARAS 622, 628, 632. See also PARA 938A.7 NOTE 6.

5 Green Belt (London and Home Counties) Act 1938 s 18.

9. Powers of tenants for life

Where the owner¹ of land within the area² is, as regards that land, a tenant for life within the meaning of the Settled Land Act 1925³, or a trustee of land⁴, the powers conferred by the Green Belt (London and Home Counties) Act 1938⁵ are in addition to and not in substitution for or derogation of any other powers possessed by him, but they may not be exercised without an order of the High Court or, in the case of a tenant for life, the consent of the trustees of the settlement⁶, or, in the case of a trustee of land, the consent of all beneficiaries of full age and not under a disability⁷.

1 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

2 For the meaning of 'the area' see PARA 938A.1 NOTE 2. As to the establishment of the Green Belt see PARA 938A.1.

3 See the Settled Land Act 1925 ss 19, 20 (as amended), ss 21, 117(1)(xxviii); and **SETTLEMENTS**. As to the phasing out of strict settlements under the 1925 Act see the Trusts of Land and Appointment of Trustees Act 1996 s 2, Sch 1; **LIMITATION PERIODS** vol 68 (2008) PARA 1022; and **REAL PROPERTY; SETTLEMENTS**.

4 See the Law of Property Act 1925 s 205(1)(xxix) (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(2), Sch 4); and **REAL PROPERTY**.

5 As to these powers see the Green Belt (London and Home Counties) Act 1938 ss 3(a), 18; and PARAS 938A.2, 938A.8.

6 See for the purposes of the Settled Land Act 1925 (see s 30 (amended by the Trusts of Land and Appointment of Trustees Act 1996 s 25(1), Sch 3 para 2(1), (9)); and **SETTLEMENTS**): Green Belt (London and Home Counties) Act 1938 s 19(1) (amended by the Trusts of Land and Appointment of Trustees Act 1996 Sch 3 para 7). See also NOTE 3.

7 Green Belt (London and Home Counties) Act 1938 s 19(1) (as amended: see NOTE 6). All money, not being rent, received on the exercise of any power under this Act by such an owner of land must be treated as if it were the proceeds of a sale of land: s 19(2).

10. Land held on charitable trust

The powers conferred by the Green Belt (London and Home Counties) Act 1938 on the owner¹ of land within the area² or on a parish council³ must not be exercised in the case of land held by the owner or parish council upon charitable trusts in a manner at variance with such trusts without an order of the High Court, the Charity Commission⁴ or the Secretary of State⁵ or, where the trust instrument reserves to the donor or any other person the power to vary the trusts, without the consent of that donor or other person⁶.

1 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

2 For the meaning of 'the area' see PARA 938A.1 NOTE 2.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1. As to these powers see the Green Belt (London and Home Counties) Act 1938 ss 3, 18; and PARAS 938A.3, 938A.8.

4 As to the Charity Commission see **CHARITIES** vol 8 (2010) PARA 538 et seq.

5 The Green Belt (London and Home Counties) Act 1938 s 20 refers to the Board of Education, whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

6 Green Belt (London and Home Counties) Act 1938 s 20 (amended by Charities Act 2006 s 75, Sch 8 para 28).

11. Alienation by local authority

Before Green Belt land¹ vested in a local authority² or a parish council³ can be sold, exchanged⁴ or appropriated⁵, the local authority or parish council must: (1) publish in one or more newspapers circulating in the locality of the land concerned a notice stating its intentions, specifying a place within the locality where a plan can be inspected and the manner in which objections can be made⁶; (2) serve a copy of the notice on the county council⁷ and every contributing local authority⁸; (3) seek the consent of that council and those authorities⁹; (4) send a copy of the notice and every consent obtained to the Secretary of State¹⁰; and (5) obtain his consent¹¹.

Before giving his consent the Secretary of State must consider any objections that he has received¹², and, if the consent of any contributing local authority or of the county council has either not been obtained or can only be obtained on terms with which the local authority or parish council is dissatisfied, he must cause a local inquiry¹³ to be held¹⁴. The consent of the Secretary of State must be given by order and may be given subject to conditions; it ranks for all purposes and in all respects as if it were the consent of the county council and of every contributing council¹⁵. The consent may also specify that the land is to be free from the restrictions to which it was subject as Green Belt land¹⁶.

These restrictions upon alienation do not apply to any land which becomes Green Belt land after the Secretary of State has: (a) approved a resolution of a highway authority¹⁷ adopting a standard width or made an order adopting a standard width¹⁸ as respects a road any part of which is situate on or adjacent to the land¹⁹; or (b) approved plans for the improvement or construction of a road any part of which is or will be situate on or adjacent to the land²⁰; or (c) made an order²¹ by virtue of which a route becomes a trunk road, any part of which will be situate on the land²².

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

4 In the case of exchanges this is subject to special provisions: see PARA 938A.16.

5 I.e. appropriated under the Local Government Act 1972 s 122 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 513), or under any other enactment: Green Belt (London and Home Counties) Act 1938 s 5(1); Local Government Act 1972 s 272(2). This provision is expressed not to extend to appropriations by way of substitution, for the purpose for which the land is held, of any other approved purpose which is not inconsistent with any covenant entered into under the Green Belt (London and Home Counties) Act 1938: see s 5(1). For the purposes for which Green Belt land may be used see PARA 938A.15.

6 Green Belt (London and Home Counties) Act 1938 s 5(1)(a).

7 For the meaning of 'county council' see PARA 938A.5 NOTE 2.

8 Green Belt (London and Home Counties) Act 1938 s 5(1)(b). For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

9 Green Belt (London and Home Counties) Act 1938 s 5(1)(c). The consent may be given, in each case, subject to such terms and conditions as the authority giving it may determine: s 24.

10 Green Belt (London and Home Counties) Act 1938 s 5(1)(d). See also the TEXT AND NOTES 15-16. Section 5 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519. Capital money received by a local authority or parish council on a sale or exchange of Green Belt land vested in it must be applied in such manner as the Secretary of State may approve: s 25.

11 Green Belt (London and Home Counties) Act 1938 s 5(1)(e).

12 Green Belt (London and Home Counties) Act 1938 s 5(2).

13 The provisions of the Local Government Act 1972 s 250 (as amended) (see *LOCAL GOVERNMENT* vol 69 (2009) PARA 105) apply to such an inquiry: Green Belt (London and Home Counties) Act 1938 s 33; Local Government Act 1972 s 272(2).

14 Green Belt (London and Home Counties) Act 1938 s 5(3).

15 See Green Belt (London and Home Counties) Act 1938 ss 5(4), (5), 24; and PARA 938A.3 NOTE 7.

16 Green Belt (London and Home Counties) Act 1938 s 5(5). As a condition of giving his consent under s 5 or s 6 (see PARA 938A.12), the Secretary of State may require that other land should be obtained to replace the Green Belt land disposed of or appropriated, and, when obtained, this other land is deemed to be Green Belt land and becomes subject to any covenant restrictive of its user entered into by the authority: see s 7(1). When required by the Secretary of State to provide such other land, the authority has power to acquire it by agreement: see s 7(2).

The right to buy legislation contained in the Housing Act 1985 disapplies the requirement in the Green Belt (London and Home Counties) Act 1938 s 5 for the Secretary of State to consent to the sale of Green Belt land: *R (on the application of O'Byrne) v Secretary of State for the Environment, Transport and the Regions* [2002] UKHL 45, [2003] 1 All ER 15.

17 'Highway authority' is not defined in the Green Belt (London and Home Counties) Act 1938. However see the Highways Act 1980 ss 1, 2 (both as amended), s 3; and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARA 49 et seq.

18 It originally under the Restriction of Ribbon Development Act 1935 s 1 (repealed). The control of the development of roads is now part of the general system of development planning under the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as amended).

19 Green Belt (London and Home Counties) Act 1938 s 8(1)(a), (2).

20 It originally under the Restriction of Ribbon Development Act 1935 s 13(1) (repealed), which is now replaced by the Highways Act 1980 ss 238(1), 239(1), (3), 247(1) (see **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 77, 97): Green Belt (London and Home Counties) Act 1938 s 8(1)(b), (2).

21 It originally made under the Trunk Roads Act 1936 s 1(3) (repealed): see now the Highways Act 1980 s 10(2) (as amended); and **HIGHWAYS, STREETS AND BRIDGES** vol 21 (2004 Reissue) PARAS 704, 725.

22 Green Belt (London and Home Counties) Act 1938 s 8(1)(c), (2). As from the date on which possession is taken by the acquiring authority, Green Belt land acquired under s 8(1) is (without prejudice to the provisions of s 9 (see PARA 938A.2)) to be free from any restrictions imposed upon it by the Green Belt (London and Home Counties) Act 1938 or any declaration made in the manner provided by that Act: s 8(3).

12. Acquisition of Green Belt land

Green Belt land¹ vested in a local authority² or a parish council³ may be acquired by any local authority, highway authority⁴ or statutory undertakers⁵ and, subject to the provisions of any order or consent of the Secretary of State⁶, used for their statutory powers or duties⁷; but, except in certain cases⁸, before such Green Belt land is acquired the following steps must be taken. Where the land is proposed to be acquired by agreement, the same notices must be given and consents obtained as in the case of a sale, exchange or appropriation of Green Belt land by a local authority⁹; and where the land is proposed to be acquired compulsorily the acquiring authority or undertakers must first obtain the consent of the Secretary of State¹⁰ to the initiation of procedure for compulsory purchase after having published in one or more newspapers circulating in the locality of the land notice of its or their intention to apply for such consent, stating the purpose for which it is proposed to acquire the land and the manner in which objections can be made¹¹, and serving a copy of such notice on the local authority or parish council in which the land is vested and on every contributing local authority¹² and on the county council¹³.

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

- 3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.
- 4 As to highway authorities see PARA 938A.11 NOTE 17.
- 5 For the meaning of 'statutory undertakers' see PARA 938A.2 NOTE 5.
- 6 The Green Belt (London and Home Counties) Act 1938 s 6 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.
- 7 This includes the erection of buildings: Green Belt (London and Home Counties) Act 1938 s 6(1). 'Building' means any building, erection, structure or hoarding, whether permanent or temporary, other than a boundary wall or fence: s 2(1).
- 8 Ie where the land is acquired or proposed to be acquired under the powers conferred or to be conferred by any enactment, including any enactment in a provisional order confirmed by Parliament, which specifies or specifically refers to the particular land to be acquired, or where the Green Belt (London and Home Counties) Act 1938 s 8 (see PARA 938A.11) applies: ss 2(1), 6(1).
- 9 See Green Belt (London and Home Counties) Act 1938 s 6(1)(a); and PARA 938A.11.
- 10 Any application to the Secretary of State under the Green Belt (London and Home Counties) Act 1938 s 6(1)(b) must be accompanied by a copy of each newspaper in which a notice relating to the application was published: s 6(2). Before giving his consent the Secretary of State must consider any objections which he has received: s 6(3). The consent may be given upon and subject to such terms and conditions as the Secretary of State may determine (s 24); it may be conditional upon the provision by the acquiring authority or undertakers of other land in place of the land to be acquired (s 7(1)), and may provide that when possession is taken of the land it be freed to such extent as he may specify from the restrictions imposed on it by reason of its being Green Belt land (s 6(4)). Nothing in s 6(4) prejudices or affects the requirement that restrictions imposed on land be not taken into account in ascertaining purchase money or compensation: s 6(5). See also s 9; and PARA 938A.2 NOTE 5.
- 11 Green Belt (London and Home Counties) Act 1938 s 6(1)(b)(i).
- 12 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.
- 13 Green Belt (London and Home Counties) Act 1938 s 6(1)(b)(ii). For the meaning of 'county council' see PARA 938A.5 NOTE 2.

13. Restrictions on the erection of buildings

Subject to certain exceptions, no building¹ may be erected on Green Belt land² except with the consent of the Secretary of State³ and of every contributing local authority⁴, other than a building ancillary to the purposes for which (with all necessary consents) that land is for the time being used, or ancillary to the erection, repair or demolition of such a building⁵.

Where a local authority⁶ or highway authority⁷ or statutory undertakers⁸ have acquired Green Belt land from an owner⁹ (not being a local authority) for the purposes of its or their statutory duties, the foregoing restriction imposed upon the erection of buildings ceases to apply to that land, but before erecting any building, or constructing or improving any road, the authority or undertakers must either obtain all the necessary consents¹⁰ or the consent of the Secretary of State¹¹. Before applying to the Secretary of State for his consent, the authority or undertakers must publish in one or more newspapers circulating in the locality of the land a notice containing certain particulars as to the land and the proposed building or road, the inspection of the plan, and the time and manner of making objections¹²; and must serve a copy of the notice on every contributing authority and on the county council¹³. The Secretary of State must consider any objections raised¹⁴, and in giving his consent may provide that the land is to be freed to such extent as he may specify from the restrictions imposed on it by reason of its being Green Belt land¹⁵.

The foregoing restriction on the erection of buildings¹⁶ and the requirements as to the erection of buildings and the construction or improvement of roads by a local authority, highway authority or statutory undertakers¹⁷ do not apply to: (1) the erection of buildings on land

acquired or proposed to be acquired under powers conferred or to be conferred by any enactment which specifies or specifically refers to the particular land to be acquired¹⁸; (2) the construction or improvement of certain roads¹⁹; or (3) the erection under certain powers of a building in connection with the laying of pipes, sewers and electrical lines²⁰.

1 For the meaning of 'building' see PARA 938A.12 NOTE 7.

2 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

3 The Green Belt (London and Home Counties) Act 1938 s 10 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

4 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

5 Green Belt (London and Home Counties) Act 1938 s 10(1). The exception of ancillary buildings does not authorise the erection of a building or the use of land in contravention of any byelaw or restriction: s 10(2). Permission of the local planning authority or the Secretary of State may be required for the carrying out of operations on the land: see the Town and Country Planning Act 1990 s 55 (as amended), s 57 (as amended), ss 58, 77, 90 (as amended), s 268 (as amended), s 316 (as amended), s 336 (as amended), Sch 4.

6 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

7 As to highway authorities see PARA 938A.11 NOTE 17.

8 For the meaning of 'statutory undertakers' see PARA 938A.2 NOTE 5.

9 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

10 *le* consents under the Green Belt (London and Home Counties) Act 1938 s 10(1) (see the TEXT TO NOTES 1-5).

11 Green Belt (London and Home Counties) Act 1938 s 12(1). Section 12 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

12 Green Belt (London and Home Counties) Act 1938 s 12(2)(a). An application to the Secretary of State must be accompanied by a copy of each newspaper in which the notice was published: s 12(3).

13 Green Belt (London and Home Counties) Act 1938 s 12(2)(b). For the meaning of 'county council' see PARA 938A.5 NOTE 2.

14 Green Belt (London and Home Counties) Act 1938 s 12(4).

15 Green Belt (London and Home Counties) Act 1938 s 12(5). Any consent of the Secretary of State may be given upon and subject to such terms and conditions as the Secretary of State may determine: s 24. Section 24 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

16 *le* under the Green Belt (London and Home Counties) Act 1938 s 10 (see the TEXT AND NOTES 1-5): s 13.

17 *le* under the Green Belt (London and Home Counties) Act 1938 s 12 (see the TEXT AND NOTES 6-15): s 13.

18 Green Belt (London and Home Counties) Act 1938 s 13(a).

19 *le* roads in respect of which the Secretary of State has approved a resolution or plans or has made an order (see the Green Belt (London and Home Counties) Act 1938 s 8(1); and PARA 938A.1): s 13(b).

20 *le* under the Green Belt (London and Home Counties) Act 1938 s 11 (see PARA 938A.15): s 13(c).

14. Enforcement of restrictions

Any restrictions imposed on Green Belt land¹ by the Green Belt (London and Home Counties) Act 1938, or by any declaration made in the manner provided by that Act, may be enforced by the Secretary of State² or by a contributing local authority³ in his or its name⁴.

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 The Green Belt (London and Home Counties) Act 1938 s 23 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

3 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

4 Green Belt (London and Home Counties) Act 1938 s 23. For the restrictions imposed by the Act see ss 5, 10; and PARAS 938A.11, 938A.13. -as to declarations restrictive of user of Green Belt land see s 3; and PARAS 938A.2, 938A.4.

15. Statutory works on Green Belt land

Green Belt land¹ may be used for the purposes of recreation or agriculture², or for any other purpose which is not inconsistent with the statutory restrictions imposed on the land or any covenant restrictive of the user of the land and which is approved by every contributing local authority³. It may also be used for camping by means of tents⁴. A local authority⁵ or a parish council⁶ may let Green Belt land vested in it for any of those purposes⁷.

An owner⁸ (including a parish council) or occupier of Green Belt land may consent to the construction of, and any local authority, highway authority or statutory undertakers⁹ may construct and maintain, above or below the surface of that land: (1) any sewer main pipe or similar work¹⁰; (2) any watercourse¹¹; (3) any electric line¹²; or (4) any electrical sub-station or transforming station¹³.

The statutory rights and powers of the Post Office¹⁴ are not affected by the provisions of the Green Belt (London and Home Counties) Act 1938¹⁵.

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 'Purposes of agriculture' means use as arable, meadow or pasture land, or a plantation, orchard or wood, or for the growth of saleable underwood: Green Belt (London and Home Counties) Act 1938 s 27(a).

3 Green Belt (London and Home Counties) Act 1938 s 27(a). For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

4 Ie subject to and in accordance with any enactment relating to the use of land for that purpose and any byelaws made under it: Green Belt (London and Home Counties) Act 1938 s 27(b).

5 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

6 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

7 Green Belt (London and Home Counties) Act 1938 s 27(c).

8 For the meaning of 'owner' see PARA 938A.2 NOTE 1.

9 As to the highway authorities see PARA 938A.11 NOTE 17. For the meaning of 'statutory undertakers' see PARA 938A.2 NOTE 5.

10 Green Belt (London and Home Counties) Act 1938 s 11(1)(a).

11 Ie within the meaning of the Land Drainage Act 1991 s 72(1) (see **WATER AND WATERWAYS** vol 101 (2009) PARA 573); Green Belt (London and Home Counties) Act 1938 s 11(1)(b); Interpretation Act 1978 s 17(2)(a).

12 Ie within the meaning of the Electricity Act 1989 (see s 64(1); and **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1041); Green Belt (London and Home Counties) Act 1938 s 11(1)(c); Interpretation Act 1978 s

17(2)(a). Where it is proposed to place an electric line above Green Belt land, notice of the proposal must be given to every contributing local authority (for the meaning of which see PARA 938A.3 note 7), and before giving his consent (under the Electricity Act 1989) to the proposal the Secretary of State must give to every contributing local authority an opportunity of being heard: Green Belt (London and Home Counties) Act 1938 s 11(1) proviso (iii). Section 11 refers to the Minister of Transport, whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

13 Green Belt (London and Home Counties) Act 1938 s 11(1)(d). An electrical sub-station or transforming station which would exceed a certain area or height must not be erected without the consent of every contributing local authority, which must not be unreasonably withheld: s 11(1) proviso (i). The question whether consent is unreasonably withheld must be determined by the Secretary of State: s 11(2). In the case of any other electrical sub-station or transforming station, every contributing local authority must be given notice of the proposed erection and afforded an opportunity of being heard by the Secretary of State before he gives his consent to the proposed erection: s 11(1) proviso (ii).

Where all requisite consents under s 11(1) have been obtained, the owner or occupier may convey or grant to the local authority, highway authority or statutory undertakers any land, easements or rights necessary for the construction and maintenance of the works: s 11(3).

14 le under the Telegraph Acts 1863 to 1926 (mostly repealed): see now the Telecommunications Act 1984; and **TELECOMMUNICATIONS**. Functions under the Telegraph Acts 1863 to 1926 were originally conferred on the Postmaster-General but on the abolition of that office (see the Post Office Act 1969 s 1 (repealed)) the rights of the Postmaster-General under the Telegraph Acts became those of the Post Office (see the Post Office Act 1969 s 21 (repealed)), some of which were then transferred to British Telecommunications plc (see the Telecommunications Act 1981 s 10; the Telecommunications Act 1984 s 60 (as amended); and **TELECOMMUNICATIONS** vol 97 (2010) PARA 57).

15 See the Green Belt (London and Home Counties) Act 1938 s 30.

16. Power of local authorities to exchange land

Green Belt land¹ which is vested in a local authority² or a parish council³ may be exchanged by it for other land within the area⁴ of equal or greater area which is agreed by every contributing local authority⁵ and by the county council⁶ to be suitable for the purpose of becoming Green Belt land⁷. Land received by the local authority or parish council is deemed to be Green Belt land and is subject to any covenant which is entered into restrictive of the user of the land given in exchange and the land given in exchange is freed from all restrictions imposed upon it by reason of being Green Belt land⁸.

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

4 For the meaning of 'the area' see PARA 938A.1 NOTE 2.

5 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7.

6 For the meaning of 'county council' see PARA 938A.5 NOTE 2.

7 Green Belt (London and Home Counties) Act 1938 s 15(1). However, any such exchange must be subject to the consent of the Secretary of State for the Environment, Transport and the Regions (see PARA 102) where the land to be exchanged was acquired under the powers conferred by or subject to covenants made under s 3 (see PARAS 938A.2-938A.4) (s 15(1) proviso (i)), or where consent is required under any other enactment (s 15(1) proviso (ii)); and the consent of the Secretary of State for Education and Employment is also necessary if it is required by any other enactment (s 15(3)). Section 15(3) refers to the Board of Education, whose functions have been transferred to the Secretary of State (see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519). The consent of the Secretary of State for the Environment, Transport and the Regions may be given upon and subject to such terms as he may determine (Green Belt (London and Home Counties) Act 1938 s 24), and any difference or question arising in regard to an exchange of land must be settled by him in accordance with the provisions of s 26 (s 15(2)). As to the settlement of differences see PARA 938A.18. As to the application of capital money arising on an exchange of land see PARA 938A.11 NOTE 10. As to the rules relating to the acquisition of land by agreement after local government reorganisation see **LOCAL GOVERNMENT** vol 69 (2009) PARA 509.

8 Green Belt (London and Home Counties) Act 1938 s 16.

17. Byelaws

Where the public are allowed access to any Green Belt land¹ vested in a local authority² or parish council³, the authority or council may make byelaws with respect to its management, control and use⁴.

Where the land has been leased to or is maintained or managed by another local authority or parish council, that other authority or council has the power of making byelaws after consultation with the authority or council in which the land is vested, and the byelaws may be enforced by either or both those authorities or councils⁵.

1 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

2 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

3 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

4 Green Belt (London and Home Counties) Act 1938 s 17(1). Byelaws may have effect subject to modifications specified in them (s 17(3)), but must be consistent with the law relating to Green Belt land (s 17(4)). Special provision is made as to the furnishing of copies made by one local authority or council to another: see s 17(6), (7) (amended by the London Government Act 1963 s 59(2)(e)); and the Local Government Act 1972 s 272(2). For the purposes of s 236 (as amended) (procedure for byelaws: see LOCAL GOVERNMENT vol 69 (2009) PARA 556), the confirming authority is the Secretary of State: Green Belt (London and Home Counties) Act 1938 s 17(5) (amended by the London Government Act 1963 s 93(1), Sch 18 Pt III (repealed)); Local Government Act 1972 s 272(2). The Green Belt (London and Home Counties) Act 1938 s 17(5) refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

5 Green Belt (London and Home Counties) Act 1938 s 17(2).

18. Determination of differences and questions

Any difference or question (other than one arising between lessor and lessee or one for the determination of which other provision is made¹) arising in relation to Green Belt land² between a local authority³ or a parish council⁴ in which the land is vested and a contributing local authority⁵ (or county council) or between two contributing local authorities, must be determined by the Secretary of State⁶ who, after hearing the local authority or parish council, if any, and every contributing local authority desiring to be heard, and any other person he may deem it proper to hear, must make such order as appears to him to be just, and every order so made is final and binding on all persons⁷.

1 ie by the Green Belt (London and Home Counties) Act 1938: see s 26(1).

2 For the meaning of 'Green Belt land' see PARA 938A.1 NOTE 1.

3 For the meaning of 'local authority' see PARA 938A.1 NOTE 1.

4 For the meaning of 'parish council' see PARA 938A.2 NOTE 1.

5 For the meaning of 'contributing local authority' see PARA 938A.3 NOTE 7. The reference to a contributing local authority is here extended to include a county council in relation to any difference or question arising on an exchange of land: Green Belt (London and Home Counties) Act 1938 s 15(2). For the meaning of 'county council' see PARA 938A.5 NOTE 2.

6 Green Belt (London and Home Counties) Act 1938 s 26 refers to the Minister of Health (see s 2(1)), whose functions have been transferred to the Secretary of State: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 519.

7 Green Belt (London and Home Counties) Act 1938 s 26(1). Such an order may provide that the land to which it relates is to be freed to a specified extent from restrictions imposed by the Green Belt (London and Home Counties) Act 1938, or by any declaration or covenant entered into as provided by, and for the purposes of, that Act, or it may modify any restrictions (s 26(2)), but the Secretary of State may not release land from any restriction without the consent of any person, other than a contributing local authority, by whom the restriction is enforceable (s 26(3)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(ii) Acquisition of Land by the Secretary of State or the Assembly/939. Compulsory acquisition by the Secretary of State or the Assembly.

(ii) Acquisition of Land by the Secretary of State or the Assembly

939. Compulsory acquisition by the Secretary of State or the Assembly.

The Secretary of State¹ or the National Assembly for Wales² may acquire compulsorily³:

- 3648 (1) any land⁴ necessary for the public service⁵; and
- 3649 (2) any land which it is proposed to use not only for the public service but also:
259
- 16. (a) to meet the interests of the proper planning of the area; or
- 17. (b) to secure the best or most economic development⁶ or use⁷ of the land,
260
- 3650 otherwise than for the public service⁸.

Where the Secretary of State or the Assembly has so acquired, or proposes so to acquire, any land ('the primary land'), and in his or its opinion other land ought to be acquired together with the primary land:

- 3651 (i) in the interests of the proper planning of the areas concerned; or
- 3652 (ii) for the purpose of ensuring that the primary land can be used, or developed and used, together with that other land, in what appears to him or to the Assembly to be the best or most economic way; or
- 3653 (iii) where the primary land, or any land acquired, or which he or the Assembly proposes to acquire⁹, forms part of a common¹⁰, open space¹¹ or fuel or field garden allotment¹², for the purpose of being given in exchange¹³ for that land,

he or the Assembly may compulsorily acquire that other land¹⁴.

The power of so acquiring land compulsorily includes power to acquire an easement or other right over land by the grant of a new right¹⁵; but this provision does not apply to an easement or other right over any land which would for certain purposes¹⁶ form part of a common, open space or fuel or field garden allotment¹⁷.

1 The First Secretary of State: see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2, PARA 15(1), (2). As to the First Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 228 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to the power to acquire land by agreement see the Commissioners of Works Act 1852 s 2 (as amended); and PARA 940 post.

4 For the meaning of 'land' see PARA 2 note 10 ante. As to Crown land, however, see PARA 941 post.

5 For these purposes, references to the public service include the service in the United Kingdom of (1) any international organisation or institution whether or not the United Kingdom or Her Majesty's government in the United Kingdom is or is to become a member; (2) any office or agency established by such an organisation or institution or for its purposes, or established in pursuance of a treaty, whether or not the United Kingdom is or is to become a party to the treaty; and (3) a foreign sovereign power or the government of such a power: Town and Country Planning Act 1990 s 228(5). 'Treaty' includes any international agreement, and any protocol or annex to a treaty or international agreement: s 228(6). See also *Nottingham No 1 Area Hospital Management Committee v Owen* [1958] 1 QB 50, [1957] 3 All ER 358, DC. For the meaning of 'United Kingdom' see PARA 60 note 5 ante.

6 For the meaning of 'development' see PARA 217 ante.

7 For the meaning of 'use' see PARA 221 note 4 ante.

8 Town and Country Planning Act 1990 s 228(1) (s 228(1), (7) amended by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, art 6, Schedule paras 11, 12; and by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2, PARA 15(1), (2)). The Acquisition of Land Act 1981 (see generally COMPULSORY ACQUISITION OF LAND) applies to any compulsory acquisition by the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 228 (as amended): s 228(7) (as so amended). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

Any expenses so incurred by the Secretary of State in the acquisition of land must be paid out of money provided by Parliament (see PARA 51 ante at head (a) in the text) but this does not apply in relation to the Assembly (see the Government of Wales Act 1998 s 89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS).

As from a day to be appointed, the powers to acquire land for the public service conferred by the Town and Country Planning Act 1990 s 228(1) (as so amended) are to be treated as including power to acquire land for the purpose of its provision under arrangements under the Constitutional Reform Act 2005 s 50(2)(b) (provision of accommodation and other resources for Supreme Court: see COURTS): s 50(3)(b).

9 le by virtue of the Town and Country Planning Act 1990 s 228(2)(a) or (b) (see heads (i), (ii) respectively in the text) or of the Local Government, Planning and Land Act 1980 s 122(1)(a) or (b) (as amended) (see PARA 940 post).

10 For the meaning of 'common' see PARA 934 note 10 ante.

11 For the meaning of 'open space' see PARA 933 note 16 ante.

12 For the meaning of 'fuel or field garden allotment' see PARA 934 note 12 ante.

13 As to the circumstances in which exchange land is required see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 609.

14 Town and Country Planning Act 1990 s 228(2).

15 Ibid s 228(3).

16 le for the purposes of the Acquisition of Land Act 1981: see generally COMPULSORY ACQUISITION OF LAND.

17 Town and Country Planning Act 1990 s 228(4). As to the disposal of land so acquired see PARA 951 post.

UPDATE

939 Compulsory acquisition by the Secretary of State or the Assembly

NOTE 1--Reference to First Secretary of State now to Secretary of State for Communities and Local Government: Town and Country Planning Act 1990 s 228(1) (amended by SI 2006/1926).

NOTE 8--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(ii) Acquisition of Land by the Secretary of State or the Assembly/940. Acquisition of land by agreement.

940. Acquisition of land by agreement.

Where, in exercise of the power conferred by the Commissioners of Works Act 1852¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ has acquired, or proposes to acquire, any land (the 'public service land') and in his or its opinion other land ought to be acquired together with the public service land:

- 3654 (1) in the interests of the proper planning of the area concerned; or
- 3655 (2) for the purpose of ensuring that the public service land can be used, or developed and used (together with that other land), in what appears to the Secretary of State or the Assembly to be the best, or most economic, way; or
- 3656 (3) where the public service land or any land acquired, or which the Secretary of State or the Assembly proposes to acquire, by virtue of head (1) or head (2) above, forms part of a common or open space or fuel or field garden allotment⁴, for the purpose of being given in exchange therefor,

then that power to acquire land by agreement⁵ applies to that other land as if its acquisition were necessary for the public service⁶.

Where the Secretary of State or the Assembly is authorised⁷ to acquire land by agreement for a particular purpose, he or it may acquire that land notwithstanding that it is not immediately required for that purpose; and any land so acquired may, until required for the purpose for which it was acquired, be used for such purpose as the Secretary of State or the Assembly may determine⁸.

1 The Commissioners of Works Act 1852 s 2 (as amended) (power to purchase etc land necessary for the public service). It is lawful for the Commissioners of Works to purchase, take, or accept any hereditaments, of what tenure soever, necessary for the public service, and to sell or exchange the same, and give a good discharge for the purchase money thereof to any purchaser or other person, and to grant any lease or leases, underlease or underleases of any such hereditaments so taken as aforesaid, and to enter into any agreements for such sale, exchange, lease, or underlease; so nevertheless that all such hereditaments are to be purchased, taken, exchanged, sold, or leased, and the produce and income thereof applied with the consent of the Treasury which may be given either generally for any class of case, or for any particular transaction: see s 2 (amended by the Statute Law Revision Act 1892; and by SR & O 1945/1636).

As from a day to be appointed, the powers to acquire land for the public service so conferred are to be treated as including power to acquire land for the purpose of its provision under arrangements under the Constitutional Reform Act 2005 s 50(2)(b) (provision of accommodation and other resources for Supreme Court: see COURTS): s 50(3)(a).

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 122 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 The terms 'common', 'open space' and 'fuel or field garden allotment' are not defined for these purposes; as to their meaning for the purposes of the Town and Country Planning Act 1990 see PARAS 933 note 16, 934 notes 10, 12 ante.

5 le the Commissioners of Works Act 1852 s 2 (as amended).

6 Local Government, Planning and Land Act 1980 s 122(1) (s 122(1)-(3) amended by the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I; and by the Planning (Consequential Provisions) (Scotland) Act 1997 ss 3, 4, Sch 1 Pt I, Sch 2 para 31(3)). The Commissioners of Works Act 1852 s 2 (as amended) is to be construed and have effect (1) as if references to land necessary for the public service included land which it is proposed to use not only for the public service but also to meet the interests of proper planning of the area, or to secure the best, or most economic, development or use of the land, for other purposes; (2) as if references to the public service included the service in the United Kingdom (a) of any international organisation or institution whether or not the United Kingdom or Her Majesty's Government in the United Kingdom is or is to become a member; (b) of any office or agency established by such an organisation or institution or for its purposes, or established in pursuance of a treaty (whether or not the United Kingdom is or is to become a party to the treaty); (c) of a foreign sovereign power or the government of such a power; and for the purposes of head (b) supra 'treaty' includes any international agreement, and any protocol or annex to a treaty or international agreement: Local Government, Planning and Land Act 1980 s 122(2), (3) (as so amended). Where the Secretary of State or the Assembly proposes to dispose of any of his or its land and is of the opinion that it is necessary, in order to facilitate that disposal, to acquire adjoining land, then, notwithstanding that the acquisition of that adjoining land is not necessary for the public service, the Commissioners of Works Act 1852 s 2 (as amended) applies as if it were necessary for the public service: Local Government, Planning and Land Act 1980 s 122(4).

Any expenses so incurred by the Secretary of State in the acquisition of land must be paid out of money provided by Parliament (see s 122(7)) but this does not apply in relation to the Assembly (see the Government of Wales Act 1998 s 89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS).

7 See note 1 supra.

8 Local Government, Planning and Land Act 1980 s 122(5).

UPDATE

940 Acquisition of land by agreement

NOTE 1--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(iii) Crown Land/941. Compulsory acquisition of interest in Crown land; in general.

(iii) Crown Land

941. Compulsory acquisition of interest in Crown land; in general.

At the date at which this title states the law, any power to acquire land¹ compulsorily under the statutory provisions relating to compulsory acquisition or appropriation of land for planning purposes² may be exercised in relation to any interest in Crown land³ which is for the time being held otherwise than by or on behalf of the Crown, notwithstanding any interest of the Crown in that land⁴; but no such interest may be so acquired except with the consent of the appropriate authority⁵.

As from a day to be appointed⁶, the above provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷. As from that day, however, the following provisions have similar effect. The Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ must not authorise the acquisition of any interest in Crown land¹⁰ unless it is an interest which

is for the time being held otherwise than by or on behalf of the Crown, and the appropriate authority¹¹ consents to the acquisition¹². Nor does the statutory provision allowing him or the Assembly to acquire land compulsorily¹³ permit the acquisition of any interest in Crown land¹⁴ unless it is an interest which is for the time being held otherwise than by or on behalf of the Crown, and the appropriate authority consents to the acquisition¹⁵.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended): see PARA 934 et seq ante, PARA 942 et seq post.

3 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

4 See the Town and Country Planning Act 1990 s 296(1)(b); and PARA 11 ante at head (b) in the text.

5 See ibid s 296(2)(b); and PARA 11 ante at head (iii) in the text. For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.

6 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

7 See ibid ss 84(1), 120, Sch 9; and PARA 13 ante. At the date at which this title states the law, those repeals were not in force.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990 ss 226, 228 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 For the meaning of 'Crown land' for these purposes see PARA 14 ante (definition applied by the Town and Country Planning Act 1990 s 226(9) (s 226(2A), (9) added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 3(1)-(3), as from a day to be appointed: see note 6 supra)).

11 For the meaning of 'the appropriate authority' for these purposes see PARA 14 note 15 ante.

12 Town and Country Planning Act 1990 s 226(2A) (as added: see note 10 supra).

13 Ie ibid s 228(1) (as amended): see PARA 939 ante.

14 For the meaning of 'Crown land' for these purposes see PARA 14 ante (definition applied by the Town and Country Planning Act 1990 s 228(8) (s 228(1A), (8) added by the Planning and Compulsory Purchase Act 2004 Sch 3 para 4(1)-(3), as from a day to be appointed: see note 6 supra)).

15 Town and Country Planning Act 1990 s 228(1A) (as added: see note 14 supra).

UPDATE

941 Compulsory acquisition of interest in Crown land; in general

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

NOTES 10, 14--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act ss 226, 228: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 4(1), (2)(b), (c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(iv) Joint Planning Boards and Joint Bodies/942. Powers of joint planning boards.

(iv) Joint Planning Boards and Joint Bodies

942. Powers of joint planning boards.

A joint planning board¹ has, on being authorised to do so by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³:

- 3657 (1) the same power to acquire land⁴ compulsorily as the local authorities⁵ to which the statutory provisions relating to compulsory acquisition of land⁶ apply have under those provisions⁷;
- 3658 (2) for any purposes for which by virtue of head (1) above that board may acquire land compulsorily, the power⁸ to purchase compulsorily rights over land not in existence when the board's compulsory purchase is authorised⁹.

Such a board also has power¹⁰ to acquire land by agreement¹¹.

1 As to joint planning boards see PARA 30 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 244 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'local authority' see PARA 3 note 3 ante; but see also PARA 934 note 2 ante.

6 I.e. the Town and Country Planning Act 1990 s 226 (as amended): see PARAS 934-935 ante.

7 Ibid s 244(1) (amended by the Environment Act 1995 s 120(3), Sch 24).

8 I.e. the power which the Local Government (Miscellaneous Provisions) Act 1976 s 13 (as amended) confers on the local authorities to which s 13(1) applies: see LOCAL GOVERNMENT vol 69 (2009) PARA 511.

9 Town and Country Planning Act 1990 s 244(4). The Local Government (Miscellaneous Provisions) Act 1976 s 13(2)-(5) (as amended) accordingly applies to the purchase of rights under the Town and Country Planning Act 1990 s 244(4) (as so amended) as it applies to the purchase of rights under the Local Government (Miscellaneous Provisions) Act 1976 s 13(1): Town and Country Planning Act 1990 s 244(4).

10 I.e. the same power as the local authorities mentioned in ibid s 227(1) (as amended) (see PARA 937 ante) have under s 227(1) (as amended).

11 Ibid s 244(2). Section 226(1) (as amended), s 226(7) (see PARA 934 ante), s 227 (as amended) (see PARA 937 ante), s 229 (see PARA 947 post), s 230 (see PARA 938 ante), s 232 (see PARAS 945-946 post), s 233 (see PARAS 948-950 post) and ss 235-242 (as amended) (see PARA 952 et seq post) apply with the necessary modifications as if any such board were a local authority to which those statutory provisions applied: s 244(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(iv) Joint Planning Boards and Joint Bodies/943. Constitution of joint body to hold land for planning purposes.

943. Constitution of joint body to hold land for planning purposes.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales², after consultation³ with the local authorities⁴ concerned, to be expedient that any land⁵ acquired by a local authority for planning purposes⁶ should be held by a joint body, consisting of representatives of that authority and of any other local authority, he or the Assembly may by order provide for the establishment of such a joint body and for the transfer to that body of the land so acquired⁷.

Any such order providing for the establishment of a joint body may make such provision⁸ as the Secretary of State or the Assembly considers expedient with respect to the constitution and functions⁹ of that body¹⁰; and regulations¹¹ may make such provision consequential upon or supplementary to these provisions as appears to the Secretary of State or the Assembly to be necessary or expedient¹².

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 243, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'consult' see PARA 2 note 1 ante.

4 For the meaning of 'local authority' see PARA 3 note 3 ante; but see PARA 934 note 2 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 For these purposes, any reference to the acquisition of land for planning purposes is a reference to the acquisition of it under the Town and Country Planning Act 1990 s 226 (as amended) (see PARAS 934-935 ante) or s 227 (as amended) (see PARA 937 ante), or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 52 (as amended) (see PARA 1161 post), or, as the case may be, the Town and Country Planning Act 1971 ss 112 or 119 (repealed), or the Town and Country Planning Act 1962 ss 68 or 71 (repealed): Town and Country Planning Act 1990 s 246(1)(a). As to land acquired under Town and Country Planning Act 1947 (repealed) see the Town and Country Planning Act 1971 s 292(1), Sch 24 paras 47-49 (repealed) and the Planning (Consequential Provisions) Act 1990 s 5, Sch 3 para 3.

7 Town and Country Planning Act 1990 s 243(1).

8 The provisions which may be so included include provisions (1) for incorporating the joint body; (2) for conferring on it, in relation to land transferred to it as mentioned in *ibid* s 243(1), any of the powers conferred on local authorities by Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante, PARA 944 et seq post), or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post) in relation to land acquired and held by such authorities for the purposes of the Town and Country Planning Act 1990 Pt IX (as amended) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (as amended); (3) for determining the manner in which its expenses are to be defrayed: Town and Country Planning Act 1990 s 243(3).

9 For the meaning of 'functions' see PARA 2 note 1 ante.

10 Town and Country Planning Act 1990 s 243(2).

11 *Ie* under the Town and Country Planning Act 1990.

12 *Ibid* s 243(4). At the date at which this title states the law no such regulations had been made and none had effect as if so made. As to the making of regulations generally see PARA 3 ante.

UPDATE

943 Constitution of joint body to hold land for planning purposes

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(1) ACQUISITION OF LAND/(v) Compulsory Purchase Procedure/944. Modification of statutory provisions relating to compulsory purchase procedure.

(v) Compulsory Purchase Procedure

944. Modification of statutory provisions relating to compulsory purchase procedure.

In relation to the compulsory acquisition of land by a local authority¹, a National Park authority² or a joint planning board³ or by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵, the general statutory provisions⁶ relating to compulsory purchase procedure apply⁷.

Where, however:

- 3659 (1) it is proposed that land⁸ should be acquired compulsorily⁹; and
 3660 (2) a compulsory purchase order relating to that land is submitted to the confirming authority¹⁰ or, as the case may be, is made in draft¹¹ by the Secretary of State¹² or by the Assembly,

the confirming authority or, as the case may be, the Secretary of State or the Assembly may disregard¹³ any objection to the order or draft which, in the opinion of that authority or of the Secretary of State or the Assembly, amounts in substance to an objection to the provisions of the development plan¹⁴ defining the proposed use¹⁵ of that or any other land¹⁶.

1 Ie under the Town and Country Planning Act 1990 s 226 (as amended): see PARAS 934-935 ante.

2 See note 1 supra. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 See note 1 supra; and see PARA 942 ante. As to joint planning boards see PARA 30 ante.

4 Ie under ibid s 228 (as amended): see PARA 939 ante. As to the Secretary of State see PARA 19 ante.

5 Ie under ibid s 228 (as amended): see PARA 939 ante. As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie the Acquisition of Land Act 1981: see generally COMPULSORY ACQUISITION OF LAND.

7 See the Town and Country Planning Act 1990 ss 226(7), 228(7) (cited in PARAS 934-935, 939 ante). As to the application of s 226(7) to National Park authorities see PARA 934 note 17 ante; and as to its application to joint planning boards see PARA 942 ante. The Compulsory Purchase Act 1965 also applies (see s 1(1) (as substituted; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 513); and the general vesting declaration procedure may also be used (see the Compulsory Purchase (Vesting Declarations) Act 1981 s 1; and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686).

In construing the Compulsory Purchase Act 1965 as so applied: (1) references to the execution of the works are to be construed as including references to any erection, construction or carrying out of buildings or works authorised by the Town and Country Planning Act 1990 s 237 (as amended) (see PARA 954 post); (2) in relation to the erection, construction or carrying out of any buildings or works so authorised, references in the Compulsory Purchase Act 1965 s 10 (as amended) to the acquiring authority are to be construed as references

to the person by whom the buildings or works in question are erected, constructed or carried out; and (3) references to the execution of the works are to be construed as including also references to any erection, construction or carrying out of buildings or works on behalf of a minister or the National Assembly for Wales or statutory undertakers on land acquired by that minister, by the Assembly or by those undertakers, where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired: Town and Country Planning Act 1990 s 245(4). For the meaning of 'buildings or works' see PARA 43 note 9 ante; for the meaning of 'erection' see PARA 2 note 10 ante; for the meaning of 'minister' see PARA 3 note 5 ante; and for the meaning of 'statutory undertakers' see PARA 1009 post. The standard authorisation procedure also applies to the acquisition of listed buildings in need of repair: see PARA 1157 post. As to the special provisions in relation to land of statutory undertakers see PARA 1018 post; and as to ecclesiastical property see PARA 17 ante.

8 For the meaning of 'land' see PARA 2 note 10 ante.

9 Ie under the Town and Country Planning Act 1990 s 226 (as amended) (see PARAS 934-935 ante) or s 228 (as amended) (see PARA 939 ante).

10 Ie in accordance with the Acquisition of Land Act 1981 Pt II (ss 10-15) (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq.

11 Ie in accordance with ibid s 2(3), Sch 1 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 572 et seq.

12 Ie the First Secretary of State: see the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2, PARA 15(1), (3). As to the First Secretary of State see PARA 19 ante.

13 Ie for the purposes of the Acquisition of Land Act 1981 Pt II (ss 10-15) or Sch 1 (as amended).

14 For the meaning of 'development plan' see PARA 91 ante.

15 For the meaning of 'use' see PARA 221 note 4 ante.

16 Town and Country Planning Act 1990 s 245(1) (amended by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2, PARA 15(1), (3)). In relation to compulsory purchase orders in relation to which notice was published before 31 October 2004 see also the Town and Country Planning Act 1990 s 245(2), (3) (repealed subject to transitional provisions).

UPDATE

944 Modification of statutory provisions relating to compulsory purchase procedure

NOTE 12--Reference to First Secretary of State now to Secretary of State for Communities and Local Government: Town and Country Planning Act 1990 s 245(1) (amended by SI 2006/1926).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(i) Appropriation of Land/945. Appropriation of land held for planning purposes.

(2) APPROPRIATION AND DISPOSAL OF LAND

(i) Appropriation of Land

945. Appropriation of land held for planning purposes.

Where any land¹ has been acquired² or appropriated³ by a local authority⁴ for planning purposes and is for the time being held by the authority for the purposes for which it was so acquired or appropriated, the authority may appropriate⁵ the land for any purpose for which the authority is or may be authorised in any capacity to acquire land by virtue of or under any enactment⁶ other than the statutory provisions⁷ relating to the acquisition and appropriation of land for planning purposes⁸.

Land which consists of, or forms part of, a common⁹, or formerly consisted of or formed part of a common, and is held or managed by a local authority in accordance with a local Act may not, however, be so appropriated without the consent of the Secretary of State¹⁰ or, in relation to Wales, of the National Assembly for Wales¹¹. Such consent may be given:

- 3661 (1) either in respect of a particular appropriation or in respect of
appropriations of any class; and
3662 (2) either subject to or free from any conditions or limitations¹².

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'acquired for planning purposes' see PARA 943 note 6 ante.

3 For these purposes, any references to the appropriation of land for planning purposes is a reference to the appropriation of it for purposes for which land can be, or, as the case may be, could have been, acquired under the Town and Country Planning Act 1990 s 226 (as amended) (see PARAS 934-935 ante) or s 227 (as amended) (see PARA 937 ante), or the Planning (Listed Buildings and Conservation Areas) Act 1990 s 52 (as amended) (see PARA 1161 post), or, as the case may be, the Town and Country Planning Act 1971 ss 112 or 119 (repealed), or the Town and Country Planning Act 1962 ss 68 or 71 (repealed): Town and Country Planning Act 1990 s 246(1). As to land acquired under the Town and Country Planning Act 1947 (repealed) see the Town and Country Planning Act 1971 s 292(1), Sch 24 paras 47-49 (repealed) and the Planning (Consequential Provisions) Act 1990 s 5, Sch 3 para 3.

4 For the meaning of 'local authority' see PARA 3 note 3 ante; but see PARA 934 note 2 ante. As to the application of the Town and Country Planning Act 1990 s 232 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 As to the effect of appropriation see *Dowty Boulton Paul Ltd v Wolverhampton Corpn (No 2)* [1976] Ch 13, [1973] 2 All ER 491, CA.

6 For the meaning of 'enactment' see PARA 2 note 11 ante.

7 I.e. the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante; the text and notes 1-6 supra, 8-12 infra; and PARA 946 et seq post) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59 (as amended) (see PARA 1154 et seq post).

8 Town and Country Planning Act 1990 s 232(1). In relation to any such land as is mentioned in s 232(1), s 232 has effect to the exclusion of the provisions of the Local Government Act 1972 s 122(1) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 513): Town and Country Planning Act 1990 s 232(6). In relation to any appropriation under s 232: (1) the Local Government Act 1972 s 122(4) (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 513), which relates to the operation of the Lands Clauses Consolidation Act 1845 s 68 (as amended) and the Compulsory Purchase Act 1965 s 10 (as amended), has effect as it has effect in relation to appropriations under the Local Government Act 1972 s 122 (as amended); and (2) the Town and Country Planning Act 1990 s 229(5), (6) (see PARA 947 post) has effect as it has effect in relation to appropriations under s 229: s 232(5).

As to the local authority's duty, in exercising its powers under s 232, to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, see PARA 1106 post.

9 For the meaning of 'common' see PARA 934 note 10 ante.

10 As to the Secretary of State see PARA 19 ante.

11 Town and Country Planning Act 1990 s 232(2). As to the preliminaries to acquisition of an open space see PARA 946 post; and as to appropriation of part of a common see PARA 947 post. As to the transfer of functions under s 232, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Town and Country Planning Act 1990 s 232(3).

UPDATE

945 Appropriation of land held for planning purposes

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(i) Appropriation of Land/946. Preliminaries to appropriation of open space.

946. Preliminaries to appropriation of open space.

Before appropriating¹ any land² which consists of, or forms part of, an open space³, a local authority⁴ must:

- 3663 (1) publish a notice of its intention to do so for at least two consecutive weeks in a newspaper circulating in its area; and
- 3664 (2) consider any objections to the proposed appropriation which may be made to it⁵.

1 le under the Town and Country Planning Act 1990 s 232: see PARA 945 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'open space' see PARA 933 note 16 ante.

4 For the meaning of 'local authority' see PARA 3 note 3 ante.

5 Town and Country Planning Act 1990 s 232(4). As to the application of s 232 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(i) Appropriation of Land/947. Appropriation of land forming part of common etc.

947. Appropriation of land forming part of common etc.

Any local authority¹ may be authorised, by an order² made by that authority and confirmed by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴, to appropriate for any purpose for which that authority can be authorised to acquire land under any enactment⁵ any land⁶ for the time being held⁷ by the authority for other purposes, being land which is or forms part of a common⁸, or fuel or field garden allotment⁹, other than land which is Green Belt¹⁰ land¹¹.

On such an appropriation, the appropriate adjustment in accounts must be made¹².

1 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the application of the Town and Country Planning Act 1990 s 229 to joint planning boards see PARA 942 ante; as to its application to National Park Authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 The Acquisition of Land Act 1981 s 19 (as amended) (special provision with respect to compulsory purchase orders under that Act relating to certain land: see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 531) applies to an order under the Town and Country Planning Act 1990 s 229 (see the text and notes 3-12 infra) authorising the appropriation of land as it applies to a compulsory purchase order under the 1981 Act: Town and Country Planning Act 1990 s 229(3). For the meaning of 'land' see PARA 2 note 10 ante. See also *Wilson v Secretary of State for the Environment* [1974] 1 All ER 428, [1973] 1 WLR 1083. The order may provide for vesting the land given in exchange: see the Acquisition of Land Act 1981 s 19(3) (as amended). The Town and Country Planning Act 1959 s 23(1), which relaxes requirement as to ministerial consent to appropriation, does not apply: see s 23(3)(b).

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 229, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'enactment' see PARA 2 note 11 ante.

6 Ie including any such land which is specially regulated by any enactment, whether public general or local or private.

7 It is the purpose for which the land is held, rather than its de facto use, which is relevant: *Third Greytown Properties Ltd v Peterborough Corp* [1973] 3 All ER 731.

8 For the meaning of 'common' see PARA 934 note 10 ante.

9 For the meaning of 'fuel or field garden allotment' see PARA 934 note 12 ante.

10 Ie within the meaning of the Green Belt (London and Home Counties) Act 1938: see PARA 938 et seq.

11 Town and Country Planning Act 1990 s 229(1), (2). As to the power to acquire land required for giving in exchange see PARA 938 ante.

Where land so appropriated was acquired under an enactment incorporating the Lands Clauses Acts, any works executed on the land after the appropriation has been effected are deemed, for the purposes of the Lands Clauses Consolidation Act 1845 s 68 (as amended) or the Compulsory Purchase Act 1965 s 10 (as amended) (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARAS 718, 878), to have been authorised by the enactment under which the land was acquired: Town and Country Planning Act 1990 s 229(4).

12 Ibid s 229(5), (6). On such an appropriation of land by a local authority, where (1) the authority is not an authority to whom the Town and Country Planning Act 1959 Pt II (ss 22-30) (as amended) applies (see **LOCAL GOVERNMENT** vol 69 (2009) PARA 509 et seq); or (2) the land was immediately before the appropriation held by the authority for the purposes of a grant-aided function, within the meaning of that Act; or (3) the land is appropriated by the authority for the purposes of such a function, such adjustment must be made in the accounts of the local authority as the Secretary of State or the Assembly may direct; and on such an appropriation which does not fall within heads (1)-(3) supra, such adjustment of accounts must be made as is required by s 24(1): Town and Country Planning Act 1990 s 229(5), (6). As to the application of s 229(5), (6) to appropriations under s 232 see PARA 945 note 8 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(ii) Disposal of Land/948. Local authority's power of disposal.

(ii) Disposal of Land

948. Local authority's power of disposal.

Where any land¹ has been acquired or appropriated by a local authority² for planning purposes³ and is for the time being held by it for the purposes for which the land was so acquired or appropriated, the authority may dispose⁴ of the land to such person, in such manner and subject to such conditions, as may appear to the authority to be expedient in order to secure:

- 3665 (1) the best use⁵ of that or other land and any buildings or works⁶ which have been or are to be erected, constructed or carried out on it, whether by the authority itself or by any other person; or
- 3666 (2) the erection⁷, construction or carrying out on it of any buildings or works appearing to the authority to be needed for the proper planning of its area⁸.

Land which consists of, or forms part of, a common⁹, or formerly consisted of or formed part of a common, and is held or managed by a local authority in accordance with a local Act may not, however, be so disposed of without the consent of the Secretary of State¹⁰ or, in relation to Wales, of the National Assembly for Wales¹¹; and such consent is also required where the disposal is to be for a consideration less than the best that can reasonably be obtained and is not:

- 3667 (a) the grant of a term of seven years or less; or
- 3668 (b) the assignment of a term of years of which seven years or less are unexpired at the date of the assignment¹².

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the application of the Town and Country Planning Act 1990 s 233 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 For the meaning of 'acquisition of land for planning purposes' see PARA 943 note 6 ante; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

4 For the meaning of 'disposal' see PARA 38 note 6 ante. See also *R v Thurrock Borough Council, ex p Blue Circle Industries plc* (1994) 69 P & CR 79, CA ('disposal' involves not merely the relaxation of contractual rights relating to the user of land but some altogether more fundamental surrender of proprietary rights). For an example of disposal to developers under a partnership scheme see *Jones v Secretary of State for Wales* (1974) 28 P & CR 280, CA. As to the creation of a right for a term of years see *Dowty Boulton Paul Ltd v Wolverhampton Corpn* [1971] 1 WLR 204; and as to appropriation of land see PARAS 945-947 ante.

5 For the meaning of 'use' see PARA 221 note 4 ante.

6 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

7 For the meaning of 'erection' see PARA 2 note 10 ante.

8 Town and Country Planning Act 1990 s 233(1). In relation to any such land as is mentioned in s 233(1), s 233 has effect to the exclusion of the Local Government Act 1972 s 123 (as amended) (disposal of land by principal councils: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 515); Town and Country Planning Act 1990 s 233(8).

As to the local authority's duty, in exercising its powers under s 233, to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, see PARA 1106 post.

9 For the meaning of 'common' see PARA 934 note 10 ante.

10 As to the Secretary of State see PARA 19 ante.

11 Town and Country Planning Act 1990 s 233(2). As to the transfer of functions under s 233, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Town and Country Planning Act 1990 s 233(3). As to the preliminaries to disposal of an open space see PARA 949 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(ii) Disposal of Land/949. Preliminaries to disposal of open space.

949. Preliminaries to disposal of open space.

Before disposing of¹ any land² which consists of or forms part of an open space³, a local authority⁴ must:

- 3669 (1) publish a notice⁵ of its intention to do so for at least two consecutive weeks in a newspaper circulating in its area; and
- 3670 (2) consider any objections to the proposed disposal which may be made to it⁶.

1 Ie under the Town and Country Planning Act 1990 s 233: see PARA 948 ante. For the meaning of 'disposal' see PARA 38 note 6 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'open space' see PARA 933 note 16 ante.

4 For the meaning of 'local authority' see PARA 3 note 3 ante.

5 The land must be accurately described in the notice: see *Wilson v Secretary of State for the Environment* [1974] 1 All ER 428, [1973] 1 WLR 1083.

6 Town and Country Planning Act 1990 s 233(4). As to the application of s 233 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq; and as to the local authority's duty, in exercising its powers under s 233, to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, see PARA 1106 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(2) APPROPRIATION AND DISPOSAL OF LAND/(ii) Disposal of Land/950. Exercise of powers of disposal.

950. Exercise of powers of disposal.

In relation to land¹ acquired or appropriated for planning purposes² for a reason:

- 3671 (1) that it will facilitate the carrying out of development, redevelopment or improvement on or in relation to the land³; or
- 3672 (2) that it is required for the purpose of executing works for facilitating the development or use of adjoining land or is required for the purpose of being given in exchange for land which is being acquired⁴,

the powers conferred⁵ on a local authority⁶ and on the Secretary of State⁷ (or, in relation to Wales, on the National Assembly for Wales⁸) in respect of the giving of consent to disposals⁹ must be so exercised as to secure so far as may be practicable¹⁰ to relevant occupiers¹¹ a suitable opportunity¹² for accommodation¹³.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'acquisition of land for planning purposes' see PARA 943 note 6 ante; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

3 Ie a reason mentioned in the Town and Country Planning Act 1990 s 226(1)(a) (as substituted): see PARA 934 ante.

4 Ie a reason mentioned in ibid s 226(3): see PARA 934 ante.

5 Ie by ibid s 233: see PARA 948 ante.

6 For the meaning of 'local authority' see PARA 3 note 3 ante; but see PARA 934 note 2 ante. As to the application of ibid s 233 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 s 233, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 For the meaning of 'disposal' see PARA 38 note 6 ante.

10 This is a matter to be judged by the local authority and the Secretary of State: *A Crabtree & Co Ltd v Minister of Housing and Local Government* (1965) 17 P & CR 232.

11 A person is a relevant occupier for these purposes if (1) he was living or carrying on business or other activities on any such land as is mentioned in the Town and Country Planning Act 1990 s 233(5) which the authority has acquired as mentioned in s 233(1) (see PARA 948 ante); (2) he desires to obtain accommodation on such land; and (3) he is willing to comply with any requirements of the authority as to the development and use of such land: s 233(6). For these purposes, 'development' includes redevelopment: s 233(6). For the meaning of 'use' see PARA 221 note 4 ante.

12 For these purposes, 'a suitable opportunity for accommodation' means, in relation to any person, an opportunity to obtain accommodation on the land in question which is suitable to his reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from him: ibid s 233(7).

13 Ibid s 233(5). As to the local authority's duty, in exercising its powers under the Town and Country Planning Act 1990 s 233, to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, see PARA 1106 post.

951. Disposal by the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may dispose³ of land⁴ held by him or by it and acquired by him or by it or by any other minister under the statutory power of compulsory acquisition⁵ to such person, in such manner and subject to such conditions as appear to him or to the Assembly expedient⁶; and, in particular, he or the Assembly may so dispose of land held by him or by it for any purpose in order to secure its use⁷ for that purpose⁸.

The Secretary of State or the Assembly may also dispose of land held by him or by it and acquired by him, by the Assembly or by any other minister under the statutory power to acquire land for the public service by agreement⁹ to such person, in such manner and subject to such conditions as may appear to him or to the Assembly to be expedient, and in particular may dispose of land so held for any purpose in order to secure the use of the land for that purpose¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 234, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'dispose of' see PARA 38 note 6 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Ie under the Town and Country Planning Act 1990 s 228 (as amended): see PARA 939 ante.

6 Ibid s 234(1).

7 For the meaning of 'use' see PARA 221 note 4 ante.

8 Town and Country Planning Act 1990 s 234(2).

9 Ie under the Commissioners of Works Act 1852 s 2 (as amended): see PARA 940 ante.

10 Local Government, Planning and Land Act 1980 s 122(6) (amended by the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I; and by the Planning (Consequential Provisions) (Scotland) Act 1997 ss 3, 4, Sch 1 Pt I, Sch 2 para 31(3)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(i) Development of Land held for Planning Purposes/952. Power of development; in general.

(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND

(i) Development of Land held for Planning Purposes

952. Power of development; in general.

In relation to any land¹ which:

3673 (1) has been acquired or appropriated by a local authority² for planning purposes³; and

3674 (2) is for the time being held by the authority for the purposes for which it was so acquired or appropriated,

a local authority may⁴:

3675 (a) erect, construct or carry out on any such land any building or work⁵ other than a building or work for the erection⁶, construction or carrying out of which, whether by that local authority or by any other person, statutory power exists by virtue of, or could be conferred under, an alternative enactment⁷; and

3676 (b) repair, maintain and insure any buildings or works on such land and generally deal with such land in a proper course of management⁸.

A local authority may enter into arrangements with an authorised association⁹ for the carrying out by the association of any operation which, apart from the arrangements, the local authority would so have power to carry out, on such terms, including terms as to the making of payments or loans by the authority to the association, as may be specified in the arrangements¹⁰.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the application of the Town and Country Planning Act 1990 s 235 (see the text and notes 3-10 infra) to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 For the meaning of 'acquisition of land for planning purposes' see PARA 943 note 6 ante; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

4 A local authority may exercise the powers so conferred notwithstanding any limitation imposed by law on its capacity by virtue of its constitution (Town and Country Planning Act 1990 s 235(3)); but nothing in s 235 is to be construed as authorising any act or omission on the part of a local authority which is actionable at the suit of any person on any grounds other than such a limitation (s 235(5)(a)).

5 For the meaning of 'buildings or works' see PARA 43 note 9 ante.

6 For the meaning of 'erection' see PARA 2 note 10 ante.

7 For these purposes, 'alternative enactment' means any enactment which is not contained in the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante, PARA 954 et seq post), the Local Authorities (Land) Act 1963 ss 2, 5 or 6 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARAS 521-522), the Industrial Development Act 1982 s 14(1) or (4) or s 17(3) (see TRADE AND INDUSTRY vol 97 (2010) PARAS 945-946), or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post): Town and Country Planning Act 1990 s 235(6). For the meaning of 'enactment' see PARA 2 note 11 ante.

8 Ibid s 235(1), (2). As to the local authority's duty, in exercising its powers under s 235(1), to have regard to the desirability of preserving features of special architectural or historic interest, and in particular listed buildings, see PARA 1106 post.

9 For these purposes, 'authorised association' means any society, company or body of persons (1) whose objects include the promotion, formation or management of garden cities, garden suburbs or garden villages, and the erection, improvement or management of buildings for the working classes and others; and (2) which does not trade for profit or whose constitution forbids the issue of any share or loan capital with interest or dividend exceeding the rate for the time being fixed by the Treasury: ibid s 235(6).

10 Ibid s 235(4). Nothing in s 235 is to be construed as authorising an authorised association to carry out any operation which it would not have power to carry out apart from s 235(4): s 235(5)(b).

The Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante, PARA 954 post) does not have the effect of authorising the execution of any works, whether of construction, demolition or alteration, on, over or under tidal lands below high-water mark of ordinary spring tides, except with the consent of any persons whose consent would have been required if the Town and Country Planning Act 1962 (repealed) had not been passed, and except in accordance with such plans and sections and subject to such restrictions and conditions as may be approved by the Secretary of State before the works are begun: Town and Country Planning Act 1971 s 292(1), Sch 24 para 84(b); Planning (Consequential Provisions) Act 1990 s 5(1), Sch 3 para 3. As to land below high-water mark see WATER AND WATERWAYS vol 100 (2009) PARA 35.

UPDATE

952 Power of development; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(i) Development of Land held for Planning Purposes/953. Secretary of State's or Assembly's power to require development of land.

953. Secretary of State's or Assembly's power to require development of land.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied, after holding a local inquiry³, that a local authority⁴ has failed to carry out, on land⁵ acquired⁶ or appropriated⁷ by it, any development⁸ which in his or the Assembly's opinion ought to be carried out, he or the Assembly may by order require the authority to take such steps as may be specified in the order for carrying out the development⁹.

Any such order is enforceable on the application of the Secretary of State or the Assembly by mandatory order¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 231 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to local inquiries see PARA 651 et seq ante.

4 For the meaning of 'local authority' see PARA 3 note 3 ante; but see PARA 934 note 2 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 I.e. under the Town and Country Planning Act 1990 s 226 (as amended) (see PARAS 934-935 ante) or the Town and Country Planning Act 1962 s 68 (repealed) or the Town and Country Planning Act 1971 s 112 (repealed).

7 I.e. under the Town and Country Planning Act 1990 s 229 (see PARA 947 ante) or the Town and Country Planning Act 1971 s 121 (repealed).

8 For the meaning of 'development' see PARA 217 ante.

9 Town and Country Planning Act 1990 s 231(2). As to the making of orders generally see PARA 3 ante.

¹⁰ Ibid s 231(3) (amended by virtue of the Civil Procedure (Modification of Supreme Court Act 1981) Order 2004, SI 2004/1033, art 3). As to mandatory orders see JUDICIAL REVIEW vol 61 (2010) PARA 703.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/A. IN GENERAL/954. Power to override easements and other rights.

(ii) Interference with and Extinguishment of Rights

A. IN GENERAL

954. Power to override easements and other rights.

The erection¹, construction or carrying out or maintenance of any building or work² on land³ which has been acquired or appropriated by a local authority⁴ for planning purposes⁵, whether done by the local authority or by a person deriving title⁶ under it, is authorised if it is done in accordance with planning permission⁷ notwithstanding that it involves:

- 3677 (1) interference with certain interests or rights⁸; or
- 3678 (2) a breach of a restriction as to the user of land arising by virtue of a contract⁹.

Nothing in these provisions, however, authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is:

- 3679 (a) a right vested in or belonging to statutory undertakers¹⁰ for the purposes of the carrying on of their undertaking; or
- 3680 (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network¹¹.

Compensation is payable¹² in respect of any authorised interference or breach¹³ and must be assessed in the same manner and subject to the same rules as in the case of other compensation¹⁴ in respect of injurious affection where the compensation is to be estimated in connection with a purchase, or the injury arises from the execution of works on land acquired, under¹⁵ the relevant statutory provisions¹⁶.

Where a person deriving title under the local authority by which the land in question was acquired or appropriated is so liable to pay compensation and fails to discharge that liability, the liability is enforceable against the local authority¹⁷.

¹ For the meaning of 'erection' see PARA 2 note 10 ante.

² For the meaning of 'buildings or works' see PARA 43 note 9 ante.

³ For the meaning of 'land' see PARA 2 note 10 ante.

⁴ For the meaning of 'local authority' see PARA 3 note 3 ante. As to the application of the Town and Country Planning Act 1990 s 237 (as amended) (see the text and notes 5-17 infra) to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 For the meaning of 'acquisition of land for planning purposes' see PARA 943 note 6 ante; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

6 For the meaning of references to deriving title see PARA 245 note 5 ante.

7 For the meaning of 'planning permission' see PARA 43 note 6 ante.

8 Subject to the Town and Country Planning Act 1990 s 237(3) (as amended) (see the text and notes 10-11 infra), the interests and rights to which s 237 (as amended) applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support: s 237(2). As to power to extinguish highways see ss 249-256 (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq.

9 Ibid s 237(1). Section 237(1) is subject to s 237(3) (as amended): s 237(1). As to the effect of such authorisation see *Dowty Boulton Paul Ltd v Wolverhampton Corpn (No 2)* [1976] Ch 13, [1973] 2 All ER 491, CA. See also *R v City of London Council, ex p Master Governors and Commonality of the Mystery of the Barbers of London* [1996] 42 EG 156, DC; *Midtown Ltd v City of London Real Property Co Ltd*; *Joseph v City of London Real Property Ltd* [2005] EWHC 33 (Ch), [2005] 04 EG 166, [2005] All ER (D) 164 (Jan).

Nothing in the Town and Country Planning Act 1990 s 237 (as amended) is to be construed as authorising any act or omission (1) on the part of a local authority or body corporate in contravention of any limitation imposed by law on its capacity by virtue of its constitution (s 246(2)); or (2) on the part of any person which is actionable at the suit of any person on any ground other than such interference or breach as is mentioned in s 237(1) (s 237(7)). It has been held that s 237 (as amended) does not authorise use in contravention of restrictive covenants: *Thames Water Utilities Ltd v Oxford City Council* [1999] 1 EGLR 167, [1998] 31 LS Gaz R 37. However, whilst it is clear that 'use' is not referred to in the Town and Country Planning Act 1990 s 237 (as amended), it seems somewhat questionable to permit building under s 237(1) but not the use of that which is built.

10 For the meaning of 'statutory undertakers' see PARA 1009 post.

11 Town and Country Planning Act 1990 s 237(3) (amended by the Communications Act 2003 s 406(1), Sch 17 para 103(1)(b), (2)). As to the electronic communications code, electronic communications apparatus and electronic communications networks and their operators see the Communications Act 2003 Sch 17 para 1(1); and TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

12 Ie under the Lands Clauses Consolidation Act 1845 s 63 or s 68 (as amended), or the Compulsory Purchase Act 1965 s 7 or s 10 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 718, 810, 877. As to the construction of the Compulsory Purchase Act 1965 in relation to land falling under these provisions see PARA 944 note 4 ante.

13 Ie any interference or breach in pursuance of the Town and Country Planning Act 1990 s 237(1).

14 See note 12 supra.

15 Ie under the Lands Clauses Consolidation Act 1845 or the Compulsory Purchase Act 1965.

16 Town and Country Planning Act 1990 s 237(4).

17 Ibid s 237(5). Nothing in s 237(5), however, is to be construed as affecting any agreement between the local authority and any other person for indemnifying the local authority against any such liability: s 237(6).

UPDATE

954 Power to override easements and other rights

TEXT AND NOTES--Town and Country Planning Act 1990 s 237 further amended: Planning Act 2008 Sch 9 para 4.

RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/A. IN GENERAL/955. Extinguishment of rights over land compulsory acquired.

955. Extinguishment of rights over land compulsory acquired.

Upon the completion of a compulsory acquisition¹ of land²:

- 3681 (1) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished³; and
- 3682 (2) any such apparatus vests in the acquiring authority⁴.

The above provisions do not, however, apply to:

- 3683 (a) any right vested in, or apparatus belonging to, statutory undertakers⁵ for the purpose of the carrying on of their undertaking;
- 3684 (b) any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network; or
- 3685 (c) any electronic communications apparatus kept installed for the purposes of any such network⁶.

In respect of any right or apparatus not falling within heads (a) to (c) above, these provisions have effect subject to:

- 3686 (i) any direction given by the acquiring authority before the completion of the acquisition that they are not to apply to any right or apparatus specified in the direction; and
- 3687 (ii) any agreement which may be made, whether before or after the completion of the acquisition, between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs⁷.

Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under these provisions is entitled to compensation from the acquiring authority⁸.

1 le under the Town and Country Planning Act 1990 s 226 (as amended) (see PARAS 934-935 ante), s 228 (as amended) (see PARA 939 ante) or s 230 (see PARA 938 ante). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 Town and Country Planning Act 1990 s 236(1)(a). As to extinguishment of rights on a compulsory purchase under the Planning (Listed Buildings and Conservation Areas) Act 1990 see PARA 1160 post; as to the extinguishment of rights on a compulsory purchase under the New Towns Act 1981 see PARA 1356 post; and as to the powers to extinguish highways see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq.

4 Town and Country Planning Act 1990 s 236(1)(b). For the meaning of 'acquiring authority' see PARA 933 note 11 ante. As to the application of s 236 (as amended) to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 For the meaning of 'statutory undertakers' see PARA 1009 post. As to the powers to extinguish rights of statutory undertakers see PARA 1019 post.

6 Town and Country Planning Act 1990 s 236(2) (amended by the Communications Act 2003 s 406(1), Sch 17 para 103(1)(a), (2)). As to the electronic communications code, electronic communications apparatus and

electronic communications networks and their operators see Sch 17 para 1(1); and TELECOMMUNICATIONS vol 97 (2010) PARA 151 et seq.

7 Town and Country Planning Act 1990 s 236(3).

8 Ibid s 236(4). Any compensation payable must be determined accordance with the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND) (Town and Country Planning Act 1990 s 236(5)); and any expenses incurred by any government department, including the Secretary of State, in the payment of compensation must be paid out of money provided by Parliament (see PARA 51 ante at head (b) in the text), although this does not apply in relation to the National Assembly for Wales (see the Government of Wales Act 1998 s 89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS). For the meaning of 'government department' see PARA 3 note 5 ante.

UPDATE

955-956 Extinguishment of rights over land compulsory acquired, Use and development of consecrated land etc

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/956. Use and development of consecrated land etc.

B. CONSECRATED LAND AND BURIAL GROUNDS

956. Use and development of consecrated land etc.

Any consecrated land¹ which has been the subject of a relevant acquisition or appropriation² may, notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of such land, be used:

- 3688 (1) if it has been acquired by a minister³ or by the National Assembly for Wales⁴, in any manner by him or it or on his or its behalf for any purpose for which he or it acquired the land; and
- 3689 (2) in any other case, by any person in any manner in accordance with planning permission⁵.

Any use of consecrated land so authorised is subject to:

- 3690 (a) compliance with the prescribed requirements⁶ with respect to the removal and reinterment of any human remains and to the disposal⁷ of monuments⁸ and fixtures and furnishings⁹; and
- 3691 (b) to such provisions as may be prescribed for prohibiting or restricting the use¹⁰ of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part of it, remains on the land¹¹.

Any use of land other than consecrated land which:

- 3692 (i) has been the subject of a relevant acquisition or appropriation; and
- 3693 (ii) at the time of acquisition or appropriation included a church or other building used or formerly used for religious worship or the site of such a church or building,

is subject to compliance with such requirements as are mentioned in head (a) above¹².

1 The Town and Country Planning Act 1990 s 238(1) (see the text and notes 2-5 *infra*) applies whether or not the land includes a building but does not apply to land which consists of or forms part of a burial ground: s 238(2). For these purposes, 'burial ground' includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment: s 240(3). As to the consecration of land, and the effect of consecration, see ECCLESIASTICAL LAW; and as to the use and development of burial grounds see PARA 957 *post*; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172. For the meanings of 'land' and 'building' see PARA 2 note 10 *ante*.

2 For these purposes, 'relevant acquisition or appropriation' means an acquisition made by a minister, the National Assembly for Wales, a local authority or statutory undertakers under *ibid* Pt IX (ss 226-246) (as amended) (see PARA 934 *et seq ante*, PARA 957 *et seq post*) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 *et seq post*) or compulsorily under any other enactment, or an appropriation by a local authority for planning purposes: Town and Country Planning Act 1990 s 240(3). As to the transfer of functions under ss 238, 240, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*. See also note 3 *infra*. For the meaning of 'minister' see PARA 3 note 5 *ante*; for the meaning of 'local authority' see PARA 3 note 3 *ante*; for the meaning of 'statutory undertakers' see PARA 1009 *post*; for the meaning of 'enactment' see PARA 2 note 11 *ante*; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 *ante*. As to the application of the Town and Country Planning Act 1990 s 238 to consecrated land held by an NHS Trust or a health service body see HEALTH SERVICES vol 54 (2008) PARA 168.

3 Functions of Ministers of the Crown, other than the Secretary of State for Wales, under the Town and Country Planning Act 1990 s 238(1)(a), are not transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

4 See notes 2-3 *supra*.

5 Town and Country Planning Act 1990 s 238(1); and see note 3 *supra*. Any power so conferred to use land in such a manner is to be construed as a power so to use the land, whether or not it involves the erection, construction or carrying out of any building or work or the maintenance of any building or work: s 246(3). As to the application of s 238 to joint planning boards see PARA 942 *ante*; as to its application to National Park authorities see PARA 934 note 17 *ante*; as to joint planning boards see PARA 30 *ante*; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 *et seq*. For the meaning of 'planning permission' see PARA 43 note 6 *ante*; for the meaning of 'erection' see PARA 2 note 10 *ante*; and for the meaning of 'buildings or works' see PARA 43 note 9 *ante*.

Nothing in s 238 is to be construed as authorising any act or omission (1) on the part of a local authority or body corporate in contravention of any limitation imposed by law on its capacity by virtue of its constitution (s 246(2)); or (2) on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in s 238(1) (s 238(6)).

6 As to the power to prescribe requirements see PARA 958 *post*. For the meaning of 'prescribed' see PARA 16 note 5 *ante*.

7 For the meaning of 'disposal' see PARA 38 note 6 *ante*.

8 For these purposes, 'monument' includes a tombstone or other memorial: Town and Country Planning Act 1990 s 240(3).

9 Subject to the provisions of any regulations made for these purposes, no faculty is required for the removal and reinterment in accordance with the regulations of any human remains, or for the removal or disposal of any monuments: *ibid* s 240(2). As to the faculty jurisdiction of the Church of England see generally ECCLESIASTICAL LAW.

10 For the meaning of 'use' see PARA 221 note 4 ante.

11 Town and Country Planning Act 1990 s 238(3).

12 Ibid s 238(4).

UPDATE

955-956 Extinguishment of rights over land compulsory acquired, Use and development of consecrated land etc

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/957. Use and development of burial grounds; in general.

957. Use and development of burial grounds; in general.

The use and development of land¹ consisting of a burial ground² or part of a burial ground which has been the subject of a relevant acquisition or appropriation³ is discussed elsewhere in this work⁴.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'burial ground' see PARA 956 note 1 ante.

3 For the meaning of 'relevant acquisition or appropriation' see PARA 956 note 2 ante.

4 See the Town and Country Planning Act 1990 s 239; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172. As to the application of s 239 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/958. Power to make regulations.

958. Power to make regulations.

Provision must be made by any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land etc¹ and burial grounds² for:

- 3694 (1) requiring the persons in whom the land³ is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal⁴ of any monuments⁵;
- 3695 (2) enabling the personal representatives or relatives of any deceased person themselves to undertake:
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18. (a) the removal and reinterment of the remains of the deceased; and
19. (b) the disposal of any monument commemorating the deceased,
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- 3696 and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed⁶;
- 3697 (3) requiring compliance with:
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20. (a) such reasonable conditions, if any, as may be imposed in the case of consecrated land by the bishop of the diocese with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments; and
21. (b) any directions given in any case by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸ with respect to the removal and reinterment of any human remains⁹.
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Subject, however, to the provisions of any such regulations, no faculty¹⁰ is required for the removal and reinterment in accordance with the regulations of any human remains or for the removal or disposal of any monuments¹¹.

Any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land etc¹²:

- 3698 (i) must contain such provisions as appear to the Secretary of State or the Assembly to be requisite for securing that any use¹³ of land which is subject to compliance with the regulations is, as nearly as may be, subject to the same control as is imposed by law in the case of a similar use authorised by an enactment¹⁴ or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
- 3699 (ii) must contain such requirements relating to the disposal of any consecrated land or other relevant land¹⁵ as appear to the Secretary of State or the Assembly requisite for securing that the relevant statutory provisions¹⁶ are complied with in relation to the use of the land; and
- 3700 (iii) may contain such incidental and consequential provisions, including provision as to the closing of registers, as appear to the Secretary of State or the Assembly to be expedient for the purposes of the regulations¹⁷.

1 le the Town and Country Planning Act 1990 s 238(3), (4): see PARA 956 ante.

2 le ibid s 239(2): see PARA 957 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the meaning of 'disposal' see PARA 38 note 6 ante.

5 For the meaning of 'monument' see PARA 956 note 6 ante.

6 Any expenses so incurred by any government department, including the Secretary of State, must be paid out of money provided by Parliament (see the Town and Country Planning Act 1990 s 311(2)(c); and PARA 51

ante at head (c) in the text) but this does not apply in relation to the National Assembly for Wales (see the Government of Wales Act 1998 s 89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS). For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Town and Country Planning Act 1990 ss 238, 240, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning Act 1990 s 240(1). At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, regs 6-17 (as amended) have effect as if so made. See CREMATION AND BURIAL vol 10 (Reissue) PARA 1172. As to the application of the Town and Country Planning Act 1990 s 240 (as so modified) to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Nothing in s 238 or s 240 is to be construed as authorising any act or omission on the part of a local authority or body corporate in contravention of any limitation imposed by law on its capacity by virtue of its constitution: s 246(2). For the meaning of 'local authority' see PARA 3 note 3 ante.

10 As to the normal requirement for a faculty see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125 et seq; and as to the faculty jurisdiction of the Church of England see generally ECCLESIASTICAL LAW.

11 Town and Country Planning Act 1990 s 240(2). The Burial Act 1857 s 25 (as amended) (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1123) does not apply to a removal carried out in accordance with the regulations: Town and Country Planning Act 1990 s 240(2).

12 See note 1 supra.

13 For the meaning of 'use' see PARA 221 note 4 ante.

14 Ie by an enactment not contained in the Town and Country Planning Act 1990. For the meaning of 'enactment' see PARA 2 note 11 ante.

15 Ie such land as is mentioned in ibid s 238(3) or (4): see PARA 956 ante.

16 See note 1 supra.

17 Town and Country Planning Act 1990 s 238(5). At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2 (see PARA 2 ante), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, regs 3-5 have effect as if so made. See further PARAS 959-961 post.

Nothing in the Town and Country Planning Act 1990 s 238 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in s 238(1) (see PARA 956 ante); s 238(6). See also note 9 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/959. Restrictions on use when church remains on land.

959. Restrictions on use when church remains on land.

So long as any church or other building used or formerly used for religious worship, or any part thereof, remains on consecrated land, the land may not be used by the acquiring or appropriating authority¹ without the consent of the bishop² having been obtained³.

The use of any land⁴ by that authority so long as any such building or part thereof so remains:

- 3701 (1) in the case of consecrated land, is subject to the like control as is imposed by law in the case of a similar use authorised by an enactment⁵ or by a Measure⁶;
- 3702 (2) in the case of any other land, must be for such religious, charitable⁷, educational, municipal or other purposes as are not inconsistent with the last use of the land by the religious denomination at or before the date of acquisition or appropriation⁸.

In the case of land other than consecrated land, however, on presentation by the acquiring or appropriating authority of a certificate from the appropriate denominational authority⁹ that no objection is raised by that authority to any particular use of the land, the Secretary of State¹⁰ or, in relation to Wales, the National Assembly for Wales¹¹ may authorise such use¹².

1 For these purposes, 'acquiring or appropriating authority' includes any person deriving title from or under that authority: Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 2(1).

2 'The bishop' means the bishop of the diocese in which the land is situated: *ibid* reg 2(1).

3 *Ibid* reg 3(1).

4 For these purposes, unless the context otherwise requires, 'land' means any land which has been, or is deemed by virtue of the Town and Country Planning Act 1971 Sch 24 para 48 (repealed), to have been, acquired by a purchasing authority under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 *et seq* ante) or has been appropriated by a local authority as mentioned in ss 232(1), 246(1)(b) (see PARA 945 ante) and which at the time of acquisition or appropriation was consecrated land, or included any church or other building used or formerly used for religious worship, or the site thereof, or consisted of a burial ground or part of a burial ground: Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 2(1); Planning (Consequential Provisions) Act 1990 ss 2(4), 5(1), Sch 3 para 3.

5 *Ie* an enactment other than the Town and Country Planning Act 1990.

6 Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 3(2); Planning (Consequential Provisions) Act 1990 s 2(4). As to such control see ECCLESIASTICAL LAW.

7 For the meaning of 'charitable purposes' see CHARITIES vol 8 (2010) PARA 1 *et seq*.

8 Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 3(2).

9 For these purposes, unless the context otherwise requires, 'the appropriate denominational authority' means such person or persons as are designated for the purpose by the controlling body of the religious denomination for whose purposes the land has been or is being used: *ibid* reg 2(1).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of town and country planning functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 *Ibid* reg 3(2) proviso.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/960. Fixtures and furnishings of churches etc.

960. Fixtures and furnishings of churches etc.

The fixtures and furnishings of any church or other building used for religious worship situated on the land¹ are to be at the disposal of the appropriate denominational authority² as that authority may think fit³. Where any such fixtures and furnishings are not disposed of by that authority within three months of the date of acquisition or appropriation, the acquiring or appropriating authority⁴ must, before disposal, cause to be defaced such ornamentation, symbols and inscriptions as the appropriate denominational authority may require⁵.

1 For the meaning of 'land' for these purposes see PARA 959 note 4 ante.

2 In the case of consecrated land, 'the appropriate denominational authority' means the bishop: Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 2(1). For its meaning in the case of unconsecrated land see PARA 959 note 9 ante; and for the meaning of 'the bishop' see PARA 959 note 2 ante.

3 Ibid reg 4.

4 For the meaning of 'acquiring or appropriating authority' see PARA 959 note 1 ante.

5 Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 4.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/B. CONSECRATED LAND AND BURIAL GROUNDS/961. Closure of registers.

961. Closure of registers.

When a church or other building used for religious worship has ceased to be used as such by reason of the land¹ forming its site having been acquired or appropriated², the appropriate denominational authority³ must⁴ forward or cause to be forwarded the current marriage registers kept for the building to the Registrar General in order that they may be formally closed and one of them retained by him or transmitted to the appropriate denominational authority for retention, and the other forwarded to the superintendent registrar of the registration district concerned⁵. All other birth, baptismal, marriage, burial or death registers, if not removed from the building by that authority for retention by that authority within three months of the date of acquisition or appropriation, must be forwarded by the acquiring or appropriating authority⁶ to the Registrar General⁷.

1 For the meaning of 'land' for these purposes see PARA 959 note 4 ante.

2 Ie acquired or appropriated under the Town and Country Planning Act 1990.

3 For the meaning of 'the appropriate denominational authority' see PARAS 959 note 9, 960 note 2 ante.

4 le except where the marriage registers are dealt with under the Marriage Act 1949 s 62: see MATRIMONIAL AND CIVIL PARTNERSHIP LAW vol 72 (2009) PARAS 84, 86.

5 Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 5; Planning (Consequential Provisions) Act 1990 s 2(4).

6 For the meaning of 'acquiring or appropriating authority' see PARA 959 note 1 ante.

7 Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792, reg 5. As to the keeping of registers of baptisms and marriages see generally ECCLESIASTICAL LAW; REGISTRATION CONCERNING THE INDIVIDUAL; and as to registers of burials see CREMATION AND BURIAL vol 10 (Reissue) PARA 1109 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/C. MISCELLANEOUS RIGHTS/962. Use and development of open spaces etc.

C. MISCELLANEOUS RIGHTS

962. Use and development of open spaces etc.

Any land¹ which is or forms part of a common², open space³ or fuel or field garden allotment⁴, which has been acquired⁵ by a minister⁶, the National Assembly for Wales⁷, a local authority⁸ or statutory undertakers⁹ or which has been appropriated by a local authority for planning purposes¹⁰ may¹¹:

3703 (1) if it has been acquired by a minister or by the Assembly, be used in any manner by him or it or on his or its behalf for any purpose for which he or the Assembly acquired the land; and

3704 (2) in any other case, be used by any person in any manner in accordance with planning permission¹².

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'common' see PARA 934 note 10 ante.

3 For the meaning of 'open space' see PARA 933 note 16 ante.

4 For the meaning of 'fuel or field garden allotment' see PARA 934 note 12 ante.

5 le under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante, PARA 963 post) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post).

6 For the meaning of 'minister' see PARA 3 note 5 ante. Functions of Ministers of the Crown, other than the Secretary of State for Wales, under the Town and Country Planning Act 1990 s 241(1)(a), are not transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 214, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also note 6 supra.

8 For the meaning of 'local authority' see PARA 3 note 3 ante.

9 For the meaning of 'statutory undertakers' see PARA 1009 post.

10 For the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

11 In notwithstanding anything in any enactment relating to such land or by which the land is specially regulated. For the meaning of 'enactment' see PARA 2 note 11 ante.

12 Town and Country Planning Act 1990 s 241(1). As to the application of the Town and Country Planning Act 1990 s 241 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. Any power so conferred to use land in such a manner is to be construed as a power so to use the land, whether or not it involves the erection, construction or carrying out of any building or work or the maintenance of any building or work: s 246(3). For the meaning of 'planning permission' see PARA 43 note 6 ante; for the meaning of 'erection' see PARA 2 note 10 ante; and for the meaning of 'buildings or works' see PARA 43 note 9 ante.

Nothing in s 241 is to be construed as authorising any act or omission (1) on the part of a local authority or body corporate in contravention of any limitation imposed by law on its capacity by virtue of its constitution (s 246(2)); or (2) on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned in s 241(1) (s 241(2)).

UPDATE

962 Use and development of open spaces etc

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(3) ENABLING POWERS IN RELATION TO ACQUIRED OR APPROPRIATED LAND/(ii) Interference with and Extinguishment of Rights/C. MISCELLANEOUS RIGHTS/963. Overriding rights of possession.

963. Overriding rights of possession.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² certifies that possession of a house which:

3705 (1) has been acquired or appropriated by a local authority³ for planning purposes⁴; and

3706 (2) is for the time being held by the authority for the purposes for which it was acquired or appropriated,

is immediately required for those purposes, nothing in the Rent Act 1977⁵ or Part I of the Housing Act 1988⁶ prevents the acquiring or appropriating authority⁷ from obtaining possession of the house⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 242, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'local authority' see PARA 3 note 3 ante.

4 For the meaning of 'acquisition of land for planning purposes' see PARA 943 note 6 ante; and for the meaning of 'appropriation of land for planning purposes' see PARA 945 note 3 ante.

5 As to the protection of dwellings under the Rent Acts see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 784 et seq.

6 As to the Housing Act 1988 Pt I (ss 1-45) (as amended) (assured tenancies etc): see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1011 et seq.

7 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.

8 Town and Country Planning Act 1990 s 242. As to the application of the Town and Country Planning Act 1990 s 242 to joint planning boards see PARA 942 ante; as to its application to National Park authorities see PARA 934 note 17 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(4) ACQUISITION OF LAND IN WALES BY THE WELSH DEVELOPMENT AGENCY/964. Abolition of the Land Authority for Wales.

(4) ACQUISITION OF LAND IN WALES BY THE WELSH DEVELOPMENT AGENCY

964. Abolition of the Land Authority for Wales.

There was formerly a body known as the Land Authority for Wales, established in 1975¹ and continued in existence by the Local Government, Planning and Land Act 1980². That body's functions were to acquire land in Wales which in its opinion needed to be made available for development and to dispose of it to other persons for development by them at a time which was in the Land Authority's opinion appropriate to meet the need³.

As from 1 October 1998 functions of the Land Authority for Wales ceased to exist⁴ and there were transferred to and vested in the Welsh Development Agency⁵ all property, rights and liabilities to which the Land Authority for Wales was entitled or subject on that date⁶. Transitional provisions were made with regard to such transfer⁷ and for the winding down of the Land Authority's activities⁸.

The Land Authority for Wales was abolished by order of the Secretary of State for Wales with effect from 28 February 1999⁹.

1 See the Community Land Act 1975 s 8, Sch 3 (repealed).

2 See the Local Government, Planning and Land Act 1980 s 102(1) (repealed).

3 See *ibid* ss 103(1), 109 (repealed).

4 See the Government of Wales Act 1998 ss 134, 158(1); the Government of Wales Act 1998 (Commencement No 1) Order 1998, SI 1998/2244, art 4.

5 As to the Welsh Development Agency see PARA 1309 post; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

6 See the Government of Wales Act 1998 s 136(1). A certificate issued by the Secretary of State for Wales that any property has been transferred by s 136(1) is conclusive evidence of the transfer: s 136(2). Section 136(1) has effect in relation to property, rights or liabilities to which it applies in spite of any provision (of

whatever nature) which would otherwise prevent or restrict the transfer of the property, rights or liabilities (s 136(3)) but does not have effect to continue in force any contract of employment (s 136(4)). The Secretary of State may by order make provision for the transfer of staff of the Land Authority for Wales; and such an order may make any appropriate consequential, incidental, supplementary or transitional provisions or savings: s 136(4), (5). As to the exercise of this power see the Land Authority for Wales (Transfer of Staff) Order 1998, SI 1998/2194. As to the Secretary of State see PARA 19 ante.

7 See the Government of Wales Act 1998 s 137.

8 See *ibid* s 138.

9 See *ibid* s 139; and the Land Authority for Wales (Abolition) Order 1999, SI 1999/372, arts 1, 2.

UPDATE

964-965 Acquisition of Land in Wales by the Welsh Development Agency

The Welsh Development Agency has been abolished and its functions, property, rights and liabilities have been transferred to the National Assembly for Wales: see the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

964 Abolition of the Land Authority for Wales

NOTE 6--SI 1998/2194 revoked: SI 2005/3226.

TEXT AND NOTE 8--1998 Act s 138 repealed: SI 2005/3226.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/10. ACQUISITION AND APPROPRIATION OF LAND/(4) ACQUISITION OF LAND IN WALES BY THE WELSH DEVELOPMENT AGENCY/965. Acquisition of land by the Welsh Development Agency.

965. Acquisition of land by the Welsh Development Agency.

The Welsh Development Agency's¹ functions include the function of making land available for development². It has power to do anything, whether in Wales or elsewhere, which is calculated to facilitate the discharge of its statutory functions³ or is incidental or conducive to their discharge⁴ and may, in particular, exercise specified powers including power to:

- 3707 (1) acquire and dispose of land, plant, machinery and equipment and other property⁵;
- 3708 (2) manage land, and develop land and carry out works on land, and maintain works or assist in their maintenance⁶;
- 3709 (3) make land, plant, machinery and equipment and other property available for use by other persons⁷.

The functions and powers of the Welsh Development Agency are discussed in detail elsewhere in this work⁸.

- 1 As to the Welsh Development Agency see PARA 1309 post; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.
- 2 See the Welsh Development Agency Act 1975 s 1(3)(da) (added by the Government of Wales Act 1998 s 126(3)(d)); and TRADE AND INDUSTRY vol 97 (2010) PARA 954.
- 3 See its functions under the Welsh Development Agency Act 1975 s 1(3) (as amended): see TRADE AND INDUSTRY vol 97 (2010) PARA 954.
- 4 See *ibid* s 1(6); and TRADE AND INDUSTRY vol 97 (2010) PARA 954.
- 5 See *ibid* s 1(7)(h).
- 6 See *ibid* s 1(7)(i).
- 7 See *ibid* s 1(7)(j).
- 8 See TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

UPDATE

964-965 Acquisition of Land in Wales by the Welsh Development Agency

The Welsh Development Agency has been abolished and its functions, property, rights and liabilities have been transferred to the National Assembly for Wales: see the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/(i) Service of Purchase Notices; in general/966. Circumstances in which purchase notices may be served; in general.

11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS

(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS

(i) Service of Purchase Notices; in general

966. Circumstances in which purchase notices may be served; in general.

The following provisions apply where:

- 3710 (1) on an application for planning permission¹ to develop² any land³, permission is refused or is granted subject to conditions⁴; or
- 3711 (2) planning permission in respect of any land is revoked by an order⁵, or is modified by the imposition of conditions; or
- 3712 (3) an order is made⁶ requiring discontinuance of use or the alteration or removal of buildings or works⁷ in respect of any land⁸.

If in the case mentioned:

- 3713 (a) in heads (1) and (2) above, any owner⁹ of the land claims that the statutory conditions¹⁰ are satisfied with respect to it; or
- 3714 (b) in head (3) above, any person entitled to an interest in land in respect of which the order is made claims that the statutory conditions¹¹ are satisfied with respect to it,

he may, within the prescribed time¹² and in the prescribed manner¹³, serve on the council of the district¹⁴, Welsh county, county borough or London borough¹⁵ in which the land is situated a notice ('a purchase notice') requiring that council to purchase¹⁶ his interest in the land¹⁷. A purchase notice may also be so served on any National Park authority¹⁸ which is the local planning authority¹⁹ for the area in which the land is situated²⁰.

The conditions mentioned in head (a) above are:

- 3715 (i) that the land has become incapable of reasonably beneficial use²¹ in its existing state²²; and
- 3716 (ii) in a case where planning permission was granted subject to conditions or was modified by the imposition of conditions, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of the permitted development in accordance with those conditions; and
- 3717 (iii) in any case, that the land cannot be rendered capable of reasonably beneficial use by the carrying out of any other development for which planning permission has been granted or for which the local planning authority or the Secretary of State or, in relation to Wales, the National Assembly for Wales²³ has undertaken to grant planning permission²⁴.

The conditions mentioned in head (b) above are:

- 3718 (A) that by reason of the order the land is incapable of reasonably beneficial use in its existing state; and
- 3719 (B) that it cannot be rendered capable of reasonably beneficial use by the carrying out of any development for which planning permission has been granted, whether by that order or otherwise²⁵.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'develop' see PARA 217 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 For the purposes of the Town and Country Planning Act 1990 s 137(1)(a) and any claim arising in the circumstances therein mentioned, the conditions referred to in s 91 (as amended) (see PARA 537 ante) and s 92 (as amended) (see PARA 519 ante) must be disregarded: s 137(5). A person on whom a repairs notice has been served under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 48 (see PARA 1156 post) is not entitled to serve a purchase notice in the circumstances mentioned in the Town and Country Planning Act 1990 s 137(1)(a) in respect of the building in question (1) until the expiration of three months beginning with the date of the service of the repairs notice; and (2) if during that period the compulsory acquisition of the building is begun in the exercise of powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended) (see PARAS 1154, 1157 post), unless and until the compulsory acquisition is discontinued: Town and Country Planning Act 1990 s 137(6). For these purposes, a compulsory acquisition (a) is started when the notice required by the Acquisition of Land Act 1981 s 12 (as amended) or, as the case may be, s 2(3), Sch 1 para 3 (as amended) (see COMPULSORY ACQUISITION OF LAND VOL 18 (2009) PARAS 560, 573) is served; and (b) is discontinued (i) in the case of acquisition by the Secretary of State or the National Assembly for Wales, when he or the Assembly decides not to make the compulsory purchase order; and (ii) in any other case, when the order is withdrawn or the Secretary of State or the Assembly decides not to confirm it: Town and Country Planning Act 1990 s 137(7). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under s 137 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20

ante. For the meaning of 'building' see PARA 2 note 10 ante; and for the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

5 le under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.

6 le under ibid s 102 (as amended) (see PARAS 546-549 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 ante).

7 For the meanings of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

8 Town and Country Planning Act 1990 s 137(1).

9 In the case of a purchase notice served by such a person as is mentioned in ibid s 137(2)(b), references in Pt VI Ch I (ss 137-148) (as amended) to the owner of land include references to that person unless the context otherwise requires: s 148(2). For the meaning of 'owner' generally see PARA 17 note 1 ante. The claimant must own the whole of the land: see *Smart & Courtenay Dale Ltd v Dover Rural District Council* (1972) 23 P & CR 408, Lands Tribunal. As to whether companies in a group may be regarded as a single owner for these purposes see *Rakusen Properties Ltd, Rakusen Group Ltd, Lloyd Rakusen & Sons Ltd v Leeds City Council* (1978) 37 P & CR 315, Lands Tribunal. The purchase notice must relate to the whole of the land which has been refused planning permission or which has been granted conditional planning permission: *Cook v Winchester City Council* [1995] 1 EGLR 179, [1995] 07 EG 129, Lands Tribunal.

10 le the conditions mentioned in the Town and Country Planning Act 1990 s 137(3): see heads (i)-(iii) in the text.

11 le the conditions mentioned in ibid s 137(4): see heads (A)-(B) in the text.

12 The prescribed time within which any such notice must be served is 12 months from the date of the decision in respect of which the notice is given, or such longer period as the Secretary of State or the National Assembly for Wales may at any time in any particular case allow: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 12(2). For the meaning of 'prescribed' see PARA 16 note 5 ante.

13 A purchase notice must be in writing and must be served on the council of a district or London borough (or county or county borough in Wales) or on a National Park authority by delivering it at the offices of the council or the authority, or by sending it by prepaid post: Town and Country Planning General Regulations 1992, SI 1992/1492, reg 12(1) (amended by SI 1996/525; modified by SI 1996/1243; SI 2005/421).

14 As to district councils see PARA 28 note 2 ante.

15 For the meaning of 'London borough' see PARA 28 note 7 ante.

16 le in accordance with the Town and Country Planning Act 1990 Pt VI Ch I (ss 137-148) (as amended): see the text and notes 17-26 infra; and PARA 968 et seq post.

17 Ibid s 137(2) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 24(3)). Where land which is the subject of a planning decision or order comprises parcels of land in different ownerships, the owners of those parcels may combine to serve a purchase notice relating to their separate interests, provided that the notice, as served, relates to the whole of the land covered by the planning decision or order: see eg *Cook v Winchester City Council* [1995] 1 EGLR 179, [1995] 07 EG 129, Lands Tribunal, cited in note 9 supra.

18 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

19 As to local planning authorities see PARA 28 et seq ante.

20 The Town and Country Planning Act 1990 Pt VI Ch I (as amended) has effect as if (1) the bodies on which a purchase notice may be served under s 137 (as amended) included any National Park authority which is the local planning authority for the area in which the land is situated; and (2) a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990 and the National Park for which it is the local planning authority were its area; and the references Pt VI Ch I (as amended) and in s 288(10)(a) (see PARA 47 note 8 ante) to a council and to a local authority are to be construed accordingly: s 147A (added by the Environment Act 1990 s 67(5)).

21 As to determining whether land is capable of reasonably beneficial use see the Town and Country Planning Act 1990 s 138 (as amended); and PARA 968 post. See also *Gavaghan v Secretary of State for the Environment and South Hams District Council* [1989] JPL 596; affd on different grounds [1990] JPL 273, CA. All the land must be incapable of reasonably beneficial use: *Wain v Secretary of State for the Environment* (1982) 80 LGR 438, [1982] JPL 244, CA. No purchase notice may be served in respect of an interest in land while the

land is incapable of reasonably beneficial use by reason only of such an order as is mentioned in the Town and Country Planning Act 1990 s 137(1)(c) (see head (3) in the text) except by virtue of a claim under s 137(2)(b) (see head (b) in the text): s 137(8). The word 'incapable' indicates that the decision-maker has to consider not only the existing state of the land but also its prospective state: *Hudscott Estates (East) Ltd v Secretary of State for the Environment, Transport and the Regions* (2000) 82 P & CR 8, [2000] All ER (D) 1395.

22 If land has been affected by development carried out without planning permission and a valid enforcement notice can be or has been served requiring the land to be restored to its condition before that development, its existing state is taken to be its restored condition; but, where enforcement proceedings may no longer be brought, the existing state of the land is its state as it exists in fact: *Balco Transport Services Ltd v Secretary of State for the Environment* [1985] 3 All ER 689, [1986] 1 WLR 88, CA.

23 As to the Secretary of State and the Assembly see note 4 *supra*.

24 Town and Country Planning Act 1990 s 137(3).

25 *Ibid* s 137(4).

UPDATE

966 Circumstances in which purchase notices may be served; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/(i) Service of Purchase Notices; in general/967. Other circumstances in which a purchase notice may be served.

967. Other circumstances in which a purchase notice may be served.

A purchase notice may also be served if land has become incapable of reasonably beneficial use¹ where:

- 3720 (1) an application for listed building consent is refused or granted subject to conditions²;
- 3721 (2) listed building consent is revoked or modified³; or
- 3722 (3) provision is made for that purpose by a tree preservation order⁴ or by regulations for the control of advertisements⁵.

1 See PARA 966 note 18 *ante*.

2 See PARA 1139 *et seq post*.

3 See note 2 *supra*.

4 See the Town and Country Planning Act 1990 s 198(3)(c), (4)(b); and PARA 850 *ante*.

5 See *ibid* s 220(2)(c), (3)(b); and PARA 769 *ante*.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/(i) Service of Purchase Notices; in general/968. Land incapable of reasonably beneficial use.

968. Land incapable of reasonably beneficial use.

Where, for the purpose of determining whether the specified conditions for serving a purchase notice¹ are satisfied in relation to any land², any question arises as to what is or would in any particular circumstances be a reasonably beneficial use³ of that land, then, in determining that question for that purpose, no account may be taken of any unauthorised prospective use⁴ of that land⁵.

In considering whether land is incapable of reasonably beneficial use, regard may be had to whether the land may be used together with other land in the same ownership⁶.

1 le the conditions specified in the Town and Country Planning Act 1990 s 137(3) (see PARA 966 ante at heads (i)-(iii) in the text) or s 137(4) (see PARA 966 ante at heads (A)-(B) in the text).

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'use' see PARA 221 note 4 ante. See also PARA 966 note 21 ante.

4 A prospective use of land is regarded as unauthorised for these purposes (1) if it would involve the carrying out of development other than any development specified in the Town and Country Planning Act 1990 s 107(4) (as amended), Sch 3 paras 1 or 2 (see PARA 920 ante); or (2) in the case of a purchase notice served in consequence of a refusal or conditional grant of planning permission, if it would contravene the condition set out in s 111(5) (as substituted), Sch 10 (see PARA 921 ante): s 138(2) (amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 18). For the meaning of 'development' see PARA 217 ante; for the meaning of 'purchase notice' see PARA 966 ante; and for the meaning of 'planning permission' see PARA 43 note 6 ante.

5 Town and Country Planning Act 1990 s 138(1).

6 *Whiston v Secretary of State for the Environment and Stoke on Trent City Council* [1989] JPL 178.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/(ii) Crown Land/969. Purchase notices in relation to Crown land.

(ii) Crown Land

969. Purchase notices in relation to Crown land.

At the date at which this title states the law, and notwithstanding any interest of the Crown in Crown land¹, any restrictions or powers imposed or conferred by the statutory provisions relating to purchase notices² apply and are exercisable in relation to Crown land to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown³. No purchase notice⁴ may, however, be served in relation to any interest in Crown land unless an offer has been previously made by the owner⁵ of that interest to dispose⁶ of it to the appropriate authority⁷ on equivalent terms⁸ and that offer has been refused by the appropriate authority⁹.

As from a day to be appointed¹⁰, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹¹. As from such a day, the following provisions have effect. A purchase notice may be served in respect of Crown land¹² only as mentioned below¹³:

- 3723 (1) the owner of a private interest¹⁴ in Crown land must not serve a purchase notice unless he first offers to dispose of his interest to the appropriate authority¹⁵ on equivalent terms¹⁶ and the offer is refused by the appropriate authority¹⁷;
- 3724 (2) the appropriate authority may serve a purchase notice in relation to the following land:
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22. (a) land belonging to Her Majesty in right of Her private estates¹⁸;
23. (b) land belonging to Her Majesty in right of the Duchy of Lancaster;
24. (c) land belonging to the Duchy of Cornwall;
25. (d) land which forms part of the Crown Estate¹⁹.
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1 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

2 I.e. the Town and Country Planning Act 1990 Pt VI Ch I (ss 137-148) (as amended): see PARAS 966, 968 ante, PARA 970 et seq post.

3 See *ibid* s 296(1)(c) (as amended); and PARA 11 ante at head (c) in the text.

4 For the meaning of 'purchase notice' see PARA 966 ante.

5 For the meaning of 'owner' see PARA 17 note 1 ante.

6 For the meaning of 'dispose' see PARA 38 note 6 ante.

7 For the meaning of 'the appropriate authority' for these purposes see PARA 11 note 20 ante.

8 For these purposes, 'equivalent terms' means that the price payable for the interest must be equal to, and must, in default of agreement, be determined in the same manner as, the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice: Town and Country Planning Act 1990 s 296(4). As to compensation see PARA 977 post.

9 *Ibid* s 296(3).

10 I.e. as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

11 See *ibid* ss 84(1), 120, Sch 9; and PARA 13 ante. At the date at which this title states the law, those repeals were not in force.

12 For the meaning of 'Crown land' for these purposes see PARA 14 ante (definition applied by the Town and Country Planning Act 1990 s 137A(5) (s 137A added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 1, as from a day to be appointed: see note 10 *supra*)).

13 Town and Country Planning Act 1990 s 137A(1) (as added: see note 12 *supra*).

14 For the meaning of 'private interest' see PARA 11 note 19 ante (definition as applied: see note 12 *supra*).

15 For the meaning of 'appropriate authority' for these purposes see PARA 14 note 15 ante (definition as applied: see note 12 *supra*).

16 For these purposes, an offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a purchase notice: Town and Country Planning Act 1990 s 137A(4) (as added: see note 12 *supra*).

17 *Ibid* s 137A(2) (as added: see note 12 *supra*).

18 For the meaning of 'private estates' for these purposes see PARA 14 note 11 ante (definition as applied: see note 12 supra).

19 Town and Country Planning Act 1990 s 137A(3) (as added: see note 12 supra). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq.

UPDATE

969 Purchase notices in relation to Crown land

TEXT AND NOTES 10, 11--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/(iii) Duties of Authorities on Service of Purchase Notices/970. Action by council or National Park authority on which purchase notice is served.

(iii) Duties of Authorities on Service of Purchase Notices

970. Action by council or National Park authority on which purchase notice is served.

The council or National Park authority¹ on which a purchase notice is served² must serve on the owner³ by whom the purchase order was served a notice (a 'response notice') stating either:

- 3725 (1) that the council or authority is willing to comply with the purchase notice;
or
- 3726 (2) that another local authority⁴ or statutory undertakers⁵ specified in the response notice has or have agreed to comply with it in the council's or authority's place; or
- 3727 (3) that for reasons so specified the council or authority is not willing to comply with the purchase notice and has not found any other local authority or statutory undertakers who will agree to comply with it in the council's or authority's place, and that the council or authority has sent the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ a copy of the purchase notice and of the response notice⁸.

A response notice must be served before the end of the period of three months beginning with the date of service of the purchase notice⁹.

Where the council or authority on which a purchase notice is served by an owner has served a response notice on him in accordance with heads (1) or (2) above, it or, as the case may be, the other local authority or statutory undertakers specified in the response notice is or are deemed:

- 3728 (a) to be authorised to acquire the interest of the owner compulsorily in accordance with the relevant provisions¹⁰; and
- 3729 (b) to have served a notice to treat in respect of it on the date of service of the response notice¹¹.

Where the council proposes to serve such a response notice as is mentioned in head (3) above, the council or authority must first send the Secretary of State or the Assembly a copy of the proposed response notice and of the purchase notice¹².

1 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 For the meaning of 'purchase notice', and as to councils on which such a notice may be served, see PARA 966 ante. As to service on a National Park authority see the Town and Country Planning Act 1990 s 147A (as added), cited in PARA 966 note 20 ante.

3 For the meaning of 'owner' for these purposes see PARA 966 note 9 ante.

4 For the meaning of 'local authority' see PARA 3 note 3 ante; and as to the treatment of a National Park authority as a local authority for these purposes see PARA 966 note 20 ante.

5 For these purposes, 'statutory undertakers' includes electronic communications code operators and former PTOs (ie former public telecommunications operators): Town and Country Planning Act 1990 s 148(1) (definition amended by the Communications Act 2003 s 406(1), Sch 17 para 20). For the meaning of 'statutory undertakers' generally see PARA 1009 post.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 139, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 139(1) (s 139 modified in relation to National Park authorities, by virtue of the Town and Country Planning Act 1990 s 147A (as added)). If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, s 139 (as so modified) has effect as if after the word 'undertakers' there were inserted: (1) in s 139(1)(b) (see head (2) in the text) the words 'or an urban development corporation'; (2) in s 139(1)(c) (see head (3) in the text) the words 'or any urban development corporation'; and (3) in s 139(3) (see the text and notes 7-8 infra) the words 'or urban development corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 1 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). As to urban development corporations see PARA 1426 et seq post; and as to urban development corporations as planning authorities, and the orders which have been made in relation to them, see PARA 1464 post. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 29 Pt II (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

9 Town and Country Planning Act 1990 s 139(2). As to the service of notices see PARA 54 ante.

10 For these purposes, 'the relevant provisions' means: (1) the provisions of *ibid* Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante); or (2) in the case of statutory undertakers, any statutory provision, however expressed, under which they have power, or may be authorised, to purchase land compulsorily for the purposes of their undertaking: s 148(1).

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, the definition of 'relevant provisions' in s 148 has effect as if after the word 'undertaking' there were added the words 'or, in the case of an urban development corporation, section 142 of the Local Government, Planning and Land Act 1980': Sch 29 Pt II para 5 (substituted by the Planning (Consequential Provisions) Act 1990 Sch 2 para 44(13)). See also note 8 supra.

11 Town and Country Planning Act 1990 s 139(3) (as modified: see note 8 supra). A notice to treat which is deemed to have been served by virtue of s 139(3)(b) (see head (b) in the text) may not be withdrawn under the Land Compensation Act 1961 s 31 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 636: Town and Country Planning Act 1990 s 139(5). As to service of notice to treat see PARA 933 note 5 ante.

12 *Ibid* s 139(4) (as modified: see note 8 supra). As to the procedure on such a reference see PARA 971 post.

AFFECTED BY PLANNING DECISIONS OR ORDERS/(iii) Duties of Authorities on Service of Purchase Notices/971. Procedure on reference of purchase notice to the Secretary of State or the Assembly.

971. Procedure on reference of purchase notice to the Secretary of State or the Assembly.

Where a copy of a purchase notice¹ is sent² to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴, he or the Assembly must consider whether to confirm the notice or to take other action⁵ in respect of it⁶.

Before confirming a purchase notice or taking such other action, the Secretary of State must give notice of his proposed action:

- 3730 (1) to the person who served the purchase notice;
- 3731 (2) to the council or National Park authority⁷ on which it was served;
- 3732 (3) in England outside Greater London⁸:
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- 26. (a) to the county planning authority⁹ and also, where that authority is a joint planning board¹⁰, to the county council¹¹; and
- 27. (b) if the district council¹² on which the purchase notice in question was served is a constituent member of a joint planning board, to that board; and
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- 3733 (4) if the Secretary of State proposes to substitute any other local authority¹³ or statutory undertakers¹⁴ for the council or authority on which the notice was served, to them¹⁵;

and the Assembly must give notice of its proposed action to the persons and bodies mentioned in heads (1), (2) and (4) above and to the local planning authority¹⁶ in Wales where it is a joint planning board¹⁷.

Such a notice must specify the period, which must be not less than 28 days from its service, within which any of the persons on whom it is served may require the Secretary of State or the Assembly to give those persons an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose¹⁸; and, if within that period any of those persons so require, before the Secretary of State or the Assembly confirms the purchase notice or takes any other action¹⁹ in respect of it, he or the Assembly must give those persons such an opportunity²⁰.

If, after any of those persons have appeared before, and been heard by, the appointed person, it appears to the Secretary of State or the Assembly to be expedient to take action²¹ otherwise than in accordance with the notice given by him or by it, the Secretary of State or the Assembly may take that action accordingly²².

1 For the meaning of 'purchase notice' see PARA 966 ante.

2 I.e. under the Town and Country Planning Act 1990 s 139(4): see PARA 970 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Town and Country Planning Act 1990 s 140 (as amended), s 141, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 I.e. under the Town and Country Planning Act 1990 s 141: see PARA 972 post. Any reference in s 140 (as amended) to the taking of action by the Secretary of State or the Assembly under s 141 includes a reference to

the taking by him or by it of a decision not to confirm the purchase notice either on the grounds that any of the conditions referred to in s 141(1) are not satisfied or by virtue of s 142 (see PARA 973 post): s 141(5).

6 Ibid s 140(1).

7 See the Town and Country Planning Act 1990 s 147A (as added), cited in PARA 966 note 20 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

8 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

9 As to county planning authorities see PARA 28 ante.

10 For the meaning of 'joint planning board' see PARA 30 ante.

11 As to county councils see PARA 28 ante.

12 As to district councils see PARA 28 ante.

13 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the inclusion of a National Park authority see PARA 966 note 20 ante.

14 For the meaning of 'statutory undertakers' see PARA 1009 post.

15 Town and Country Planning Act 1990 s 140(2)(a)-(c), (d) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 24(4)).

16 As to local planning authorities see PARA 28 et seq ante.

17 Town and Country Planning Act 1990 s 140(2)(a), (b), (cc), (d) (s 140(2)(cc) added by the Local Government (Wales) Act 1994 Sch 6 Pt II para 24(4)).

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, the Town and Country Planning Act 1990 s 140(2) (d) (see head (4) in the text) has effect as if after the word 'undertakers' there were inserted the words 'or an urban development corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 2 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). As to urban development corporations see PARA 1426 et seq post; and as to urban development corporations as planning authorities, and the orders which have been made in relation to them, see PARA 1464 post.

18 Town and Country Planning Act 1990 s 140(3).

19 See note 5 supra.

20 Town and Country Planning Act 1990 s 140(4).

21 See note 5 supra.

22 Town and Country Planning Act 1990 s 140(5).

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972. Action by the Secretary of State or the Assembly in relation to purchase notice.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that the specified conditions³ are satisfied in relation to a purchase notice⁴, he or it must⁵ confirm the notice⁶.

If, however, it appears to the Secretary of State or the Assembly to be expedient to do so, he or it may, instead of confirming the purchase notice:

- 3734 (1) in the case of a notice served on account of the refusal of planning permission⁷, grant planning permission for the development⁸ in question⁹;
- 3735 (2) in the case of a notice served on account of planning permission for development being granted subject to conditions, revoke or amend those conditions so far as appears to him or to the Assembly to be required in order to enable the land¹⁰ to be rendered capable of reasonably beneficial use¹¹ by the carrying out of that development;
- 3736 (3) in the case of a notice served on account of the revocation of planning permission by an order¹², cancel the order;
- 3737 (4) in the case of a notice served on account of the modification of planning permission by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him or to the Assembly to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the development in respect of which the permission was granted; or
- 3738 (5) in the case of a notice served on account of the making of an order for the discontinuance of a use or the alteration or removal of apparatus¹³, revoke the order or, as the case may be, amend the order so far as appears to him or to the Assembly to be required in order to prevent the land from being rendered incapable of reasonably beneficial use¹⁴ by the order¹⁵.

If it appears to the Secretary of State or the Assembly:

- 3739 (a) that the land, or any part of the land, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out of any other development for which planning permission ought to be granted, he or the Assembly may, instead of confirming the purchase notice or, as the case may be, of confirming it so far as it relates to that part of the land, direct that, if an application for planning permission for that development is made, it must be granted¹⁶;
- 3740 (b) having regard to the probable ultimate use of the land, that it is expedient to do so, he or the Assembly may, if he or it confirms the notice, modify it, either in relation to the whole or any part of the land, by substituting another local authority¹⁷ or statutory undertakers¹⁸ for the council or National Park authority¹⁹ on which the notice was served²⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 141, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 I.e. the conditions specified in the Town and Country Planning Act 1990 s 137(3) or (4), as the case may be: see PARA 966 ante.

4 For the meaning of 'purchase notice' see PARA 966 ante.

5 I.e. subject to the Town and Country Planning Act 1990 s 141(2)-(5) (see the text and notes 6-20 infra) and to s 142(3) (see PARA 973 post).

6 Ibid s 141(1).

7 For the meaning of 'planning permission' see PARA 43 note 6 ante.

8 For the meaning of 'development' see PARA 217 ante.

9 As to the prohibition on granting planning permission without consideration of the environmental information where an environmental impact assessment may be required see PARA 491 ante.

10 For the meaning of 'land' see PARA 2 note 10 ante.

11 For the meaning of 'use' see PARA 221 note 4 ante.

12 Ie under the Town and Country Planning Act 1990 s 97 (as amended): see PARA 541 ante.

13 Ie under ibid s 102 (as amended) (see PARAS 546-547 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 ante).

14 See PARAS 966 note 21, 968 ante.

15 Town and Country Planning Act 1990 s 141(2).

16 Ibid s 141(3). See also note 9 supra.

17 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the inclusion of a National Park authority see PARA 966 note 20 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

18 For the meaning of 'statutory undertakers' for these purposes see PARA 970 note 5 ante.

19 See PARA 966 note 20 ante.

20 Town and Country Planning Act 1990 s 141(4). Before so substituting another local authority, the local authority should be offered a hearing: *Ealing Borough Council v Minister of Housing and Local Government* [1952] Ch 856, [1952] 2 All ER 639.

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, the Town and Country Planning Act 1990 s 141(4) has effect as if after the word 'undertakers' there were inserted the words 'or an urban development corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 3 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). As to urban development corporations see PARA 1426 et seq post; and as to urban development corporations as planning authorities, and the orders which have been made in relation to them, see PARA 1464 post. As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

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973. Power to refuse confirmation where land has restricted use.

Where a purchase notice¹ is served in respect of land² which consists in whole or in part of land which has a restricted use by virtue of an existing planning permission³ and a copy of the purchase notice is sent⁴ to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶, he or the Assembly need not confirm the notice⁷ if it appears to him or to it that the land having a restricted use by virtue of an existing planning permission ought, in accordance with that permission, to remain undeveloped or, as the case may be, remain or be preserved or laid out as amenity land in relation to the remainder of the large area for which that planning permission was granted⁸.

1 For the meaning of 'purchase notice' see PARA 966 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For these purposes, land is to be treated as having a restricted use by virtue of an existing planning permission if it is part of a larger area in respect of which planning permission has previously been granted, and has not been revoked, and either (1) it remains a condition of the planning permission, however expressed, that that part shall remain undeveloped or be preserved or laid out in a particular way as amenity land in relation to the remainder; or (2) the planning permission was granted on an application which contemplated, expressly or by necessary implication, that the part should not be comprised in the development for which planning permission was sought, or should be preserved or laid out as mentioned in head (1) supra: Town and Country Planning Act 1990 s 142(2). For the meaning of 'use' see PARA 221 note 4 ante; for the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'development' see PARA 217 ante.

4 le under ibid s 139(4): see PARA 970 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 142, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 le under the Town and Country Planning Act 1990 s 141(1): see PARA 972 ante.

8 Ibid s 142(1), (3).

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974. Effect of Secretary of State's or Assembly's action in relation to purchase notice.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² confirms a purchase notice³:

3741 (1) the council or National Park authority⁴ on which the purchase notice was served⁵; or

3742 (2) if the Secretary of State or the Assembly modified⁶ the purchase notice by substituting another local authority⁷ or statutory undertakers⁸ for that council or authority, that other authority or those undertakers,

is or are deemed to be authorised to acquire the interest of the owner⁹ compulsorily in accordance with the relevant provisions¹⁰ and to have served a notice to treat in respect of it on such date as the Secretary of State or the Assembly may direct¹¹.

If, before the end of the relevant period¹², the Secretary of State or the Assembly has neither:

3743 (a) confirmed the purchase notice; nor

3744 (b) taken any specified action¹³ in respect of it; nor

3745 (c) notified the owner by whom the notice was served that he or the Assembly does not propose to confirm the notice,

the notice is deemed to be confirmed at the end of that period, and the council or authority on which the notice was served is deemed to be authorised to acquire the interest of the owner

compulsorily¹⁴ and to have served a notice to treat in respect of the owner's interest at the end of that period¹⁵.

Where the Secretary of State or the Assembly has notified the owner by whom a purchase notice has been served of a decision on his or its part to confirm, or not to confirm, the notice¹⁶ and that decision is quashed¹⁷, the purchase notice is treated as cancelled, but the owner may serve a further purchase notice in its place¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 143, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'purchase notice' see PARA 966 ante.

4 See the Town and Country Planning Act 1990 s 147A (as added), cited in PARA 966 note 20 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 As to the councils on which purchase notices may be served see PARA 966 ante.

6 Ie under the Town and Country Planning Act 1990 s 141(4): see PARA 972 ante.

7 For the meaning of 'local authority' see PARA 3 note 3 ante. As to the inclusion of National Park authorities for these purposes see PARA 966 note 20 ante.

8 For the meaning of 'statutory undertakers' for these purposes see PARA 970 note 5 ante.

9 For the meaning of 'owner' for these purposes see PARA 966 note 9 ante.

10 For the meaning of 'the relevant provisions' see PARA 970 note 10 ante.

11 Town and Country Planning Act 1990 s 143(1) (modified in relation to National Park authorities by virtue of the Town and Country Planning Act 1990 s 147A (as added)). A notice to treat which is deemed to have been served by virtue of s 143(1) or (2) (as so modified) may not be withdrawn under the Land Compensation Act 1961 s 31 (see **COMPULSORY ACQUISITION OF LAND** vol 18 (2009) PARA 636: Town and Country Planning Act 1990 s 143(8)). As to service of notice to treat see PARA 933 note 5 ante.

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, s 143(1)(b) (see head (2) in the text) has effect as if (1) after the word 'undertakers', in the first place where it occurs, there were inserted the words 'or an urban development corporation'; and (2) after that word, in the second place where it occurs, there were inserted the words 'or that corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 4 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). As to urban development corporations see PARA 1426 et seq post; and as to urban development corporations as planning authorities, and the orders which have been made in relation to them, see PARA 1464 post. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 29 Pt II (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

12 For these purposes, the relevant period is (1) the period of nine months beginning with the date of service of the purchase notice; or (2) if it ends earlier, the period of six months beginning with the date on which a copy of the purchase notice was sent to the Secretary of State or the Assembly: Town and Country Planning Act 1990 s 143(3). The relevant period does not run, however, if the Secretary of State or the Assembly has before him or it at the same time both (a) a copy of the purchase notice sent to him or to it under s 139(4) (see PARA 970 ante); and (b) a notice of appeal under s 78 (as amended) (see PARA 598 ante), s 174 (as amended) (see PARA 603 ante) or s 195 (as amended) (see PARA 613 ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 post) or s 39 (as amended) (see PARAS 1191, 1193 post) (appeals against refusal of listed buildings consent etc and appeals against listed building enforcement notices) or under the Planning (Hazardous Substances) Act 1990 s 21 (as amended) (see PARAS 1287, 1289 post) (appeals against decisions and failure to take decisions relating to hazardous substances) relating to any of the land to which the purchase notice relates: Town and Country Planning Act 1990 s 143(4).

13 Ie any such action as is mentioned in *ibid* s 141(2) or (3): see PARA 972 ante.

14 le as mentioned in *ibid* s 143(1): see the text and notes 1-11 *supra*.

15 *Ibid* s 143(2).

16 For these purposes, the reference to a decision to confirm, or not to confirm, the purchase notice includes (1) any decision not to confirm the notice in respect of any part of the land to which it relates; and (2) any decision to grant any permission, or give any direction, instead of confirming the notice, either wholly or in part: *ibid* s 143(6).

17 le under *ibid* Pt XII (ss 284-292) (as amended): see PARAS 43 *et seq*, 648 *ante*.

18 *Ibid* s 143(5). For the purposes of determining whether a further purchase notice under s 143(5) was served within the period prescribed for the service of a purchase notice (see PARA 966 note 12 *ante*), the planning decision in consequence of which the notice was served is to be treated as having been made on the date on which the decision of the Secretary of State or the Assembly was quashed: s 143(7). For the meaning of 'planning decision' see PARA 916 note 6 *ante*.

UPDATE

974 Effect of Secretary of State's or Assembly's action in relation to purchase notice

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 15--See *White v Herefordshire Council* [2007] EWCA Civ 1204, [2008] 2 All ER 852.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/ (iv) Special Provisions relating to Agricultural Units/975. Counter-notice requiring purchase of remainder of agricultural unit.

(iv) Special Provisions relating to Agricultural Units

975. Counter-notice requiring purchase of remainder of agricultural unit.

Where:

3746 (1) an acquiring authority¹ is deemed² to have served notice to treat in respect of any agricultural land³ on a person ('the claimant') who has a greater interest in the land than as tenant for a year or from year to year, whether or not he is in occupation of the land; and

3747 (2) the claimant has such an interest in other agricultural land ('the unaffected area') comprised in the same agricultural unit⁴ as that to which the notice relates,

the claimant may serve on the acquiring authority a counter-notice:

3748 (a) claiming that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land⁵, as a separate agricultural unit; and

3749 (b) requiring the acquiring authority to purchase his interest in the whole of the unaffected area⁶.

Where a counter-notice is so served the claimant must also serve a copy of it on any other person who has an interest in the unaffected area; but failure to comply with this requirement does not invalidate the counter-notice⁷. A counter-notice and any copy of that notice so required to be served must be served within the period of two months beginning with the date on which the notice to treat is deemed to have been served⁸.

1 For these purposes, 'acquiring authority' has the same meaning as in the Land Compensation Act 1961 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 622): Town and Country Planning Act 1990 s 147(2). Section 145 (see the text and notes 2-8 infra) applies in relation to the acquisition of interests in land by government departments which possess compulsory purchase powers as it applies in relation to the acquisition of interests in land by authorities which are not government departments: s 147(1). 'Government departments which possess compulsory purchase powers' means government departments being authorities possessing compulsory purchase powers within the meaning of the Land Compensation Act 1961 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 763): Town and Country Planning Act 1990 s 147(2). For the meaning of 'government department' generally see PARA 3 note 5 ante.

2 le under ibid Pt VI Ch I (ss 137-148) (as amended): see PARA 966 et seq ante.

3 For these purposes, 'agricultural' and 'agricultural land' have the meaning given in the Agriculture Act 1947 s 109 (as amended); and references to the farming of land include references to the carrying on in relation to the land of any agricultural activities: Town and Country Planning Act 1990 s 147(2).

4 For these purposes, 'agricultural unit' has the meaning given in ibid s 171(1) (see PARA 987 note 9 post): s 147(2).

5 For these purposes, 'other relevant land' means land which is comprised (1) in the same agricultural unit as the land to which the notice to treat relates and in which the claimant does not have such an interest as is mentioned in ibid s 145(1) (see head (1) in the text); and (2) in any other agricultural unit occupied by the claimant on the date on which the notice to treat is deemed to have been served and in respect of which he is then entitled to a greater interest than as tenant for a year or from year to year: s 145(3). Where, however, a notice to treat has been served or is deemed under Pt VI Ch I (ss 137-148) (as amended) or under the Compulsory Purchase (Vesting Declarations) Act 1981 Pt III (ss 7-9) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 689, 693-694) to have been served in respect of any of the unaffected area or in respect of other relevant land as defined in the Town and Country Planning Act 1990 s 145(3), then, unless and until the notice to treat is withdrawn, s 145 and s 146 (see PARA 976 post) have effect as if that land did not form part of the unaffected land or, as the case may be, did not constitute other relevant land: s 145(4). For the meaning of 'land' see PARA 2 note 10 ante. As to service of notice to treat see PARA 933 note 5 ante.

6 Ibid s 145(1), (2).

7 Ibid s 145(5).

8 Ibid s 145(6). Section 145 is without prejudice to the rights conferred by the Lands Clauses Consolidation Act 1845 ss 93, 94 or the Compulsory Purchase Act 1965 s 8(2), (3) (provisions as to divided land: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 630): Town and Country Planning Act 1990 s 145(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/ (iv) Special Provisions relating to Agricultural Units/976. Effect of counter-notice.

976. Effect of counter-notice.

If the acquiring authority¹ does not within the period of two months beginning with the date of service of a counter-notice² agree in writing to accept the counter-notice as valid, the claimant

or the authority may, within two months after the end of that period, refer it to the Lands Tribunal³. On such a reference the tribunal must determine whether the claim in the counter-notice is justified and declare the counter-notice valid or invalid accordingly⁴.

Where a counter-notice is accepted as valid⁵ or declared to be valid⁶, the acquiring authority is deemed:

3750 (1) to be authorised to acquire compulsorily the interest of the claimant in the land⁷ to which the requirement in the counter-notice relates under the same statutory provision⁸ as it is authorised to acquire the other land in the agricultural unit⁹ in question; and

3751 (2) to have served a notice to treat in respect of it on the date on which notice to treat is deemed to have been served under that provision¹⁰.

A claimant may withdraw a counter-notice at any time before the compensation payable in respect of a compulsory acquisition in pursuance of the counter-notice has been determined by the Lands Tribunal or at any time before the end of six weeks beginning with the date on which it is determined¹¹; and, where a counter-notice is so withdrawn, any notice to treat deemed to have been served in consequence of it is deemed to have been withdrawn¹².

Where, by virtue of these provisions, the acquiring authority becomes or will become entitled to a lease¹³ of any land but not to the interest of the lessor:

3752 (a) the authority must offer to surrender the lease¹⁴ to the lessor on such terms as the authority considers reasonable;

3753 (b) the question of what is reasonable may be referred to the Lands Tribunal by the authority or the lessor and, if at the expiration of the period of three months after the date of the offer mentioned in head (a) above the authority and the lessor have not agreed on that question and that question has not been referred to the tribunal by the lessor, it must be so referred by the authority;

3754 (c) if that question is referred to the tribunal, the lessor is deemed to have accepted the surrender of the lease at the expiry of one month after the date of the determination of the tribunal or on such other date as the tribunal may direct and to have agreed with the authority on the terms of surrender which the tribunal has held to be reasonable¹⁵.

Where the lessor refuses to accept any sum payable to him by virtue of the above provisions¹⁶, or refuses or fails to make out his title to the satisfaction of the acquiring authority, the authority may pay into court any such sum payable to the lessor¹⁷.

1 For the meaning of 'acquiring authority' for these purposes see PARA 975 note 1 ante. The Town and Country Planning Act 1990 s 146 (see the text and notes 2-17 infra) applies in relation to the acquisition of interests in land by government departments which possess compulsory purchase powers as it applies in relation to the acquisition of interests in land by authorities which are not government departments: s 147(1). For the meaning of 'government departments which possess compulsory purchase powers' see PARA 975 note 1 ante.

2 *Ie* under *ibid* s 145: see PARA 975 ante.

3 *Ibid* s 146(1).

4 *Ibid* s 146(2).

5 *Ie* under *ibid* s 146(1): see the text and notes 1-3 supra.

6 *Ie* under *ibid* s 146(2): see the text and note 4 supra.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 Ie the same provision of the Town and Country Planning Act 1990 Pt VI Ch I (ss 137-148) (as amended): see PARA 966 et seq ante.

9 For the meaning of 'agricultural unit' see PARA 975 note 4 ante.

10 Ibid s 146(3). As to service of notice to treat see PARA 933 note 5 ante.

11 Ibid s 146(4). The compensation payable in respect of the acquisition of an interest in land in pursuance of a notice to treat deemed to have been served by virtue of s 146 must be assessed on the assumptions mentioned in the Land Compensation Act 1973 s 5(2)-(4) (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 896): Town and Country Planning Act 1990 s 146(7).

12 Ibid s 146(5). Without prejudice to s 146(5), a notice to treat deemed to have been served by virtue of s 146 may not be withdrawn under the Land Compensation Act 1961 s 31 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 636): Town and Country Planning Act 1990 s 146(6).

13 Where an acquiring authority which becomes entitled to the lease of any land as mentioned in ibid s 146(8) (see the text and note 15 infra) is a body incorporated by or under any enactment, the corporate powers of the authority include, if they would not otherwise do so, the power to farm land: s 146(11). For the meaning of 'lease' see PARA 38 note 6 ante; and for the meaning of 'enactment' see PARA 2 note 11 ante.

14 Any terms as to surrender contained in the lease must be disregarded for these purposes: ibid s 146(9).

15 Ibid s 146(8).

16 Ie by virtue of ibid s 146(8): see the text and note 15 supra.

17 Ibid s 146(10). The Compulsory Purchase Act 1965 s 9(2), (5) (deposit of compensation in cases of refusal to convey etc: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 661, 664) applies to that sum with the necessary modifications: Town and Country Planning Act 1990 s 146(10).

UPDATE

976 Effect of counter-notice

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 146(1), (4), (8) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(1) INTERESTS AFFECTED BY PLANNING DECISIONS OR ORDERS/ (v) Compensation/977. Compensation where purchase notice served.

(v) Compensation

977. Compensation where purchase notice served.

Where compensation is payable¹ in respect of expenditure incurred in carrying out any works on land², any compensation payable in respect of the acquisition of an interest in the land in pursuance of a purchase notice³ must be reduced by an amount equal to the value of those works⁴.

Where:

3755 (1) the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ directs⁷ that, if an application for it is made, planning permission⁸ must be granted for the development⁹ of any land; and

3756 (2) on a claim made to the local planning authority¹⁰ within the prescribed time¹¹ and in the prescribed manner¹², it is shown that the permitted development value¹³ of the interest in that land in respect of which the purchase notice was served is less than its Schedule 3 value¹⁴,

that authority must pay the person entitled to that interest compensation of an amount equal to the difference¹⁵.

1 le by virtue of the Town and Country Planning Act 1990 s 107 (as amended): see PARA 914 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'purchase notice' see PARA 966 ante.

4 Town and Country Planning Act 1990 s 144(1).

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 ss 141, 144, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 le under the Town and Country Planning Act 1990 s 141(3): see PARA 972 ante.

8 For the meaning of 'planning permission' see PARA 2 note 10 ante.

9 For the meaning of 'development' see PARA 217 ante.

10 As to local planning authorities see PARA 28 et seq ante.

11 As to the time so prescribed see PARA 581 note 13 ante. For the meaning of 'prescribed' see PARA 16 note 5 ante.

12 As to the manner so prescribed see PARA 581 note 14 ante.

13 For these purposes, 'permitted development value', in relation to an interest in land in respect of which a direction is given under the Town and Country Planning Act 1990 s 141(3) (see PARA 972 ante), means the value of that interest calculated with regard to that direction, but on the assumption that no planning permission would be granted otherwise than in accordance with that direction: s 144(6).

14 For these purposes, 'Schedule 3 value', in relation to such an interest as is mentioned in note 11 supra, means the value of that interest calculated on the assumption that planning permission would be granted (1) subject to the condition in *ibid* s 111(5) (as substituted), Sch 10 (see PARA 921 ante), for any development of a class specified in s 107(4) (as amended), Sch 3 para 1 (see PARA 920 ante); and (2) for any development of a class specified in Sch 3 para 2 (see PARA 920 ante): s 144(6) (s 144(2), (6) amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 paras 8, 19).

15 Town and Country Planning Act 1990 s 144(2) (as amended: see note 12 supra). If the planning permission mentioned in s 144(2)(a) (see head (1) in the text) would be granted subject to conditions for regulating the design or external appearance, or the size or height of buildings, or for regulating the number of buildings to be erected on the land, the Secretary of State or the Assembly may direct that in assessing any compensation payable under s 144(2) (as so amended) those conditions must be disregarded, either altogether or to such extent as may be specified in the direction: s 144(3). The Secretary of State or the Assembly may, however, only give such a direction if it appears to him or to it to be reasonable to do so having regard to the local circumstances: s 144(4).

Section 117 (as amended) (see PARA 930 ante) and s 118 (see PARA 931 ante) have effect in relation to compensation under s 144(2) (as so amended) as they have effect in relation to compensation to which s 117 (as amended) and s 118 apply: s 144(5).

Compensation payable under s 144(2) (as so amended) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the direction under the Town and Country Planning Act 1990 s 141(3) (see PARA 972 ante) until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

Where a purchase notice in respect of an interest in land is served in consequence of an order under the Town and Country Planning Act 1990 s 102 (as amended) (see PARAS 546-547 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 ante), then, if (1) that interest is acquired in accordance with Pt VI Ch I (ss 137-148) (as amended): see PARA 966 et seq ante; or (2) compensation is payable under s 144(2) (as so amended), no compensation is payable in respect of that order under s 115 (see PARA 923 ante): s 144(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/978. Land identified for the purposes of relevant public functions by a development plan document or a local development plan.

(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT

(i) Blighted Land

978. Land identified for the purposes of relevant public functions by a development plan document or a local development plan.

In relation to England, land¹ which is identified for the purposes of relevant public functions² by a development plan document³ for the area in which the land is situated is blighted land⁴.

Land in Wales which is identified for the purposes of relevant public functions⁵ by a local development plan⁶ for the area in which the land is situated is blighted land⁷.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For these purposes, 'relevant public functions' are (1) the functions of a government department, local authority, National Park authority or statutory undertakers; (2) the establishment or running by a public telecommunications operator of a telecommunication system: Town and Country Planning Act 1990 s 149(1), Sch 13 para 1A note (1) (Sch 13 para 1A added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 18(1), (3)).

3 For these purposes, a development plan document is (1) a development plan document which is adopted or approved for the purposes of the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (see PARA 89 et seq ante); (2) a revision of such a document in pursuance of s 26 (see PARA 123 ante) which is adopted or approved for the purposes of Pt 2; (3) a development plan document which has been submitted to the Secretary of State for independent examination under s 20(1) (see PARA 108 ante); (4) a revision of a development plan document in pursuance of s 26 if the document has been submitted to the Secretary of State for independent examination under s 20(1); but heads (3)-(4) supra do not apply if the document is withdrawn under s 22 (see PARA 119 ante) at any time after it has been submitted for independent examination: Town and Country Planning Act 1990 Sch 13 para 1A notes (2)-(3) (as added: see note 2 supra). In heads (3)-(4) supra, the submission of a development plan document to the Secretary of State for independent examination is to be taken to include the holding of an independent examination by the Secretary of State under the Planning and Compulsory Purchase Act 2004 s 21 (see PARA 116 ante) or s 27 (see PARA 118 ante): Town and Country Planning Act 1990 Sch 13 para 1A note (4) (as so added).

4 Ibid Sch 13 para 1A (as added: see note 2 supra).

5 For these purposes, relevant public functions are (1) the functions of the National Assembly for Wales, a government department, local authority, National Park authority or statutory undertakers; (2) the establishment or running by a public telecommunications operator of a telecommunications system: ibid Sch 13 para 1B note

(1) (Sch 13 para 1B added by the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 3(1)-(3)).

6 For these purposes, a local development plan is (1) a local development plan which is adopted or approved for the purposes of the Planning and Compulsory Act 2004 Pt 6 (ss 60-78) (see PARAS 87-89, 133 et seq ante); (2) a revision of a local development plan in pursuance of s 70 (see PARA 145 ante) which is adopted or approved for the purposes of Pt 6; (3) a local development plan which has been submitted to the National Assembly for Wales for independent examination under s 64(1) (see PARA 138 ante); (4) a revision of a local development plan in pursuance of s 70 if the plan has been submitted to the Assembly for independent examination under s 64(1): Town and Country Planning Act 1990 Sch 13 para 1B note (2) (as added: see note 5 supra). However, heads (3)-(4) supra do not apply if the plan is withdrawn under the Planning and Compulsory Act 2004 s 66 (see PARA 143 ante) at any time after it has been submitted for independent examination; and in those heads the submission of a local development plan to the Assembly for independent examination is to be taken to include the holding of an independent examination by the Assembly under s 65 (see PARA 140 ante) or s 71 (see PARA 142 ante): Town and Country Planning Act 1990 Sch 13 para 1B notes (3), (4) (as added: see note 5 supra). As to the Assembly see PARA 20 ante.

7 Ibid Sch 13 para 1B (as added: see note 5 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/979. Land allocated for public authority functions in a structure plan, local plan or unitary development plan.

979. Land allocated for public authority functions in a structure plan, local plan or unitary development plan.

During any time when a structure plan¹, local plan² or unitary development plan³ continues⁴ to form part of the development plan⁵, then land⁶ indicated or allocated in such a plan⁷ for the specified purposes⁸ is treated as blighted land⁹.

1 As to structure plans in England see PARA 176 et seq ante.

2 As to local plans in England see PARAS 176-182, 195 et seq ante.

3 As to unitary development plans in England and Wales see PARA 155 et seq ante.

4 Ie by virtue of: (1) the Planning and Compulsory Purchase Act 2004 s 119(1), Sch 8 para 1 (see PARAS 126-127 ante); or (2) Sch 8 para 1 as applied by any other provision of Sch 8: Sch 8 para 16(1)(a), (b).

5 For the meaning of 'development plan' see PARA 91 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante (definition applied by the Planning and Compulsory Purchase Act 2004 s 117(1), (5)).

7 Ie a plan mentioned in the Town and Country Planning Act 1990 Sch 13 paras 1-4 (repealed subject to transitional provisions). References to a plan mentioned in any of Sch 13 paras 1-4 (repealed) include any proposal for the alteration or replacement of the plan: Planning and Compulsory Purchase Act 2004 Sch 8 para 16(2).

8 Ie the purposes set out in the Town and Country Planning Act 1990 Sch 13 paras 1-4 (as amended; repealed by the Planning and Compulsory Purchase Act 2004 ss 118(1), 120, Sch 6 paras 1, 18(1), Sch 9). The repeal of the Town and Country Planning Act 1990 Sch 13 paras 1-4 does not, however, affect anything which is required or permitted to be done for the purposes of Pt VI Ch 2 (ss 149-171) (as amended) during any time when a plan mentioned in any of those repealed provisions continues to form part of the development plan by virtue of the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 5(2) (see PARA 148 ante): art 7(1). For those purposes, references to a plan mentioned in any of those repealed provisions include any proposal for the alteration or replacement of the plan; and the development plan is the development plan for the purposes of the Town and Country Planning Act 1990 s 27A (as added; repealed with savings) (see PARA 150 ante) or s 54

(as amended; repealed with savings) (see PARA 151 ante): Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 7(2), (3). For the purposes of the transitional arrangements set out in art 7, the following provisions continue to have effect on or after 15 October 2005 as if they had not been amended or repealed by the Planning and Compulsory Purchase Act 2004, ie (1) the Town and Country Planning Act 1990 Pt II (ss 10-54A) (as otherwise amended) (see PARA 149 et seq ante); (2) s 284 (as otherwise amended) (see PARA 43 ante); (3) s 287 (as otherwise amended) (see PARA 46 ante); (4) s 296(1)(a) (see PARA 11 ante); and (5) s 303A (as added) (see PARA 658 ante): Planning and Compulsory Purchase Act 2004 (Commencement No 6, Transitional Provisions and Savings) Order 2005, SI 2005/2847, art 3(3), Schedule.

The indicated or allocated land and the purposes specified in the repealed provisions are as follows:

- 333 (1) land indicated in a structure plan in force for the district in which it is situated either:
60. (a) as land which may be required for the purposes (i) of the functions of a government department, local authority, National Park authority or statutory undertakers, or (ii) of the provision by an electronic communications code operator of an electronic communications code network or the provision by a former PTO of a public electronic communications network or a public electronic communications service; or
60
61. (b) as land which may be included in an action area;
61
- 334 but excluding for these purposes land situated in a district for which a local plan is in operation, where that plan allocates any land in the district for the purposes of such functions as are mentioned in heads (a)-(b) supra or defines any land in the district as the site of proposed development for the purposes of any such functions;
- 335 (2) land which is allocated for the purposes of any such functions as are mentioned in head (1) (a)(i) or (ii) supra by a local plan in operation for the district, or is land defined in such a plan as the site of proposed development for the purposes of any such functions;
- 336 (3) land indicated in a unitary development plan in force where the land is situated as land which may be required for the purpose of any such functions as are mentioned in head (1)(a)(i) or (ii) supra or as land which may be included in an action area;
- 337 (4) land which by a unitary development plan is allocated for the purposes, or defined as the site, of proposed development for any such functions as are mentioned in head (1)(a)(i) or (ii) supra.

For the purposes of head (1) supra, the reference to a structure plan in force includes a reference to proposals for the alteration or replacement of a structure plan which have been made available for inspection under the Town and Country Planning Act 1990 s 33(2) (as amended; repealed with savings) (see PARA 187 ante) and to any proposed modifications to those proposals which have been published in accordance with regulations under s 53 (as amended; repealed with savings) (see PARA 177 ante) (Sch 13 para 1 note (1) (as amended; now repealed)); but this ceases to apply when the copies of the proposals made available for inspection have been withdrawn under s 34 (as substituted; repealed with savings) (see PARA 189 ante) and also ceases to apply when the relevant proposals become operative (whether in their original form or with modifications) or the Secretary of State decides to reject the proposals and notice of the decision has been given by advertisement; and in Sch 13 para 1 note (1) (as amended and repealed), references to anything done under any provision include references to anything done under that provision as it applies by virtue of s 51 (as amended; repealed with savings) (see PARA 179 ante) (Sch 13 para 1 notes (2)-(4) (as amended; now repealed)). For the purposes of the exclusion set out in head (1) supra, the reference to a local plan in operation includes a reference to a minerals local plan, a waste local plan, which in either case is in operation, and to a local plan continued in operation by virtue of the Planning and Compensation Act 1991 Sch 4 para 44: Town and Country Planning Act 1990 Sch 13 para 1 note (5A) (as added: now repealed). Head (1) supra does not apply to land within Sch 13 paras 5, 6 (as amended) (see PARA 980 post) and in its application to Greater London the reference to a structure plan is to be construed as a reference to the Greater London Development Plan and Sch 13 para 1 notes (1)-(4) (as amended and repealed) are to be omitted: Sch 13 para 1 notes (6)-(7) (as amended; now repealed).

For the purposes of head (2) supra, the reference to a local plan in operation includes a reference to a minerals local plan, a waste local plan, which in either case is in operation, and to a local plan continued in operation by virtue of the Planning and Compensation Act 1991 Sch 4 para 44 and also includes proposals for the making or alteration and replacement of any such plan where copies of the proposals have been made available for inspection under the Town and Country Planning Act 1990 s 40(2) as substituted; repealed with savings) (see PARA 201 ante) or by virtue of the Planning and Compensation Act 1991 Sch 4 para 43, and any proposed modifications to those proposals which have been published in accordance with regulations under the Town and Country Planning Act 1990 s 53 (as amended; repealed with savings) (see PARA 177 ante) (Sch 13 para 2 note (1) (as substituted; now repealed)); but this ceases to apply when the relevant plan or proposals become

operative (whether in their original form or with modifications), or the Secretary of State decides to reject, or the local planning authority decides to abandon, the plan or proposals and notice of the decision has been given by advertisement (Sch 13 para 2 note (3) (as amended; now repealed)). In Sch 13 para 2 note (1) (as substituted and repealed), references to anything done under any provision include references to anything done under that provision as it applies by virtue of s 51 (as amended; repealed with savings) (see PARA 179 ante); Sch 13 para 2 note (4) (now repealed).

For the purposes of heads (3)-(4) supra, the reference to a unitary development plan includes references to (A) a unitary development plan of which copies have been made available for inspection under s 13(2) (as substituted; repealed with savings) (see PARA 163 ante); (B) proposals for the alteration or replacement of a unitary development plan of which copies have been made available for inspection under that provision as applied by s 21(2) (as amended; repealed with savings) (see PARA 175 ante); (C) modifications proposed to be made by the local planning authority or the Secretary of State (or, in relation to Wales) by the National Assembly for Wales) to any such plan or proposals as are mentioned in head (A) or head (B) supra, being modifications of which notice has been given in accordance with regulations under Pt II Ch I (repealed with savings); but this ceases to apply when the copies of the plan or proposals made available for inspection have been withdrawn under s 14(2) (as amended; repealed with savings) (see PARA 166 ante) (except that s 14(4) (as amended; repealed with savings) does not invalidate any blight notice served by virtue of heads (A)-(C) supra before the withdrawal of copies of the plan or proposals; and heads (A)-(C) supra also cease to apply when the relevant plan or proposals become operative (whether in their original form or with modifications), or the Secretary of State or the Assembly decides to reject, or the local planning authority decide to withdraw, the plan or proposals and notice of the decision has been given by advertisement: Sch 13 para 3 notes (1)-(3), PARA 4 notes (1)-(3) (as amended; now repealed). In heads (A)-(C) supra references to anything done under any provision include references to anything done under that provision as it applies by virtue of s 25(2) (repealed with savings) (see PARA 174 ante); Sch 13 para 3 note (4), PARA 4 note (4) (now repealed).

9 See the Planning and Compulsory Purchase Act 2004 Sch 8 para 16(1); and PARA 127 ante. See also note 8 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/980. Land otherwise allocated for relevant public functions.

980. Land otherwise allocated for relevant public functions.

The following land¹ is blighted land:

- 3757 (1) land indicated in a plan, other than a development plan², approved by a resolution passed by a local planning authority³ for the purpose of the exercise of the authority's powers of planning control⁴ as land which may be required for the purposes of relevant public functions⁵;
- 3758 (2) land in respect of which a local planning authority has:
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28. (a) resolved to take action to safeguard it for development⁶ for the purposes of relevant public functions⁷; or
29. (b) been directed by the Secretary of State⁸ or, in relation to Wales, by the National Assembly for Wales⁹ to restrict the grant of planning permission¹⁰ in order to safeguard it for such development¹¹.
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1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'development plan' see PARA 91 ante.

3 As to local planning authorities see PARA 28 et seq ante.

- 4 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.
- 5 Ibid s 149(1), Sch 13 para 5 (amended by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 18(1), (4)). 'Relevant public functions' are relevant public functions within the meaning of the Town and Country Planning Act 1990 Sch 13 para 1A or Sch 13 para 1B (each as added) (see PARA 978 ante): Sch 13 para 5 (as so amended; further amended by the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 3(1)-(2), (4)).
- 6 For the meaning of 'development' see PARA 217 ante.
- 7 le within the meaning of the Town and Country Planning Act 1990 Sch 13 para 1A or Sch 13 para 1B (each as added): see PARA 978 ante.
- 8 As to the Secretary of State see PARA 19 ante.
- 9 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 13 para 6 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 10 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 11 Town and Country Planning Act 1990 Sch 13 para 6 (amended by the Planning and Compulsory Purchase Act 2004 Sch 6 paras 1, 18(1), (5); the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 3(1)-(2), (5)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/981. New towns and urban development areas.

981. New towns and urban development areas.

The following land¹ is blighted land:

- 3759 (1) land within an area described as the site of a proposed new town in the draft of an order in respect of which a notice has been published² under the relevant statutory provision³; or
- 3760 (2) land within an area designated as the site of a proposed new town by an order⁴ which has come into operation⁵; or
- 3761 (3) land which is:
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30. (a) within an area intended to be designated as an urban development area⁶ by an order which has been made⁷ but has not come into effect; or
31. (b) within an area which has been so designated by such an order which has come into effect⁸.
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1 For the meaning of 'land' see PARA 2 note 10 ante.

2 le under the New Towns Act 1981 s 1 (as amended), Sch 1 para 2 (as amended): see PARA 1316 post.

3 Town and Country Planning Act 1990 s 149(1), Sch 13 para 7. Land ceases to be within Sch 13 para 7 where the order comes into operation, whether in the form of the draft or with modifications, or where the Secretary of State or, in relation to Wales, the National Assembly for Wales decides not to make the order: Sch 13 para 7 note (a), (b). As to the Secretary of State see PARA 20 ante; as to the transfer of functions under the Town and Country Planning Act 1990 Sch 13 para 7, so far as exercisable in relation to Wales, to the Assembly

see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 le under the New Towns Act 1981 s 1 (as amended): see PARA 1315 post.

5 Town and Country Planning Act 1990 Sch 13 para 8.

6 For these purposes, 'urban development area' has the same meaning as in the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended) (see PARA 1426 post): Town and Country Planning Act 1990 s 336(1).

7 le under the Local Government, Planning and Land Act 1980 s 134 (as amended): see PARA 1426 post.

8 Town and Country Planning Act 1990 Sch 13 para 9. As to the Secretary of State's or the Assembly's power to acquire such blighted land see PARAS 1355, 1460 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/982. Clearance and renewal areas.

982. Clearance and renewal areas.

The following land¹ is blighted land:

- 3762 (1) land within an area declared² to be a clearance area³; or
- 3763 (2) land which is surrounded by or adjoining an area declared to be a clearance area and which is land which a local authority⁴ has determined⁵ to purchase⁶; or
- 3764 (3) land indicated by information published in pursuance of the relevant statutory provision⁷ as land which a local authority proposes to acquire in exercise of its statutory powers⁸ relating to renewal areas⁹.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 le by a resolution under the Housing Act 1985 s 289 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 426.

3 Town and Country Planning Act 1990 s 149(1), Sch 13 para 10.

4 For the meaning of 'local authority' see PARA 3 note 3 ante.

5 le under the Housing Act 1985 s 290: see HOUSING vol 22 (2006 Reissue) PARA 427.

6 Town and Country Planning Act 1990 Sch 13 para 11.

7 le in pursuance of the Local Government and Housing Act 1989 s 92 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 591.

8 le under ibid Pt VII (ss 89-100) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 588 et seq.

9 Town and Country Planning Act 1990 Sch 13 para 12.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/983. Highways.

983. Highways.

The following land¹ is blighted land:

- 3765 (1) land indicated (otherwise than by being dealt with as previously described)² in a development plan³ as land on which a highway⁴ is proposed to be constructed, or to be included in a highway as proposed to be improved or altered⁵;
- 3766 (2) land on or adjacent to the line of a highway proposed to be constructed, improved or altered as indicated in an order or scheme which has come into operation⁶, being land in relation to which a power of compulsory acquisition⁷ may become exercisable, as being land required for purposes of construction, improvement or alteration as indicated in the order or scheme⁸;
- 3767 (3) land shown on plans approved by a resolution of a local highway authority⁹ as land comprised in the site of a highway as proposed to be constructed, improved or altered by that authority¹⁰;
- 3768 (4) land comprised in the site of a highway as proposed to be constructed, improved or altered by the Secretary of State¹¹ or, in relation to Wales, by the National Assembly for Wales¹² if he or the Assembly has given written notice of the proposal, together with maps or plans sufficient to identify the land in question, to the local planning authority¹³;
- 3769 (5) land shown on plans approved by a resolution of a local highway authority as land proposed to be acquired by that authority for certain¹⁴ statutory purposes¹⁵;
- 3770 (6) land shown in a written notice given by the Secretary of State or the Assembly to the local planning authority as land proposed to be acquired¹⁶ by him or by it in connection with a highway which he or it proposes to provide¹⁷.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 le otherwise than by being dealt with in a manner mentioned in the Town and Country Planning Act 1990 s 149(1), Sch 13 para 1A or Sch 13 para 1B (each as added): see PARA 978 ante. For transitional provisions see PARA 979 ante.

3 For the meaning of 'development plan' see PARA 91 ante.

4 For the meaning of 'highway' see PARA 50 note 5 ante.

5 Town and Country Planning Act 1990 Sch 13 para 13 (amended by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 1, 18(1), (6); the Planning and Compulsory Purchase Act 2004 (Commencement No 4 and Consequential, Transitional and Savings Provisions) (Wales) Order 2005, SI 2005/2722, art 3(1)-(2), (6)).

6 le under the Highways Act 1980 Pt II (ss 10-23) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 710, 745) or under the corresponding provisions of the Highways Act 1959 Pt II (ss 7-25) or the Highways Act 1971 s 1 (both repealed). For these purposes, the reference to an order or scheme which has come into operation includes a reference to an order or scheme which has been submitted for confirmation to, or been prepared in draft by, the Secretary of State for Transport or the National Assembly for Wales under the Highways Act 1980 Pt II (ss 10-23) (as amended) and in respect of which a notice has been published under Sch 1 paras 1, 2 or 10 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 728): Town and Country Planning Act 1990 Sch 13 para 14 note (1). Schedule 13 para 14 note (1) ceases to apply when (1) the relevant order or scheme comes into operation, whether in its original form or with modifications; or (2) the Secretary of State or the Assembly decides not to confirm or make the order or scheme: Sch 13 para 14 note (2). As to the transfer of highways functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 le conferred by any of the provisions of the Highways Act 1980 Pt XII (ss 238-271) (as amended): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 77 et seq), including a power compulsorily to acquire any right by virtue of s 250 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 85).

8 Town and Country Planning Act 1990 Sch 13 para 14. For these purposes, the reference to land required for purposes of construction, improvement or alteration as indicated in an order or scheme includes a reference to land required for the purposes of the Highways Act 1980 s 246(1) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 82); Town and Country Planning Act 1990 Sch 13 para 14 note (3).

9 For the meaning of 'local highway authority' see PARA 39 note 21 ante.

10 Town and Country Planning Act 1990 Sch 13 para 15.

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Town and Country Planning Act 1990 Sch 13 para 16 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

13 Town and Country Planning Act 1990 Sch 13 para 16 (substituted by the Planning and Compensation Act 1991 s 70, Sch 15 para 14(1)). For these purposes, the reference to the local planning authority is to be construed in relation to land in England in an area for which the local planning authority comprises both a county planning authority and a district planning authority, as a reference to the district planning authority: Town and Country Planning Act 1990 s 1(5) (as amended), Sch 1 para 20(4) (amended by the Environment Act 1995 ss 78, 120, Sch 10 para 32(14)(d), Sch 24). The Town and Country Planning Act 1990 Sch 1 para 20(4) (as so amended) does not, however, apply in Greater London: Sch 1 para 21(1). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; and as to county planning authorities and district planning authorities see PARA 28 ante.

As to land which is blighted land under Sch 13 para 16 (as so substituted and amended) by virtue of steps taken by the Secretary of State in relation to the A2 and M2 improvement works in connection with the Channel Tunnel rail link see the Channel Tunnel Rail Link Act 1996 s 46.

14 le for the purposes of the Highways Act 1980 s 246(1): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 82.

15 Town and Country Planning Act 1990 Sch 13 para 17.

16 See note 14 supra.

17 Town and Country Planning Act 1990 Sch 13 para 18 (amended by the Planning and Compensation Act 1991 Sch 15 para 14(2)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/984. New streets.

984. New streets.

The following land¹ is blighted land:

3771 (1) land which either:

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32. (a) is within the outer lines prescribed by an order prescribing the minimum width of a new street²; or

33. (b) has a frontage to a highway³ declared to be a new street⁴ and lies within the minimum width of the street prescribed by any byelaws or any local Act applicable by virtue of the order; and

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3772 (2) land which is, or is part of, a dwelling erected before, or under construction on, the date on which the order is made, or the curtilage of any such dwelling⁵.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 Ie under the Highways Act 1980 s 188 (repealed with savings) or the Highways Act 1959 s 159 (repealed): see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 140.

3 For the meaning of 'highway' see PARA 50 note 5 ante.

4 Ie by an order under the Public Health Act 1925 s 30 (repealed).

5 Town and Country Planning Act 1990 s 149(1), Sch 13 para 19. Schedule 13 para 19 does not include any land in which the appropriate authority has previously acquired an interest either in pursuance of a blight notice served by virtue of Sch 13 para 19 or by agreement in circumstances such that the authority could have been required to acquire it in pursuance of such a notice: Sch 13 para 19 note. For the meaning of 'blight notice' see PARA 990 note 20 post; and for the meaning of 'the appropriate authority' see PARA 990 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/985. General improvement areas.

985. General improvement areas.

Land¹ indicated by information published in pursuance of the relevant statutory provision² as land which a local authority³ proposes to acquire in the exercise of its powers relating to general improvement areas⁴ is blighted land⁵.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 Ie in pursuance of the Housing Act 1985 s 257 (as amended): see HOUSING vol 22 (2006 Reissue) PARA 616.

3 For the meaning of 'local authority' see PARA 3 note 3 ante.

4 Ie its powers under the Housing Act 1985 Pt VII (ss 239-263) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 612 et seq.

5 Town and Country Planning Act 1990 s 149(1), Sch 13 para 20. As to the phasing out of general improvement areas see the Local Government and Housing Act 1989 s 98; and HOUSING vol 22 (2006 Reissue) PARAS 597, 612.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(i) Blighted Land/986. Land subject to compulsory purchase.

986. Land subject to compulsory purchase.

The following land¹ is blighted land:

- 3773 (1) land authorised by a special enactment² to be compulsorily acquired, or land falling within the limits of deviation within which powers of compulsory acquisition conferred by a special enactment are exercisable³;
- 3774 (2) land in respect of which a compulsory purchase order is in force, or there is in force a compulsory purchase order providing for the acquisition of a right or rights over that land, and the appropriate authority⁴ has power to serve, but has not served, notice to treat in respect of the land or, as the case may be, the right or rights⁵;
- 3775 (3) land:
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34. (a) the compulsory acquisition of which is authorised by an order under the Transport and Works Act 1992⁶; or
35. (b) which falls within the limits of deviation within which powers of compulsory acquisition conferred by such an order are exercisable; or
36. (c) which is the subject of a proposal⁷ that it should be such land⁸.
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1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For these purposes, 'special enactment' means a local enactment, or a provision contained in an Act other than a local or private Act, which is a local enactment or provision authorising the compulsory acquisition of land specifically identified in it; and in this definition 'local enactment' means a local or private Act, or an order confirmed by Parliament or brought into operation in accordance with special parliamentary procedure: Town and Country Planning Act 1990 s 171(1). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante. As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

3 Ibid s 149(1), Sch 13 para 21.

4 For the meaning of 'the appropriate authority' see PARA 990 post.

5 Town and Country Planning Act 1990 Sch 13 para 22. Schedule 13 para 22 also applies to land in respect of which (1) a compulsory purchase order has been submitted for confirmation to, or been prepared in draft by, a minister or by the National Assembly for Wales; and (2) a notice has been published under the Acquisition of Land Act 1981 s 2(3), Sch 1 para 3(1)(a) or under any corresponding enactment applicable to it: Town and Country Planning Act 1990 Sch 13 para 22 note (1). The Town and Country Planning Act 1990 Sch 13 para 22 note (1) ceases, however, to apply when (a) the relevant compulsory purchase order comes into force, whether in its original form or with modifications; or (b) the minister concerned decides not to confirm or make the order (Sch 13 para 22 note (2)). For the meaning of 'minister' see PARA 3 note 5 ante; and for the meaning of 'enactment' see PARA 2 note 11 ante. As to the transfer of functions under Sch 13 para 22, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie under the Transport and Works Act 1992 s 1 or s 3: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 302; WATER AND WATERWAYS vol 101 (2009) PARA 801.

7 Ie a proposal contained in an application made in accordance with rules under ibid s 6 (as amended) or in a draft order prepared under s 7(3): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 307.

8 Town and Country Planning Act 1990 Sch 13 para 23 (added by the Transport and Works Act 1992 s 16(2)).

UPDATE

986 Land subject to compulsory purchase

TEXT AND NOTES--Land is blighted land if (1) the compulsory acquisition of the land is authorised by an order granting development consent; (2) the land falls within the limits of deviation within which powers of compulsory acquisition conferred by an order granting development consent are exercisable; or (3) an application for an order granting development consent seeks authority compulsorily to acquire the land: Town

and Country Planning Act 1990 Sch 13 para 24 (Sch 13 paras 24, 25 added by the Planning Act 2008 s 175(1), (2). Land is blighted land if it is in a location identified in a national policy statement as suitable (or potentially suitable) for a specified description of development: Town and Country Planning Act 1990 Sch 13 para 25.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/ (ii) Qualifying Interests/987. Qualifying interests in blighted land.

(ii) Qualifying Interests

987. Qualifying interests in blighted land.

Land¹ falling within the relevant statutory provisions² as affected by the planning proposals of public authorities is referred to as 'blighted land'³. An interest qualifies⁴ for protection under the provisions relating to blighted land⁵ if it is an interest:

- 3776 (1) in a hereditament⁶ or part of a hereditament and on the relevant date⁷ it satisfies one of the statutory conditions⁸; or
- 3777 (2) in an agricultural unit⁹ or part of an agricultural unit and on the relevant date it is the interest of an owner-occupier¹⁰ of the unit;

and such an interest is referred to as a 'qualifying interest'¹¹.

The statutory conditions are:

- 3778 (a) that the annual value¹² of the hereditament does not exceed such amount as may be prescribed¹³ for these purposes by an order made by the Secretary of State¹⁴ or, in relation to Wales, by the National Assembly for Wales¹⁵ and the interest is the interest of an owner-occupier of the hereditament; or
- 3779 (b) that the interest is the interest of a resident owner-occupier¹⁶ of the hereditament¹⁷.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 Ie within any of the Town and Country Planning Act 1990 s 149(1), Sch 13 (as amended): see PARA 978 et seq ante.

3 Ibid s 149(1).

4 Ie subject to ibid ss 161, 162 (as amended): see PARAS 1003-1004 post.

5 Ie under ibid Pt VI Ch II (ss 149-171) (as amended): see the text and notes 6-17 infra; and PARA 988 et seq post.

6 For these purposes, 'hereditament' means a relevant hereditament within the meaning of the Local Government Finance Act 1988 s 64(4)(a)-(c): Town and Country Planning Act 1990 s 171(1). Land which would otherwise comprise separate hereditaments solely by reason of being divided by a boundary between rating areas is treated for the purposes for this definition of 'hereditament' as if it were not so divided: s 171(4). A right of way is not a hereditament for these purposes: *Ley and Ley v Kent County Council* (1976) 31 P & CR 439, Lands Tribunal.

7 For these purposes, 'the relevant date', in relation to an interest, means the date of service of a notice under the Town and Country Planning Act 1990 s 150 (as amended) (see PARA 992 post) in respect of it: s 149(4).

8 In the conditions mentioned in *ibid* s 149(3): see the text and notes 12-17 *infra*.

9 For these purposes, 'agricultural unit' means land which is occupied as a unit for agricultural purposes, including any dwelling house or other building occupied by the same person for the purpose of farming land; and 'agricultural' has the same meaning as in the Agriculture Act 1947 s 109 (as amended) and references to the farming of land include references to the carrying on in relation to the land of agricultural activities: Town and Country Planning Act 1990 s 171(1).

10 For the meaning of 'owner-occupier' see PARA 988 post.

11 Town and Country Planning Act 1990 s 149(2).

12 For these purposes, 'annual value' means (1) in the case of a hereditament which is shown in a local non-domestic rating list and none of which consists of domestic property or property exempt from local non-domestic rating, the value shown in that list as the rateable value of that hereditament on the date of service; (2) in the case of a hereditament which is shown in a local non-domestic rating list and which includes domestic property or property exempt from local non-domestic rating, the sum of (a) the value shown in that list as the rateable value of that hereditament on the date of service; and (b) the value attributable to the non-rateable part of that hereditament in accordance with *ibid* s 171(2), (3) (see *infra*); (3) in the case of any other hereditament, the value attributable to that hereditament in accordance with s 171(2), (3): s 171(1).

The value attributable to a hereditament, or the non-rateable part of it: (i) in respect of domestic property, is the value certified by the relevant valuation officer as being 5% of the compensation which would be payable in respect of the value of that property if it were purchased compulsorily under statute with vacant possession and the compensation payable were calculated in accordance with the Land Compensation Act 1961 Pt II (ss 5-16 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754 et seq) by reference to the relevant date (Town and Country Planning Act 1990 s 171(2)); and (ii) in respect of property exempt from local non-domestic rating, is the value certified by the relevant valuation officer as being the value which would have been shown as the rateable value of that property on the date of service if it were a relevant non-domestic hereditament consisting entirely of non-domestic property, none of which was exempt from local non-domestic rating (s 171(3)).

For these purposes, 'date of service' has the same meaning as in s 168 (see PARA 988 note 4 post); 'relevant valuation officer' means the valuation officer who would have determined the rateable value in respect of the hereditament for the purposes of the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended) if the hereditament had fulfilled the conditions set out in s 42(1)(b)-(d) (as amended); 'relevant date' is the date by reference to which that determination would have been made; and expressions used in the definition of 'annual value' in the Town and Country Planning Act 1990 s 171(1) or in s 171(2), (3) which are also used in the Local Government Finance Act 1988 Pt III (ss 41-67) (as amended) have the same meanings as therein: Town and Country Planning Act 1990 s 171(5). See further RATING AND COUNCIL TAX.

13 The amount so prescribed is £29,200: Town and Country Planning (Blight Provisions) (England) Order 2005, SI 2005/406, art 2; Town and Country Planning (Blight Provisions) (Wales) Order 2005, SI 2005/367, art 2. For the meaning of 'prescribed' see PARA 16 note 5 *ante*.

14 As to the exercise of this power by the Secretary of State see note 13 *supra*; and as to the Secretary of State see PARA 19 *ante*.

15 As to the exercise of this power by the Assembly see note 13 *supra*; as to the transfer of functions under the Town and Country Planning Act 1990 s 149, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

16 For the meaning of 'resident owner-occupier' see PARA 988 post.

17 Town and Country Planning Act 1990 s 149(3).

UPDATE

987 Qualifying interests in blighted land

NOTE 13--Prescribed amount in relation to England now £34,800: Town and Country Planning (Blight Provisions) (England) Order 2010, SI 2010/498.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/ (ii) Qualifying Interests/988. Meaning of 'owner-occupier' and 'resident owner-occupier'.

988. Meaning of 'owner-occupier' and 'resident owner-occupier'.

For the purposes of the statutory provisions relating to blighted land¹:

3780 (1) 'owner-occupier', in relation to a hereditament², means:
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37. (a) a person who occupies the whole or a substantial part of the hereditament in right of an owner's interest³ in it, and has so occupied the hereditament or that part of it during the whole of the period of six months ending with the date of service⁴; or

38. (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, a person who so occupied the hereditament or, as the case may be, that part of it during the whole of a period of six months ending immediately before the period when it was not occupied⁵;

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3781 (2) 'owner-occupier', in relation to an agricultural unit, means a person who:
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39. (a) occupies the whole of that unit and has occupied it during the whole of the period of six months ending with the date of service; or

40. (b) occupied the whole of that unit during the whole of a period of six months ending not more than 12 months before the date of service,

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3782 and, at all times material for the purposes of head (a) or, as the case may be, head (b) above, has been entitled to an owner's interest in the whole or part of that unit⁶;

3783 (3) 'resident owner-occupier', in relation to a hereditament, means:
281

41. (a) an individual who occupies the whole or a substantial part of the hereditament as a private dwelling house in right of an owner's interest in it, and has so occupied the hereditament or, as the case may be, that part during the whole of the period of six months ending with the date of service; or

42. (b) if the whole or a substantial part of the hereditament was unoccupied for a period of not more than 12 months ending with that date, an individual who so occupied the hereditament or, as the case may be, that part during the whole of a period of six months ending immediately before the period when it was not occupied⁷.

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1 Ie the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 et seq ante, PARA 990 et seq post.

2 For the meaning of 'hereditament' see PARA 987 note 6 ante.

3 For these purposes, 'owner's interest', in relation to a hereditament or agricultural unit, means a freehold interest in it or a tenancy of it granted or extended for a term of years certain not less than three years of which remain unexpired on the date of service: Town and Country Planning Act 1990 s 168(4). For the meaning of

'agricultural unit' see PARA 987 note 9 ante; for the meaning of 'tenancy' see PARA 16 note 9 ante; and for the meaning of 'date of service' see note 4 infra.

4 For these purposes, 'date of service', in relation to a hereditament or agricultural unit, means the date of service of a notice in respect of it under *ibid* s 150 (as amended) (see PARA 992 post): s 168(4).

5 *Ibid* s 168(1). See also PARA 990 note 20 post.

6 *Ibid* s 168(2). See also PARA 990 note 20 post.

7 *Ibid* s 168(3). See also PARA 990 note 20 post.

UPDATE

988 Meaning of 'owner-occupier' and 'resident owner-occupier'

NOTE 4--See *Aardvark SRE Ltd v Sedgefield BC* [2008] EWCA Civ 1109, [2009] RVR 93 (landlord who let property briefly and then left it vacant was not owner-occupier).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/ (ii) Qualifying Interests/989. Crown land.

989. Crown land.

At the date at which this title states the law, the rights conferred by the statutory provisions relating to blighted land¹ are exercisable by a person who is an owner-occupier² of a hereditament³ or agricultural unit⁴ which is Crown land⁵, or is a resident owner-occupier⁶ of a hereditament which is Crown land, in the same way as they are exercisable in respect of a hereditament or agricultural unit which is not Crown land, and those provisions apply accordingly⁷.

As from a day to be appointed⁸, however, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004⁹. As from such a day, and subject to any express provision made by Part XIII¹⁰ of the Town and Country Planning Act 1990, the 1990 Act binds the Crown¹¹.

1 *Ie* the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 979 et seq ante, 990 et seq post.

2 *Ie* within the meaning of *ibid* Pt VI Ch II (ss 149-171) (as amended): see PARA 988 ante.

3 For the meaning of 'hereditament' see PARA 987 note 6 ante.

4 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

5 For the meaning of 'Crown land' for these purposes see PARA 11 note 1 ante.

6 For the meaning of 'resident owner-occupier' see PARA 988 ante.

7 Town and Country Planning Act 1990 s 296(5). As to ecclesiastical property see PARA 17 ante.

8 *Ie* a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

9 See *ibid* ss 84(1), 120, Sch 9; and PARA 13 ante. At the date at which this title states the law, those repeals were not in force.

10 le made by the Town and Country Planning Act 1990 Pt XIII (ss 292A-302) (as amended): see PARA 14 ante.

11 Ibid s 292A(1), (2) (added by the Planning and Compulsory Purchase Act 2004 s 79(1), partly as from a day to be appointed: see note 8 supra). At the date at which this title states the law, s 79(1) was in force for limited purposes only: see PARA 13 note 8 ante.

UPDATE

989 Crown land

TEXT AND NOTES 8, 9--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iii) Appropriate Authorities and Enactments/990. Meaning of 'the appropriate authority'.

(iii) Appropriate Authorities and Enactments

990. Meaning of 'the appropriate authority'.

For the purposes of the statutory provisions relating to blighted land¹, 'the appropriate authority', in relation to any land², means the government department³, local authority⁴, National Park authority⁵ or other body or person by whom, in accordance with the circumstances by virtue of which the land is blighted land⁶, the land is liable to be acquired or is indicated as being proposed to be acquired or, as the case may be, any right over the land is proposed to be acquired⁷.

In relation to land in a new town or urban development area⁸, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation⁹ is established for the urban development area¹⁰, those provisions¹¹ have effect as if 'the appropriate authority' were the Secretary of State¹² or, in relation to Wales, the National Assembly for Wales¹³; and, in relation to land within the width of a new street¹⁴, 'the appropriate authority' is the highway authority for the highway¹⁵ in relation to which the order¹⁶ was made¹⁷.

If any question arises:

3784 (1) whether the appropriate authority in relation to any land for the relevant statutory purposes¹⁸ is the Secretary of State (or the Assembly) or a local highway authority¹⁹; or

3785 (2) which of two or more local highway authorities is the appropriate authority in relation to any land for those purposes; or

3786 (3) which of two or more local authorities is the appropriate authority in relation to any land for those purposes,

that question must be referred to the Secretary of State or the Assembly, whose decision is final²⁰.

1 le the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 et seq ante, PARA 991 et seq post.

- 2 For the meaning of 'land' see PARA 2 note 10 ante.
 - 3 For the meaning of 'government department' see PARA 3 note 5 ante.
 - 4 For the meaning of 'local authority' see PARA 3 note 3 ante.
 - 5 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
 - 6 le the circumstances by virtue of which the land falls within any of the Town and Country Planning Act 1990 s 149(1), Sch 13 (as amended): see PARAS 978-986 ante.
 - 7 Ibid s 169(1) (amended by the Environment Act 1995 s 78, Sch 10 para 32(5)).
 - 8 le land falling within ibid Sch 13 para 7, Sch 13 para 8 or Sch 13 para 9: see PARA 981 ante.
 - 9 As to urban development corporations see PARA 1428 et seq post.
 - 10 For the meaning of 'urban development area' see PARA 981 note 6 ante; and as to the designation of such areas see PARA 1426 post.
 - 11 See note 1 supra.
 - 12 As to the Secretary of State see PARA 19 ante.
 - 13 Town and Country Planning Act 1990 s 169(4). As to the transfer of functions under s 169 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
 - 14 le land falling within the Town and Country Planning Act 1990 Sch 13 para 19: see PARA 984 ante.
 - 15 For the meaning of 'highway' see PARA 50 note 5 ante.
 - 16 le the order mentioned in the Town and Country Planning Act 1990 Sch 13 para 19.
 - 17 Ibid s 169(5).
 - 18 le for the purposes of ibid Pt VI Ch II (ss 149-171) (as amended).
 - 19 For the meaning of 'local highway authority' see PARA 39 note 21 ante.
 - 20 Town and Country Planning Act 1990 s 169(2). The Secretary of State may determine that two or more authorities are the appropriate authority: see *R v Secretary of State for the Environment, Dorset County Council and Saunders, ex p Bournemouth Borough Council* [1987] JPL 357.
- If any question arises which authority is the appropriate authority for the purposes of the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): (1) s 151(2) (see PARA 993 post) has effect as if the reference to the date of service of the blight notice were a reference to that date or, if it is later, the date on which that question was determined; (2) s 162(4)(b) (see PARA 1004 post) applies with the substitution for the period of six months of a reference to that period extended for so long as it takes to obtain a determination of the question; and (3) s 168(1)(b), (2)(b), (3)(b) (see PARA 988 ante) applies with the substitution for the reference to 12 months before the date of service of a reference to that period extended by so long as it takes to obtain a determination of the question: s 169(3).
- For these purposes, 'blight notice' means a notice served under s 150 (as amended) (see PARA 992 post), s 161 (as amended) (see PARA 1003 post) or s 162 (as amended) (see PARA 1004 post): ss 149(5), 171(1).

UPDATE

990 Meaning of 'the appropriate authority'

TEXT AND NOTES--As to the meaning of 'the appropriate authority' in relation to land falling within the 1990 Act Sch 13 para 25 (see PARA 986) see the Town and Country Planning Act 1990 s 169(6)-(8) (added by the Planning Act 2008 s 175(1), (6)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iii) Appropriate Authorities and Enactments/991. Meaning of 'the appropriate enactment'.

991. Meaning of 'the appropriate enactment'.

'The appropriate enactment', in relation to blighted land¹, means the enactment² which provides for the compulsory acquisition³ of land as being land falling within the relevant statutory provision⁴ or, in respect of land in relation to which a compulsory purchase order is in force providing for the acquisition of rights over the land⁵, the enactment under which that compulsory purchase order was made⁶.

If two or more enactments would otherwise be the appropriate enactment in relation to any land for the purposes of the statutory provisions relating to blighted land⁷, the appropriate enactment for those purposes is to be taken to be that one of those enactments under which, in the circumstances in question, it is most likely that the land would otherwise have been acquired by the appropriate authority⁸. If any question arises as to which enactment is the appropriate enactment in relation to any land for those purposes, that question must be referred:

- 3787 (1) where the appropriate authority is a government department⁹, to the minister¹⁰ in charge of that department;
- 3788 (2) where statutory undertakers¹¹ are the appropriate authority, to the appropriate minister¹²; and
- 3789 (3) in any other case, to the Secretary of State¹³ or, in relation to Wales, to the National Assembly for Wales¹⁴,

and the decision of the minister or, as the case may be, the Secretary of State or the Assembly, is final¹⁵.

1 In relation to land falling within any paragraph of the Town and Country Planning Act 1990 s 149(1), Sch 13 (as amended): see PARA 978 et seq ante. For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'enactment' see PARA 2 note 11 ante.

3 For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

4 In the relevant paragraph of the Town and Country Planning Act 1990 Sch 13 (as amended).

5 In as respects ibid Sch 13 para 22(b): see PARA 986 ante.

6 Ibid s 170(1). Where, in accordance with the circumstances by virtue of which any land falls within any of Sch 13 paras 1-23 (as amended), it is indicated that the land is proposed to be acquired for highway purposes, any enactment under which a highway authority is or, subject to the fulfilment of the relevant conditions, could be authorised to acquire that land compulsorily for highway purposes is, for the purposes of s 170(1), to be taken to be an enactment providing for the compulsory acquisition of that land as being land falling within that provision of Sch 13 (as amended): s 170(9). For these purposes, the reference to the fulfilment of the relevant conditions is a reference to such one or more of the following as are applicable to the circumstances in question: (1) the coming into operation of any requisite order or scheme made, or having or effect as if made, under the provisions of the Highways Act 1980 Pt II (ss 10-23) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARAS 710, 745); (2) the coming into operation of any requisite scheme made, or having effect as if made, under s 106(3) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 878); (3) the making or approval of any requisite plans: Town and Country Planning Act 1990 s 170(10). For the meaning of 'highway' see PARA 50 note 5 ante.

In relation to land:

- 338 (a) falling within *ibid* Sch 13 para 2, Sch 13 para 3 or Sch 13 para 4 (all repealed with savings: see PARA 979 ante), an enactment is for the purposes of s 170(1) to be taken to be an enactment which provides for the compulsory acquisition of land as being land falling within that paragraph if (i) the enactment provides for the compulsory acquisition of land for the purposes of the functions which are indicated in the development plan as being the functions for the purposes of which the land is allocated or is proposed to be developed; or (ii) where no particular functions are so indicated in the development plan, the enactment provides for the compulsory acquisition of land for the purposes of any of the functions of the government department, local authority, National Park authority or other body for the purposes of whose functions the land is allocated or is defined as the site of proposed development (s 170(2) (amended by the Environment Act 1995 s 78, Sch 10 para 32(5));
- 339 (b) falling within the Town and Country Planning Act 1990 Sch 13 para 2, Sch 13 para 3 or Sch 13 para 4 (all repealed with savings: see PARA 979 ante), by virtue of Sch 13 para 2 note (1), Sch 13 para 3 note (1) or Sch 13 para 4 note (1) (all repealed with savings), 'the appropriate enactment' is to be determined in accordance with s 170(2) (as amended) (see head (1) supra) as if references in s 170(2) (as amended) to the development plan were references to any such plan, proposal or modifications as are mentioned in PARA (a), (b) or (c) of that note (s 170(3));
- 340 (c) falling within Sch 13 para 5 or Sch 13 para 6 (each as amended) (see PARA 980 ante), 'the appropriate enactment' is to be determined in accordance with s 170(2) (as amended) as if references in s 170(2) (as amended) to the development plan were references to the resolution or direction in question (s 170(4));
- 341 (d) falling within Sch 13 para 7, Sch 13 para 8 or Sch 13 para 9 (see PARA 981 ante), until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation is established for the urban development area, Pt VI Ch II (ss 149-171, Sch 13) (as amended) has effect as if 'the appropriate enactment' were s 165(1) (see PARA 1007 post) (s 170(5));
- 342 (e) falling within Sch 13 para 10 or Sch 13 para 11 (see PARA 982 ante), 'the appropriate enactment' is the Housing Act 1985 s 290 (Town and Country Planning Act 1990 s 170(6));
- 343 (f) falling within Sch 13 para 19 (see PARA 984 ante), 'the appropriate enactment' is the Highways Act 1980 s 239(6) (Town and Country Planning Act 1990 s 170(7));
- 344 (g) falling within Sch 13 para 22 by virtue of Sch 13 para 22 note (1) (see PARA 986 ante), 'the appropriate enactment' is the enactment which would provide for the compulsory acquisition of the land or of the rights over the land if the relevant compulsory purchase order were confirmed or made (s 170(8)).

For the meaning of 'development plan' see PARA 91 ante; for the meaning of 'development' see PARA 217 ante; for the meaning of 'local authority' see PARA 3 note 3 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq. As to urban development corporations see PARA 1428 et seq post; for the meaning of 'urban development area' see PARA 981 note 6 ante; and as to the designation of such areas see PARA 1426 post.

7 *le ibid* Pt VI Ch II (as amended): see PARA 978 et seq ante, PARA 992 et seq post.

8 Town and Country Planning Act 1990 s 170(11). For the meaning of 'the appropriate authority' see PARA 990 ante.

9 For the meaning of 'government department' see PARA 3 note 5 ante.

10 For the meaning of 'minister' see PARA 3 note 5 ante. Functions of Ministers of the Crown other than the Secretary of State for Wales under the Town and Country Planning Act 1990 s 170(12) (see the text and notes 11-15 *infra*) are not transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante.

11 For the meaning of 'statutory undertakers' see PARA 1009 post.

12 For the meaning of 'the appropriate Minister' see PARA 1012 post. See also note 10 *supra*.

13 As to the Secretary of State see PARA 19 ante.

14 See note 10 *supra*.

15 Town and Country Planning Act 1990 s 170(12).

UPDATE

991 Meaning of 'the appropriate enactment'

TEXT AND NOTES--As to the meaning of 'the appropriate enactment' in relation to land falling within the 1990 Act Sch 13 para 24 or 25 (see PARA 986) see the Town and Country Planning Act 1990 s 170(8A)-(8C) (added by the Planning Act 2008 s 175(1), (7)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/992. Notices requiring purchase of blighted land.

(iv) Blight Notices

A. IN GENERAL

992. Notices requiring purchase of blighted land.

Where the whole or part of a hereditament¹ or agricultural unit² is comprised in blighted land³ and a person claims that:

- 3790 (1) he is entitled to a qualifying interest⁴ in that hereditament or unit;
- 3791 (2) he has made reasonable endeavours to sell⁵ that interest or the land is subject to compulsory purchase⁶ and the powers of compulsory acquisition remain exercisable; and
- 3792 (3) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,

he may serve on the appropriate authority⁷ a notice in the prescribed form⁸ requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the relevant⁹ statutory provisions¹⁰.

The right so to serve a blight notice¹¹ applies in relation to an interest in part of a hereditament or unit as it applies in relation to an interest¹² in the whole of a hereditament or unit¹³; but this provision does not enable any person:

- 18
- 43. (a) if he is entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any such notice in respect of his interest in part of a hereditament or unit; or
- 44. (b) if he is entitled to an interest only in part of a hereditament or agricultural unit, to make or serve any such claim or notice in respect of his interest in less than the whole of that part¹⁴.

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- 1 For the meaning of 'hereditament' see PARA 987 note 6 ante.
- 2 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.
- 3 For the meaning of 'blighted land' see PARA 987 ante.
- 4 For the meaning of 'qualifying interest' see PARA 987 ante.
- 5 For the meaning of 'reasonable endeavours to sell' see *Lade and Lade v Brighton Corp* (1970) 22 P & CR 737 (no necessity to use services of estate agent); *Perkins v West Wiltshire District Council* (1975) 31 P & CR 427, Lands Tribunal (property must be put on the market); *Glodwick Mutual Institute and Social Club v Oldham Metropolitan Borough Council* [1979] RVR 197.
- 6 If the land falls within the Town and Country Planning Act 1990 s 149(1), Sch 13 paras 21 or 22, disregarding Sch 13 para 22 notes (1)-(2): see PARA 986 ante. A mere resolution authorising the making of a compulsory purchase order is not sufficient to justify the service of a blight notice: *Jones Son & Vernon v Sandwell Metropolitan Borough Council* (1994) 68 P & CR 563, Lands Tribunal.
- 7 For the meaning of 'the appropriate authority' see PARA 990 ante.
- 8 For the prescribed form of notice see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 16, Sch 2. A form substantially to the like effect may be used: reg 16. For the meaning of 'prescribed' see PARA 16 note 5 ante.
- 9 If the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 et seq ante, PARA 993 et seq post.
- 10 Ibid s 150(1) (amended by the Planning and Compensation Act 1991 s 70, Sch 15 para 13). A blight notice can still be served even though, as a result of subsequent events, the blighted land is no longer required by the appropriate authority: *Entwistle Pearson (Manchester) Ltd v Chorley Borough Council* (1993) 66 P & CR 277.
- 11 If the right conferred by the Town and Country Planning Act 1990 s 150(1) (as amended: see note 10 supra).
- 12 For these purposes, any reference to the interest of the claimant, in relation to a blight notice, is a reference to the interest which the notice requires the appropriate authority to purchase as mentioned in ibid s 150(1) (as amended: see note 10 supra): s 150(4)(b). Subject to s 161(1), 'the claimant', in relation to a blight notice, means the person who served that notice: s 150(4)(a). In relation to any time after the death of a person who has served a blight notice, s 151(1) (see PARA 993 post), s 152(1) (see PARA 995 post), s 153(1) (see PARA 996 post), s 154(4), (5) (see PARA 997 post), s 156(1) (see PARA 999 post) and s 160(2), (4) (see PARA 1002 post) apply as if any reference in them to the claimant were a reference to the claimant's personal representative: s 161(1). For the meaning of 'blight notice' see PARA 990 note 20 ante.
- 13 Ibid s 150(2).
- 14 Ibid s 150(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/993. Counter-notices objecting to blight notices.

993. Counter-notices objecting to blight notices.

Where a blight notice¹ has been served in respect of a hereditament² or an agricultural unit³, the appropriate authority⁴ may serve on the claimant⁵ a counter-notice in the prescribed form⁶ objecting to the notice⁷. A counter-notice may be served at any time before the end of the period of two months beginning with the date of service of the blight notice⁸.

Such a counter-notice must specify the grounds⁹ on which the appropriate authority objects to the blight notice¹⁰; and the grounds on which objection may be so made¹¹ are:

- 3793 (1) that no part of the hereditament or agricultural unit to which the notice relates is comprised in blighted land¹²;
- 3794 (2) that the appropriate authority, unless compelled to do so¹³, does not propose to acquire any part of the hereditament, or in the case of an agricultural unit any part of the affected area¹⁴, in the exercise of any relevant powers¹⁵;
- 3795 (3) that the appropriate authority proposes in the exercise of relevant powers to acquire a part of the hereditament or, in the case of an agricultural unit, a part of the affected area specified in the counter-notice, but, unless compelled to do so¹⁶, does not propose to acquire any other part of that hereditament or area in the exercise of any such powers¹⁷;
- 3796 (4) in the case of certain land¹⁸, that the appropriate authority, unless compelled to do so¹⁹, does not propose to acquire in the exercise of any relevant powers any part of the hereditament or, in the case of an agricultural unit, any part of the affected area during the period of 15 years from the date of the counter-notice or such longer period from that date as any be specified in the counter-notice²⁰;
- 3797 (5) that, on the date of service of the notice²¹, the claimant was not entitled to an interest²² in any part of the hereditament or agricultural unit to which the notice relates;
- 3798 (6) that, for reasons specified in the counter-notice, the interest of the claimant is not a qualifying interest²³;
- 3799 (7) that the specified statutory conditions²⁴ are not fulfilled²⁵.

1 For the meaning of 'blight notice' see PARA 990 note 20 ante.

2 For the meaning of 'hereditament' see PARA 987 note 6 ante.

3 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

4 For the meaning of 'the appropriate authority' see PARA 990 ante.

5 For the meaning of 'the claimant' see PARA 992 note 12 ante.

6 For the prescribed form of counter-notice see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 16, Sch 2. A form substantially to the like effect may be used: reg 16. For the meaning of 'prescribed' see PARA 16 note 5 ante.

7 Town and Country Planning Act 1990 s 151(1).

8 Ibid s 151(2). As to the validity of counter-notices see *Parker and Parker v West Midlands County Council* (1978) 38 P & CR 720, Lands Tribunal.

9 Ie being one of the grounds specified in the Town and Country Planning Act 1990 s 151(4) (see the text and notes 11-25 infra) or, as relevant, in s 159(1) (see PARA 1001 post), s 161(5) (see PARA 1003 post) or s 162(5) (see PARA 1004 post).

10 Ibid s 151(3).

11 Ie in a counter-notice to a notice served under ibid s 150 (as amended): see PARA 992 ante.

12 For the meaning of 'blighted land' see PARA 987 ante.

13 Ie by virtue of the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 979 et seq ante, PARA 995 et seq post.

14 For these purposes, 'the affected area', in relation to an agricultural unit, means so much of that unit as, on the date of service, consists of land falling within any paragraph of ibid Sch 13 (as amended) (see PARA 978 et seq ante): s 171(1). For the meaning of 'date of service' see PARA 987 note 12 ante.

15 For these purposes, 'relevant powers', in relation to blighted land falling within any paragraph of *ibid* Sch 13 (as amended), means any powers under which the appropriate authority is or could be authorised (1) to acquire that land or to acquire any rights over it compulsorily as being land falling within that paragraph; or (2) to acquire that land or any rights over it compulsorily for any of the relevant purposes; and 'the relevant purposes', in relation to any such land, means the purposes for which, in accordance with the circumstances by virtue of which that land falls within the paragraph in question, it is liable to be acquired or is indicated as being proposed to be acquired: s 151(8).

16 See note 13 *supra*.

17 The provisions of the Town and Country Planning Act 1990 s 151(4)(c) (see head (3) in the text), s 153(6) (see PARA 996 post), s 154(4), (5) (see PARA 997 post) and s 155(3), (4) (see PARA 998 post) relating to hereditaments do not affect (1) the right of a claimant under the Lands Clauses Consolidation Act 1845 s 92 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 625) to sell the whole of the hereditament or, in the case of an agricultural unit, the whole of the affected area, which he has required the authority to purchase; or (2) the right of a claimant under the Compulsory Purchase Act 1965 s 8 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 628) to sell, unless the Lands Tribunal otherwise determines, the whole of the hereditament or, as the case may be, affected area which he has required that authority to purchase: Town and Country Planning Act 1990 s 166(1). In accordance with s 166(1)(b) (see head (2) *supra*), in determining whether or not to uphold an objection relating to a hereditament on the grounds mentioned in s 151(4)(c), the Lands Tribunal must consider, in addition to the other matters which the tribunal is required to consider, whether (a) in the case of a house, building or factory, the part proposed to be acquired can be taken without material detriment to the house, building or factory; or (b) in the case of a park or garden belonging to a house, the part proposed to be acquired can be taken without seriously affecting the amenity or convenience of the house: s 166(2). For the meaning of 'building' see PARA 2 note 10 *ante*. See also *Entwistle Pearson (Manchester) Ltd v Chorley Borough Council* (1993) 66 P & CR 277 (counter-notice not valid where acquisition of part of property caused material detriment to remainder).

18 The land falling within *ibid* Sch 13 para 1 (as amended; repealed with savings) (see PARA 979 *ante*), Sch 13 para 3 (as amended; repealed with savings) (see PARA 979 *ante*) or Sch 13 para 13 (as amended) (see PARA 983 *ante*) but not within Sch 13 para 14, Sch 13 para 15 or Sch 13 para 16 (as substituted) (see PARA 983 *ante*).

19 See note 13 *supra*.

20 An objection may not be made on the grounds mentioned in the Town and Country Planning Act 1990 s 151(4)(d) if it may be made on the grounds mentioned in s 151(4)(b) (see head (2) in the text): s 151(6).

21 The under *ibid* s 150 (as amended): see PARA 992 *ante*.

22 For the meaning of 'interest' see PARA 992 note 12 *ante*.

23 For the meaning of 'qualifying interest' see PARA 987 *ante*.

24 The conditions specified in the Town and Country Planning Act 1990 s 150(1)(b), (c) (as amended): see PARA 992 *ante*.

25 *Ibid* s 151(4). Where the appropriate enactment confers power to acquire rights over land, s 151(4) has effect as if (1) in s 151(4)(b) after the word 'acquire' there were inserted the words 'or to acquire any rights over'; (2) in s 151(4)(c) for the words 'does not propose to acquire' there were substituted the words 'proposes neither to acquire, nor to acquire any right over'; (3) in s 151(4)(d) after the words 'affected area' there were inserted 'or to acquire any right over any part of it': s 151(5). The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of Sch 13 para 19 (see PARA 984 *ante*) do not include those mentioned in s 151(4)(b) or (c): s 151(7). For the meaning of 'the appropriate enactment' see PARA 991 *ante*.

Objections which have not been raised in the counter-notice may not be raised in a different manner and at a different time: *Essex County Council v Essex Inc Congregational Church Union* [1963] AC 808, [1963] 1 All ER 326, HL.

UPDATE

993 Counter-notices objecting to blight notices

NOTE 6--SI 1992/1492 Sch 2 amended: SI 2009/1307.

NOTE 17--Reference to the Lands Tribunal is now to the Upper Tribunal: Town and Country Planning Act 1990 s 166(1), (2) (amended by SI 2009/1307).

NOTE 20--The grounds on which objection may be made in a counter-notice to a blight notice served by virtue of the 1990 Act Sch 13 para 25 (see PARA 986) do not include those mentioned in s 151(4)(b): Town and Country Planning Act 1990 s 151(7A) (added by the Planning Act 2008 s 175(1), (4)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/994. Assistance for acquisition of property where objection made to blight notice in certain cases.

994. Assistance for acquisition of property where objection made to blight notice in certain cases.

The council of a county, county borough¹, district² or London borough³ may advance money to any person for the purposes of enabling him to acquire a hereditament⁴ or agricultural unit⁵ in respect of which a counter-notice has been served⁶ specifying certain grounds⁷ as, or as one of, the grounds of objection⁸. An advance may be so made subject to such conditions as the council may think fit⁹; but no such advance may be made in the case of a hereditament if its annual value¹⁰ exceeds such amount¹¹ as may be prescribed¹².

1 As to county and county borough councils see PARA 28 ante.

2 As to district councils see PARA 28 ante.

3 For the meaning of 'London borough' see PARA 28 note 7 ante.

4 For the meaning of 'hereditament' see PARA 987 note 6 ante.

5 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

6 I.e. under the Town and Country Planning Act 1990 s 151: see PARA 993 ante.

7 I.e. the grounds mentioned in ibid s 151(4)(d): see PARA 993 ante at head (4) in the text.

8 Ibid s 307(1) (amended by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 24(12)).

9 Town and Country Planning Act 1990 s 307(3).

10 For the meaning of 'annual value' see PARA 987 note 12 ante.

11 I.e. such amount as may be prescribed under the Town and Country Planning Act 1990 s 149(3)(a): see PARA 987 ante. For the amount so prescribed see PARA 987 note 13 ante. For the meaning of 'prescribed' see PARA 16 note 5 ante.

12 Ibid s 307(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/995. Further counter-notices where certain proposals have come into force.

995. Further counter-notices where certain proposals have come into force.

Where an appropriate authority¹ has served a counter-notice objecting to a blight notice² in respect of certain land³ and the relevant plan or alterations or, as the case may be, the relevant order or scheme comes or come into force, whether in its or their original form or with modifications, the appropriate authority may serve on the claimant⁴, in substitution for the counter-notice already served, a further counter-notice specifying different grounds of objection⁵. Such a further counter-notice may not, however, be served:

- 3800 (1) at any time after the end of the period of two months beginning with the date on which the relevant plan or alterations comes or come into force; or
- 3801 (2) if the objection in the counter-notice already served has been withdrawn or the Lands Tribunal has already determined whether or not to uphold that objection⁶.

1 For the meaning of 'the appropriate authority' see PARA 990 ante.

2 For the meaning of 'blight notice' see PARA 990 note 20 ante.

3 ie any land falling within the Town and Country Planning Act 1990 s 149(1), Sch 13 paras 1-4 (as amended; repealed with savings) or Sch 13 para 14 by virtue of Sch 13 para 1 note (1), Sch 13 para 2 note (1), Sch 13 para 3 note (1), or Sch 13 para 4 note (1) (as amended; repealed with savings) (see PARA 979 ante) or Sch 13 para 14 note (1) (see PARA 983 ante).

4 For the meaning of 'the claimant' see PARA 992 note 12 ante.

5 Town and Country Planning Act 1990 s 152(1).

6 Ibid s 152(2).

UPDATE

995 Further counter-notices where certain proposals have come into force

TEXT AND NOTE 6--Reference to the Lands Tribunal is now to the Upper Tribunal: Town and Country Planning Act 1990 s 152(2) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/996. Reference of objection to Lands Tribunal.

996. Reference of objection to Lands Tribunal.

Where a counter-notice has been served¹ objecting to a blight notice², the claimant³ may require the objection to be referred to the Lands Tribunal⁴. Such a reference may be so required at any time before the end of the period of two months beginning with the date of service of the counter-notice⁵.

On any such reference, if the objection is not withdrawn, the tribunal must consider:

- 3802 (1) the matters set out in the notice served by the claimant; and
- 3803 (2) the grounds of the objection specified in the counter-notice,

and, unless it is shown to the satisfaction of the tribunal that the objection is not well-founded, the tribunal must⁶ uphold the objection⁷; but an objection on certain specified grounds⁸ may not be upheld by the tribunal unless it is shown to the satisfaction of the tribunal that the objection is well-founded⁹.

If the tribunal determines not to uphold the objection, the tribunal must declare that the notice to which the counter-notice relates is a valid notice¹⁰; and, if the tribunal upholds the objection, but only on certain specified grounds¹¹, the tribunal must declare that the notice is a valid notice in relation to the part of the hereditament¹², or in the case of an agricultural unit¹³ the part of the affected area¹⁴, specified in the counter-notice as being the part which the appropriate authority¹⁵ proposes to acquire as mentioned in that notice, but not in relation to any other part of the hereditament or affected area¹⁶.

1 Ie under the Town and Country Planning Act 1990 s 151: see PARA 993 ante. Section 153 (see the text and notes 2-16 infra) has effect in relation to a further counter-notice served by virtue of s 152(1) (see PARA 995 ante) as it has effect in relation to the counter-notice for which it is substituted: s 153(8).

2 For the meaning of 'blight notice' see PARA 990 note 20 ante.

3 For the meaning of 'the claimant' see PARA 992 note 12 ante.

4 Town and Country Planning Act 1990 s 153(1).

5 Ibid s 153(2).

6 Ie subject to ibid s 153(4): see the text and notes 8-9 infra.

7 Ibid s 153(3).

8 Ie the grounds mentioned in ibid s 151(4)(b), (c) or (d): see PARA 993 ante at heads (2)-(4) in the text.

9 Ibid s 153(4). The material date at which the tribunal must determine whether the objection is well-founded is the date of service of the counter-notice: *Louisville Investments Ltd v Basingstoke District Council, Planned Properties Ltd v Basingstoke District Council* (1975) 32 P & CR 419, Lands Tribunal; *Mancini v Coventry City Council* (1983) 49 P & CR 127, CA (considered in *Sinclair v Secretary of State for Transport* (1997) 161 JP 772).

10 Town and Country Planning Act 1990 s 153(5). In a case falling within s 153(5) or s 153(6) (see the text and notes 11-16 infra), the tribunal must give directions specifying the date on which notice to treat, as mentioned in s 154 (see PARA 997 post), is to be deemed to have been served: s 153(7). As to the effect of a valid notice see PARA 997 post; and as to service of notice to treat see PARA 933 note 5 ante.

11 Ie the grounds mentioned in ibid s 151(4)(c): see PARA 993 ante at head (3) in the text.

12 For the meaning of 'hereditament' see PARA 987 note 6 ante.

13 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

14 For the meaning of 'the affected area' see PARA 993 note 14 ante.

15 For the meaning of 'the appropriate authority' see PARA 990 ante.

16 Town and Country Planning Act 1990 s 153(6). See also note 10 supra; and see s 159(8) cited in 1001 note 2 post. As to the saving for a claimant's right to sell the whole hereditament etc see s 166; and PARA 993 note 17 ante.

UPDATE

996 Reference of objection to Lands Tribunal

TEXT AND NOTES 4-7--References to the Lands Tribunal is now to the Upper Tribunal: Town and Country Planning Act 1990 s 153(1), (3) (amended by SI 2009/1307).

TEXT AND NOTE 5--Omit words 'such a reference ... the counter-notice': Town and Country Planning Act 1990 s 153(2) (repealed by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/997. Effect of valid blight notice.

997. Effect of valid blight notice.

Where a blight notice¹ has been served, and either:

- 3804 (1) no counter-notice objecting to that notice is served²; or
- 3805 (2) where such a counter-notice has been served, the objection is withdrawn, or, on a reference to the Lands Tribunal³, is not upheld by the tribunal,

the appropriate authority⁴ is deemed:

- 3806 (a) to be authorised to acquire compulsorily under the appropriate enactment⁵ the interest⁶ of the claimant⁷ in the hereditament⁸, or in the case of an agricultural unit⁹ the interest of the claimant in so far as it subsists in the affected area¹⁰; and
- 3807 (b) to have served a notice to treat in respect of it on the specified¹¹ date¹².

Where the appropriate authority has served a counter-notice objecting to a blight notice on certain specified grounds¹³ and either:

- 3808 (i) the claimant, without referring that objection to the Lands Tribunal, and before the time for so referring it¹⁴ has expired, gives notice to the appropriate authority that he accepts the proposal of the authority to acquire the part of the hereditament or affected area specified in the counter-notice, and withdraws his claim as to the remainder of that hereditament or area; or
- 3809 (ii) on a reference to the Lands Tribunal, the tribunal makes a declaration¹⁵ in respect of that part of the hereditament or affected area,

the appropriate authority is deemed:

- 3810 (A) to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the hereditament or affected area specified in the counter-notice, but not so far as it subsists in any other part of that hereditament or area; and
- 3811 (B) to have served a notice to treat in respect of it on the specified¹⁶ date¹⁷.

1 For the meaning of 'blight notice' see PARA 990 note 20 ante.

2 In accordance with the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 979 et seq ante, PARA 998 et seq post. As to service of counter-notice see PARAS 993-995 ante.

3 As to references to the Lands Tribunal see PARA 996 ante.

4 For the meaning of 'the appropriate authority' see PARA 990 ante.

5 For the meaning of 'the appropriate enactment' see PARA 991 ante.

6 For the meaning of 'interest' see PARA 992 note 12 ante.

7 For the meaning of 'the claimant' see PARA 992 note 12 ante.

8 For the meaning of 'hereditament' see PARA 987 note 6 ante.

9 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

10 For the meaning of 'the affected area' see PARA 993 note 14 ante.

11 Ie on the date mentioned in the Town and Country Planning Act 1990 s 154(3). The date so referred to is (1) in a case where, on a reference to the Lands Tribunal, the tribunal determines not to uphold the objection, the date specified in directions given by the tribunal in accordance with s 153(7) (see PARA 996 note 10 ante); (2) in any other case, the date on which the period of two months beginning with the date of service of the blight notice comes to an end: s 154(3).

12 Ibid s 154(1), (2). Without prejudice to the provisions of s 156(1), (2) (see PARA 999 post), a notice to treat which is deemed to have been served by virtue of Pt VI Ch II (ss 149-171) (as amended) (see PARA 979 et seq ante, PARA 998 et seq post) may not be withdrawn under the Land Compensation Act 1961 s 31 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 636): Town and Country Planning Act 1990 s 167. As to the service of notice to treat see PARA 933 note 5 ante.

13 Ie the grounds mentioned in ibid s 151(4)(c): see PARA 993 ante at head (3) in the text.

14 As to the time for so referring an objection see PARA 996 ante.

15 Ie in accordance with the Town and Country Planning Act 1990 s 153(6): see PARA 996 ante.

16 Ie on the date mentioned in ibid s 154(6). The date so referred to is (1) in a case falling within s 154(4)(a) (see head (i) in the text), the date on which notice is given in accordance with s 154(4)(a); and (2) in a case falling within s 154(b) (see head (ii) in the text), the date specified in directions given by the Lands Tribunal in accordance with s 153(7) (see PARA 996 note 10 ante): s 154(6).

17 Ibid s 154(4), (5). See also note 12 supra. As to the saving for a claimant's right to sell the whole hereditament etc see s 166; and PARA 993 note 17 ante.

UPDATE

997 Effect of valid blight notice

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 154(1), (3), (4), (6) amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/998. Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire.

998. Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire.

Where the grounds of objection specified in a counter-notice¹ consist of or include grounds relating to disclaiming an intention to acquire² and either the objection on those grounds is referred to and upheld by the Lands Tribunal³ or the time for referring that objection⁴ to that tribunal expires without its having been so referred, then, if:

- 3812 (1) a compulsory purchase order has been made under the appropriate enactment⁵ in respect of land⁶ which consists of or includes the whole or part of the hereditament⁷ or agricultural unit⁸ to which the counter-notice relates; or
- 3813 (2) the land in question falls within the statutory provision relating to blighted land subject to compulsory purchase⁹,

any power conferred by that order or, as the case may be, by special enactment¹⁰ for the compulsory acquisition¹¹ of the interest¹² of the claimant¹³ in the hereditament or agricultural unit or any part of it ceases to have effect¹⁴.

Where the grounds of objection specified in a counter-notice¹⁵ consist of or include grounds relating to an intention to acquire part only of the blighted land¹⁶ and either the objection on those grounds is referred to and upheld by the Lands Tribunal or the time for referring that objection to that tribunal expires without its having been so referred, then, if:

- 3814 (a) a compulsory purchase order has been made under the appropriate enactment in respect of land which consists of or includes any part of the hereditament or affected area¹⁷ not required¹⁸; or
- 3815 (b) the land in question falls within the statutory provision relating to blighted land subject to compulsory purchase¹⁹,

any power conferred by that order or, as the case may be, by the special enactment for the compulsory acquisition of the interest of the claimant in any land comprised in the part of the hereditament or affected area not required ceases to have effect²⁰.

1 Ie a counter-notice served under the Town and Country Planning Act 1990 s 151: see PARA 993 ante.

2 Ie the grounds mentioned in s 151(4)(b) or (d): see PARA 993 ante at heads (2), (4) in the text.

3 As to references to the Lands Tribunal see PARA 996 ante.

4 As to the time for so referring objections see PARA 996 ante.

5 For the meaning of 'the appropriate enactment' see PARA 991 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 For the meaning of 'hereditament' see PARA 987 note 6 ante.

8 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

9 Ie the Town and Country Planning Act 1990 s 149(1), Sch 13 para 21: see PARA 986 ante.

10 For the meaning of 'special enactment' see PARA 986 note 2 ante.

11 For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

12 For the meaning of 'interest' see PARA 992 note 12 ante.

13 For the meaning of 'the claimant' see PARA 992 note 12 ante.

14 Town and Country Planning Act 1990 s 155(1), (2).

15 See note 1 supra.

16 le the grounds mentioned in the Town and Country Planning Act 1990 s 151(4)(c): see PARA 993 ante at head (3) in the text.

17 For the meaning of 'the affected area' see PARA 993 note 14 ante.

18 For these purposes, any reference to 'the part of the hereditament or affected area not required' is a reference to the whole of that hereditament or area except the part specified in the counter-notice as being the part which the appropriate authority proposes to acquire as mentioned in the counter-notice: Town and Country Planning Act 1990 s 155(3).

19 See note 9 supra.

20 Town and Country Planning Act 1990 s 155(3), (4). As to the saving for a claimant's right to sell the whole hereditament etc see s 166; and PARA 993 note 17 ante.

UPDATE

998 Effect on powers of compulsory acquisition of counter-notice disclaiming intention to acquire

TEXT AND NOTES 14-20--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 155(1), (3) amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/A. IN GENERAL/999. Withdrawal of blight notice.

999. Withdrawal of blight notice.

The person by whom a blight notice¹ has been served may withdraw the notice at any time before the compensation payable in respect of a compulsory acquisition² in pursuance of the notice has been determined by the Lands Tribunal or, if there has been such a determination, at any time before the end of the period of six weeks beginning with the date of the determination³; but a person is not so entitled to withdraw a notice after the appropriate authority⁴ has exercised a right of entering and taking possession of land⁵ in pursuance of a notice to treat deemed to have been served in consequence of that notice⁶.

Where a blight notice is so withdrawn, any notice to treat deemed to have been served in consequence of it is deemed to have been withdrawn⁷.

No compensation is payable in respect of the withdrawal of a notice to treat which is so deemed to have been withdrawn⁸.

1 For the meaning of 'blight notice' see PARA 990 note 20 ante.

2 For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

3 Town and Country Planning Act 1990 s 156(1).

4 For the meaning of 'the appropriate authority' see PARA 990 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning Act 1990 s 156(3). As to service of notice to treat see PARA 933 note 5 ante. See also PARA 997 note 12 ante.

7 Ibid s 156(2).

8 Ibid s 156(4).

UPDATE

999 Withdrawal of blight notice

TEXT AND NOTE 3--Reference to the Lands Tribunal is now to the Upper Tribunal: Town and Country Planning Act 1990 s 156(1) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/B. SPECIAL PROVISIONS RELATING TO AGRICULTURAL UNITS/1000. Inclusion in blight notice of requirement to purchase unaffected parts of agricultural unit.

B. SPECIAL PROVISIONS RELATING TO AGRICULTURAL UNITS

1000. Inclusion in blight notice of requirement to purchase unaffected parts of agricultural unit.

The following provisions apply where:

- 3816 (1) a blight notice¹ is served in respect of an interest² in the whole or part of an agricultural unit³; and
- 3817 (2) on the date of service that unit or part contains land⁴ ('the unaffected area') which is not blighted land⁵ as well as land ('the affected area') which is such land⁶.

Where these provisions apply, the claimant⁷ may include in the blight notice:

- 3818 (a) a claim that the unaffected area is not reasonably capable of being farmed, either by itself or in conjunction with other relevant land⁸, as a separate agricultural unit; and
- 3819 (b) a requirement that the appropriate authority⁹ shall purchase his interest in the whole of the unit or, as the case may be, in the whole of the part of it to which the notice relates¹⁰.

1 For the meaning of 'blight notice' see PARA 990 note 20 ante.

2 For the meaning of 'interest' see PARA 992 note 12 ante.

3 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'blighted land' see PARA 987 ante.

6 Town and Country Planning Act 1990 s 158(1).

7 For the meaning of 'the claimant' see PARA 992 note 12 ante.

8 For these purposes, subject to the Town and Country Planning Act 1990 s 159(4) (see PARA 1001 post), 'other relevant land' means (1) if the blight notice is served only in respect of part of land comprised in the agricultural unit, the remainder of it; and (2) land which is comprised in any other agricultural unit occupied by the claimant on the date of service and in respect of which he is then entitled to an owner's interest as defined in s 168(4) (see PARA 988 note 3 ante): s 158(3). For the meaning of 'date of service' see PARA 988 note 4 ante.

9 For the meaning of 'the appropriate authority' see PARA 990 ante.

10 Town and Country Planning Act 1990 s 158(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/B. SPECIAL PROVISIONS RELATING TO AGRICULTURAL UNITS/1001. Objections to notices requiring purchase of whole agricultural unit.

1001. Objections to notices requiring purchase of whole agricultural unit.

The grounds on which objection may be made in a counter-notice to a blight notice requiring the purchase of unaffected parts of an agricultural unit¹ include the grounds that the claim made in the notice is not justified².

If the Lands Tribunal upholds an objection but only on the grounds mentioned above, the tribunal must declare that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area³; and, if the tribunal upholds an objection both on that ground and on the other specified statutory grounds⁴, but not on any other grounds, the tribunal must declare that the blight notice is a valid notice in relation to the part of the affected area specified in the counter-notice as being the part which the appropriate authority⁵ proposes to acquire as mentioned in that notice but not in relation to any other part of the affected area or in relation to the unaffected area⁶.

1 If a blight notice served by virtue of the Town and Country Planning Act 1990 s 158: see PARA 1000 ante. For the meaning of 'blight notice' see PARA 990 note 20 ante.

2 Ibid s 159(1). Objection may not be made to a blight notice served by virtue of s 158 on the grounds mentioned in s 151(4)(c) (see PARA 993 ante at head (3) in the text) unless it is also made on the grounds mentioned in s 159(1) (s 159(2)); and the Lands Tribunal may not uphold an objection to a notice so served on the grounds mentioned in s 151(4)(c) unless it also upholds the objection on the grounds mentioned in s 159(1) (s 159(3)).

Where objection is made to a blight notice served by virtue of s 158 on the grounds mentioned in s 159(1) and also on those mentioned in s 151(4)(c), the Lands Tribunal, in determining whether or not to uphold the objection, must treat that part of the affected area which is not specified in the counter-notice as included in 'other relevant land' as defined in s 158(3) (see PARA 1000 note 7 ante): s 159(4).

Section 153(6) (see PARA 996 ante) does not apply to any blight notice served by virtue of s 158: s 159(8). For the meaning of 'the affected area' see PARA 993 note 14 ante.

3 Ibid s 159(5). In a case falling within s 159(5) or s 159(6) (see the text and notes 4-6 infra), the tribunal must give directions specifying a date on which notice to treat, as mentioned in s 154 (see PARA 997 ante) and s 160 (see PARA 1002 post) is to be deemed to have been served: s 159(7). A notice to treat so deemed to have been served cannot be withdrawn: see PARA 997 note 12 ante. As to service of notice to treat see PARA 933 note 5 ante.

4 le the grounds mentioned in *ibid* s 151(4)(c): see PARA 993 ante at head (3) in the text.

5 For the meaning of 'the appropriate authority' see PARA 990 ante.

6 Town and Country Planning Act 1990 s 159(6). See also note 3 *supra*.

UPDATE

1001 Objections to notices requiring purchase of whole agricultural unit

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 159(3)-(5) amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/B. SPECIAL PROVISIONS RELATING TO AGRICULTURAL UNITS/1002. Effect of notices.

1002. Effect of notices.

The statutory provisions relating to the effect of blight notices¹ apply with specified modifications² in relation to a blight notice³ requiring the purchase of unaffected parts of an agricultural unit⁴.

Where the appropriate authority⁵ has served a counter-notice objecting to a blight notice on the grounds that the claim made in the notice is not justified⁶, then, if either:

3820 (1) the claimant⁷, without referring that objection to the Lands Tribunal and before the time for so referring it has expired⁸, gives notice to the appropriate authority that he withdraws his claim as to the unaffected area; or

3821 (2) on a reference to the tribunal, the tribunal makes a declaration that the blight notice is a valid notice in relation to the affected area but not in relation to the unaffected area⁹,

the appropriate authority is deemed:

3822 (a) to be authorised to acquire compulsorily under the appropriate enactment¹⁰ the interest¹¹ of the claimant in so far as it subsists in the affected area, but not in so far as it subsists in the unaffected area; and

3823 (b) to have served a notice to treat in respect of it on the specified¹² date¹³.

Where the appropriate authority has served a counter-notice on the grounds mentioned above and also on the other specified statutory grounds¹⁴, then, if either:

3824 (i) the claimant, without referring that objection to the Lands Tribunal and before the time for so referring it has expired, gives notices to the appropriate authority that he accepts the proposal of the authority to acquire the part of the

affected area specified in the counter-notice and withdraws his claim as to the remainder of that area and as to the unaffected area; or
 3825 (ii) on a reference to the tribunal, the tribunal makes a declaration¹⁵ in respect of that part of the affected area,

the appropriate authority is deemed to be authorised to acquire compulsorily under the appropriate enactment the interest of the claimant in so far as it subsists in the part of the affected area specified in the counter-notice, but not in so far as it subsists in any other part of that area or in the unaffected area, and to have served a notice to treat in respect of it on the specified¹⁶ date¹⁷.

1 Ie the Town and Country Planning Act 1990 s 154: see PARA 997 ante.

2 The specified modifications are that (1) *ibid* s 154(2) has effect as if for the words 'or in the case of an agricultural unit the interest of the claimant in so far as it subsists in the affected area' there were substituted the words 'or agricultural unit'; and (2) s 154(4), (5) does not apply: s 160(1). For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

3 Ie a blight notice served by virtue of *ibid* s 158: see PARA 1000 ante. For the meaning of 'blight notice' see PARA 990 note 20 ante.

4 *Ibid* s 160(1).

5 In relation to a blight notice served by virtue of *ibid* s 158, references to 'the appropriate authority' are to be construed as if the unaffected area of an agricultural unit were part of the affected area: s 160(6). For the meaning of 'the appropriate authority' generally see PARA 990 ante; and for the meaning of 'the unaffected area' and 'the affected area' see PARA 1000 ante.

6 Ie on the grounds mentioned in *ibid* s 159(1): see PARA 1001 ante.

7 For the meaning of 'the claimant' see PARA 992 note 12 ante.

8 As to reference of objections to the Lands Tribunal and the time for making such references see PARA 996 ante.

9 Ie a declaration in accordance with the Town and Country Planning Act 1990 s 159(5): see PARA 1001 ante.

10 In relation to a blight notices served by virtue of *ibid* s 158, references to 'the appropriate enactment' are to be construed as if the unaffected area of an agricultural unit were part of the affected area: s 160(6). For the meaning of 'the appropriate enactment' generally see PARA 991 ante.

11 For the meaning of 'interest' see PARA 992 note 12 ante.

12 Ie the date mentioned in the Town and Country Planning Act 1990 s 160(3). The date so referred to is (1) in a case falling within s 160(2)(a) (see head (1) in the text), the date on which notice is given in accordance therewith; and (2) in a case falling within s 160(2)(b) (see head (2) in the text), the date specified in directions given by the tribunal in accordance with s 159(7) (see PARA 1001 note 3 ante): s 160(3).

13 *Ibid* s 160(2). A notice to treat so deemed to have been served cannot be withdrawn: see PARA 997 note 12 ante. As to service of notice to treat see PARA 933 note 5 ante.

14 Ie on the grounds mentioned in *ibid* s 151(4)(c): see PARA 993 ante at head (3) in the text.

15 Ie in accordance with *ibid* s 159(6): see PARA 1001 ante.

16 Ie on the date mentioned in *ibid* s 160(5). The date so referred to is (1) in a case falling within s 160(4)(a) (see head (i) in the text), the date on which notice is given in accordance therewith; and (2) in a case falling within s 160(4)(b) (see head (ii) in the text), the date specified in directions given by the tribunal in accordance with s 159(7) (see PARA 1001 note 3 ante): s 160(5).

17 *Ibid* s 160(4). See also note 13 *supra*.

UPDATE

1002 Effect of notices

TEXT AND NOTES 13-17--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 160(2), (4) amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/C. POWERS OF PERSONAL REPRESENTATIVES, MORTGAGEES AND PARTNERSHIPS/1003. Powers of personal representatives in respect of blight notice.

C. POWERS OF PERSONAL REPRESENTATIVES, MORTGAGEES AND PARTNERSHIPS

1003. Powers of personal representatives in respect of blight notice.

Where the whole or part of a hereditament¹ or agricultural unit² is comprised in blighted land³ and a person claims that:

- 3826 (1) he is the personal representative of a person ('the deceased') who at the date of his death was entitled to an interest in that hereditament or unit;
- 3827 (2) the interest was one which would have been a qualifying interest⁴ if a blight notice⁵ had been served⁶ in respect of it on that date;
- 3828 (3) he has made reasonable endeavours to sell that interest or the land is subject to compulsory purchase⁷ and the powers of compulsory acquisition remain exercisable;
- 3829 (4) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land; and
- 3830 (5) one or more individuals are, to the exclusion of any body corporate, beneficially entitled to that interest,

he may serve on the appropriate authority⁸ a notice in the prescribed form⁹ requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the relevant statutory¹⁰ provisions¹¹.

The above provisions apply in relation to an interest in part of a hereditament or agricultural unit as they apply in relation to an interest in the whole of a hereditament or agricultural unit¹²; but this does not enable any person:

- 3831 (a) if the deceased was entitled to an interest in the whole of a hereditament or agricultural unit, to make any claim or serve any notice¹³ in respect of the deceased's interest in part of the hereditament or unit; or

- 3832 (b) if the deceased was entitled to an interest only in part of the hereditament or agricultural unit, to make or serve any such claim or notice in respect of the deceased's interest in less than the whole of that part¹⁴.

The grounds on which objection may be made in a counter-notice¹⁵ to a notice under the above provisions are¹⁶ those specified in the relevant statutory provisions¹⁷ and also the following grounds:

- 3833 (i) that the claimant is not the personal representative of the deceased or that, on the date of the deceased's death, the deceased was not entitled to an interest in any part of the hereditament or agricultural unit to which the notice relates;
 3834 (ii) that, for reasons specified in the counter-notice, the interest of the deceased is not such as is specified in head (2) above;
 3835 (iii) that the conditions specified in head (3), head (4) or head (5) above are not satisfied¹⁸.

1 For the meaning of 'hereditament' see PARA 987 note 6 ante.

2 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

3 For the meaning of 'blighted land' see PARA 987 ante.

4 For the meaning of 'qualifying interest' see PARA 987 ante.

5 For the meaning of 'blight notice' see PARA 990 note 20 ante.

6 Ie under the Town and Country Planning Act 1990 s 150 (as amended): see PARA 992 ante.

7 Ie the land falls within ibid s 149(1), Sch 13 para 21 or Sch 13 para 22, disregarding Sch 13 para 22 notes (1), (2): see PARA 986 ante.

8 For the meaning of 'the appropriate authority' see PARA 990 ante.

9 For the prescribed form of notice see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 16, Sch 2. A form substantially to the like effect may be used: reg 16. For the meaning of 'prescribed' see PARA 16 note 5 ante.

10 Ie the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 et seq ante, PARA 1004 et seq post.

11 Ibid s 161(2) (amended by the Planning and Compensation Act 1991 s 70, Sch 15 para 13). See also the Town and Country Planning Act 1990 s 161(1), cited in PARA 992 note 12 ante.

12 Ibid s 161(3).

13 Ie under ibid s 161 (as amended).

14 Ibid s 161(4).

15 Ie under ibid s 151: see PARA 993 ante.

16 Ie subject to ibid s 151(7) (see PARA 993 ante) and s 159(2), (3) (see PARA 1001 ante).

17 Ie specified in ibid s 151(4)(a)-(c) (see PARA 993 ante at heads (1)-(3) in the text) and, in a case to which it applies, the grounds specified in s 151(4)(d) (see PARA 993 ante at head (4) in the text).

18 Ibid s 161(5).

PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/C. POWERS OF PERSONAL REPRESENTATIVES, MORTGAGEES AND PARTNERSHIPS/1004. Power of mortgagees to serve blight notice.

1004. Power of mortgagees to serve blight notice.

Where the whole or part of a hereditament¹ or agricultural unit² is comprised in blighted land³ and a person claims that:

- 3836 (1) he is entitled as mortgagee, by virtue of a power which has become exercisable, to sell an interest in the hereditament or unit, giving immediate vacant possession of the land;
- 3837 (2) he has made reasonable endeavours to sell that interest or the land is subject to compulsory purchase⁴ and the power of compulsory acquisition remain exercisable;
- 3838 (3) in consequence of the fact that the hereditament or unit or a part of it was, or was likely to be, comprised in blighted land, he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the hereditament or unit were, or were likely to be, comprised in such land,

he may⁵ serve on the appropriate authority⁶ a notice in the prescribed form⁷ requiring that authority to purchase that interest to the extent specified in, and otherwise in accordance with, the relevant statutory⁸ provisions⁹.

The above provisions apply in relation to an interest in part of a hereditament or unit as they apply in relation to an interest in the whole of a hereditament or unit¹⁰; but this does not enable a person:

- 3839 (a) if his interest as mortgagee is in the whole of a hereditament or agricultural unit, to make any claim or serve any notice¹¹ in respect of any interest in part of the hereditament or unit; or
- 3840 (b) if his interest as mortgagee is only in part of a hereditament or agricultural unit, to make or serve any such notice or claim in respect of any interest in less than the whole part¹².

Notice may not be so served unless the interest which the mortgagee claims he has the power to sell:

- 3841 (i) could be the subject of a blight notice¹³ served by the person entitled to the interest on the date of service of the notice; or
- 3842 (ii) could have been the subject of a blight notice served by that person on a date not more than six months before the date of service of the notice¹⁴.

The grounds on which objection may be made in a counter-notice¹⁵ to a notice under the above provisions are¹⁶ those specified in the relevant statutory provisions¹⁷ and also the following grounds:

- 3843 (A) that, on the date of service of the notice, the claimant¹⁸ had no interest¹⁹ as mortgagee in any part of the hereditament or agricultural unit to which the notice relates;

- 3844 (B) that, for reasons specified in the counter-notice, the claimant had not on that date the power referred to in head (1) above;
- 3845 (C) that the conditions specified in heads (2) and (3) above are not fulfilled;
- 3846 (D) that, for reasons specified in the counter-notice, neither of the conditions specified in heads (i) and (ii) above was, on the date of service of the notice, satisfied with regard to the interest referred to therein²⁰.

- 1 For the meaning of 'hereditament' see PARA 987 note 6 ante.
- 2 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.
- 3 For the meaning of 'blighted land' see PARA 987 ante.
- 4 Ie the land falls within the Town and Country Planning Act 1990 s 149(1), Sch 13 para 21 or Sch 13 para 22, disregarding Sch 13 para 22 notes (1), (2): see PARA 986 ante.
- 5 Ie subject to *ibid* s 162(2)-(5): see the text and notes 6-20 *infra*.
- 6 For the meaning of 'the appropriate authority' see PARA 990 ante.
- 7 For the prescribed form of notice see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 16, Sch 2. A form substantially to the like effect may be used: see reg 16. For the meaning of 'prescribed' see PARA 16 note 5 ante.
- 8 Ie the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 *et seq* ante, PARA 1005 *et seq* post.
- 9 *Ibid* s 162(1) (amended by the Planning and Compensation Act 1991 s 70, Sch 15 para 13).
- 10 Town and Country Planning Act 1990 s 162(2).
- 11 Ie under *ibid* s 162 (as amended).
- 12 *Ibid* s 162(3).
- 13 Ie a notice under *ibid* s 150 (as amended): see PARA 992 ante.
- 14 *Ibid* s 162(4).
- 15 Ie under *ibid* s 151: see PARA 993 ante.
- 16 Ie subject to *ibid* s 151(7) (see PARA 993 ante) and s 159(2), (3) (see PARA 1001 ante).
- 17 Ie specified in *ibid* s 151(4)(a)-(c) (see PARA 993 ante at heads (1)-(3) in the text) and, in a case to which it applies, the grounds specified in s 151(4)(d) (see PARA 993 ante at head (4) in the text).
- 18 For the meaning of 'the claimant' see PARA 992 note 12 ante.
- 19 For the meaning of 'interest' see PARA 992 note 12 ante.
- 20 Town and Country Planning Act 1990 s 162(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/C. POWERS OF PERSONAL REPRESENTATIVES, MORTGAGEES AND PARTNERSHIPS/1005. Prohibition on service of simultaneous notices.

1005. Prohibition on service of simultaneous notices.

No notice may be served under the statutory provisions relating to blight notices served by claimants and personal representatives¹ in respect of a hereditament² or agricultural unit³, or any part of it, at a time when a notice already served under the provisions relating to mortgagees⁴ is outstanding⁵ with respect to it; and no notice may be served under the statutory provisions relating to mortgagees at a time when a notice already served⁶ is outstanding with respect to the relevant hereditament, unit or part⁷.

1 lie under the Town and Country Planning Act 1990 s 150 (as amended) (see PARA 992 ante) or s 161 (as amended) (see PARA 1003 ante).

2 For the meaning of 'hereditament' see PARA 987 note 6 ante.

3 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

4 lie under the Town and Country Planning Act 1990 s 162 (as amended): see PARA 1004 ante.

5 For these purposes, a notice is treated as outstanding with respect to a hereditament, unit or part (1) until it is withdrawn in relation to the hereditament, unit or part; or (2) in a case where an objection to the notice has been made by a counter-notice under *ibid* s 151 (see PARA 993 ante), until either (a) the period of two months specified in s 153 (see PARA 996 ante) elapses without the claimant having required the objection to be referred to the Lands Tribunal under s 153; or (b) the objection, having been so referred, is upheld by the tribunal with respect to the hereditament, unit or part: s 163(2). For the meaning of 'the claimant' see PARA 992 note 12 ante.

6 See note 1 *supra*.

7 Town and Country Planning Act 1990 s 163(1).

UPDATE

1005 Prohibition on service of simultaneous notices

NOTE 5--Reference to the Lands Tribunal is now to the Upper Tribunal: Town and Country Planning Act 1990 s 163(2) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(iv) Blight Notices/C. POWERS OF PERSONAL REPRESENTATIVES, MORTGAGEES AND PARTNERSHIPS/1006. Partnerships.

1006. Partnerships.

The following provisions have effect for the purposes of the application of the statutory provisions relating to blight notices¹ to a hereditament² or agricultural unit³ occupied for the purposes of a partnership firm⁴:

- 3847 (1) occupation for the purposes of the firm is treated as occupation by the firm, and not as occupation by any one or more of the partners individually, and the statutory definitions of 'owner-occupier'⁵ apply in relation to the firm accordingly⁶;
- 3848 (2) if, after service by the firm of a blight notice⁷, any change occurs, whether by death or otherwise, in the constitution of the firm, any proceedings, rights or obligations consequential upon that notice may be carried on or exercised by or against, or, as the case may be, are incumbent upon, the partners for the time being constituting the firm⁸.

- 1 le the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 978 et seq ante, PARA 1008 post.
- 2 For the meaning of 'hereditament' see PARA 987 note 6 ante.
- 3 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.
- 4 Town and Country Planning Act 1990 s 164(1). Nothing in Pt VI Ch II (ss 149-171) (as amended) is to be construed as indicating an intention to exclude the operation of the definition of 'person' in the Interpretation Act 1978 s 5, Sch 1 (by which, unless the contrary intention appears, 'person' includes any body of persons corporate or unincorporate) in relation to any provision of the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): s 164(4).
- 5 le in ibid s 168(1), (2): see PARA 988 ante.
- 6 Ibid s 164(2). Section 164(2) does not, however, affect the definition of 'resident owner-occupier' in s 168(3) (see PARA 988 ante): s 164(5).
- 7 For the meaning of 'blight notice' see PARA 990 note 20 ante.
- 8 Town and Country Planning Act 1990 s 164(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/(v) Secretary of State's or Assembly's Power to Acquire Certain Blighted Land/1007. Power to acquire land affected by orders relating to new towns etc where blight notice served.

(v) Secretary of State's or Assembly's Power to Acquire Certain Blighted Land

1007. Power to acquire land affected by orders relating to new towns etc where blight notice served.

Where a blight notice¹ has been served in respect of land² within an area:

- 3849 (1) described as the site of a proposed new town in the draft of an order in respect of which a notice³ has been published⁴; or
- 3850 (2) within an area designated as the site of a proposed new town by an order⁵ which has come into operation⁶; or
- 3851 (3) intended to be designated as an urban development area⁷ by an order which has been made⁸ but has not come into effect⁹; or
- 3852 (4) which has been so designated by an order¹⁰ which has come into effect¹¹,

then, until such time as a development corporation is established for the new town or, as the case may be, an urban development corporation¹² is established for the urban development area, the Secretary of State¹³ or, in relation to Wales, the National Assembly for Wales¹⁴ has power to acquire compulsorily any interest in the land in pursuance of the blight notice so served¹⁵.

These powers are discussed in more detail below in the part of this title dealing with urban development and regeneration¹⁶.

1 For the meaning of 'blight notice' see PARA 990 note 20 ante.

- 2 For the meaning of 'land' for these purposes see PARA 2 note 10 ante.
- 3 le under the New Towns Act 1981 s 1(4), Sch 1 para 2: see PARA 1316 post.
- 4 le land falling within the Town and Country Planning Act 1990 s 149(1), Sch 13 para 7: see PARA 981 ante.
- 5 le under the New Towns Act 1981 s 1 (as amended): see PARA 1315 post.
- 6 le land falling within the Town and Country Planning Act 1990 Sch 13 para 8: see PARA 981 ante.
- 7 For the meaning of 'urban development area' for these purposes see PARA 981 note 6 ante, PARA 1426 note 4 post.
- 8 le under the Local Government, Planning and Land Act 1980 s 134 (as amended): see PARA 1426 post.
- 9 le land falling within the Town and Country Planning Act 1990 Sch 13 para 9(a): see PARA 981 ante.
- 10 See note 8 supra.
- 11 le land falling within the Town and Country Planning Act 1990 Sch 13 para 9(b): see PARA 981 ante.
- 12 For the meaning of 'urban development corporation' for these purposes see PARA 1429 note 1 post.
- 13 As to the Secretary of State see PARA 19 ante.
- 14 As to the transfer of functions under the Town and Country Planning Act 1990 s 165, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 15 Town and Country Planning Act 1990 s 165(1).
- 16 See PARAS 1355, 1460 post.

UPDATE

1007 Power to acquire land affected by orders relating to new towns etc where blight notice served

TEXT AND NOTES--Where a blight notice has been served in respect of land falling within the 1990 Act Sch 13 para 25 (see PARA 986), the Secretary of State has power to acquire compulsorily any interest in the land in pursuance of the blight notice served by virtue of that provision: Town and Country Planning Act 1990 s 165A (added by the Planning Act 2008 s 175(1), (5)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/11. RIGHTS TO REQUIRE PURCHASE OF INTERESTS/(2) INTERESTS AFFECTED BY PLANNING PROPOSALS; BLIGHT/ (vi) Compensation/1008. Compensation for acquisitions in pursuance of blight notices.

(vi) Compensation

1008. Compensation for acquisitions in pursuance of blight notices.

Where an interest in land¹ is acquired in pursuance of a blight notice² and the interest is one in respect of which:

3853 (1) a compulsory purchase order is in force³ containing a direction for minimum compensation⁴, the compensation payable for the acquisition must be assessed in accordance with that direction and as if the notice to treat deemed to have been served⁵ in respect of the interest had been served in pursuance of the compulsory purchase order⁶;

3854 (2) a compulsory purchase order is in force under the statutory provisions relating to the acquisition of land for clearance⁷, the compensation payable for the acquisition must be assessed in accordance with the Housing Act 1985 and as if the notice to treat deemed to have been served⁸ in respect of the interest had been served in pursuance of the compulsory purchase order⁹.

The compensation payable in respect of the acquisition¹⁰ of an interest in land comprised in:

3855 (a) the unaffected area¹¹ of an agricultural unit¹²; or

3856 (b) if the appropriate authority¹³ has served a counter-notice objecting to the blight notice on the specified grounds¹⁴, so much of the affected area of the unit as is not specified in the counter-notice,

must be assessed on the normal statutory¹⁵ assumptions¹⁶.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'blight notice' see PARA 990 note 20 ante.

3 Ie under the Acquisition of Land Act 1981 s 1 (as amended) as applied by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1157 post.

4 Ie under ibid s 50 (as amended): see PARA 1159 post.

5 Ie under the Town and Country Planning Act 1990 s 154: see PARA 997 ante. As to service of notice to treat see PARA 933 note 5 ante.

6 Ibid s 157(1).

7 Ie under the Housing Act 1985 s 290: see HOUSING vol 22 (2006 Reissue) PARA 427.

8 See note 5 supra.

9 Town and Country Planning Act 1990 s 157(2).

10 Ie by virtue of ibid s 160: see PARA 1002 ante.

11 For the meaning of 'the unaffected area' see PARA 1000 ante.

12 For the meaning of 'agricultural unit' see PARA 987 note 9 ante.

13 For these purposes, the reference to 'the appropriate authority' is to be construed as if the unaffected area of an agricultural unit were part of the affected area: Town and Country Planning Act 1990 s 157(4). For the meaning of 'the affected area' see PARA 993 note 14 ante.

14 Ie the grounds mentioned in ibid s 151(4)(c): see PARA 993 ante at head (3) in the text.

15 Ie the assumptions mentioned in the Land Compensation Act 1973 s 5(2)-(4) (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 896.

16 Town and Country Planning Act 1990 s 157(3).

UPDATE

1008 Compensation for acquisitions in pursuance of blight notices

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(1) IN GENERAL/1009. Meaning of 'statutory undertakers'.

12. STATUTORY UNDERTAKERS

(1) IN GENERAL

1009. Meaning of 'statutory undertakers'.

'Statutory undertakers' means¹ persons authorised by any enactment² to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power, and a relevant³ airport operator⁴. 'Statutory undertaking' is to be construed accordingly and, in relation to a relevant airport operator, means an airport to which Part V of the Airports Act 1986⁵ applies⁶.

For the purposes of specified provisions of the Town and Country Planning Act 1990⁷, and subject to certain exceptions and modifications⁸, any gas transporter⁹, water or sewerage undertaker¹⁰, the Environment Agency¹¹, any universal postal service provider in connection with the provision of a universal postal service¹², the Civil Aviation Authority¹³ and a person who holds a licence under the provisions of the Transport Act 2000 relating to air traffic services¹⁴ are deemed to be statutory undertakers and their undertakings statutory undertakings¹⁵.

Any holder of a licence under the Electricity Act 1989¹⁶ is deemed to be a statutory undertaker and his undertaking a statutory undertaking for specified purposes¹⁷ if the statutory conditions¹⁸ are fulfilled¹⁹.

1 Ie for the purposes of the Town and Country Planning Act 1990 but subject to s 262(2)-(7) (as amended): see the text and notes 2-19 infra.

2 For the meaning of 'enactment' see PARA 2 note 11 ante.

3 Ie within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended): see AIR LAW vol 2 (2008) PARA 189.

4 Town and Country Planning Act 1990 ss 262(1), 336(1).

5 Ie the Airports Act 1986 Pt V (ss 57-62) (as amended): see AIR LAW vol 2 (2008) PARA 189 et seq.

6 Town and Country Planning Act 1990 ss 262(2), 336(1).

7 Ie for the purposes of the provisions mentioned in ibid s 262(4) (as amended). The provisions so referred to are s 55 (as amended) (see PARAS 217-223 ante), s 90 (as amended) (see PARA 238 ante), s 101 (see PARA 704 ante), s 108(3) (see PARA 915 ante), ss 139-141 (as amended) (see PARAS 970-972 ante), s 143 (see PARA 974 ante), s 148 (as amended) (see PARAS 966, 970 ante), s 170(12)(b) (see PARA 991 ante), s 236(2)(a) (see PARA 955 ante), ss 237-241 (as amended) (see PARAS 954, 956-958 ante), s 245 (as amended) (see PARA 944 ante), ss

247(4)(b), 253, 257(2) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq), s 263(1), (2) (see PARA 1010 post), s 264 (as amended) (see PARA 1011 post), ss 266-283 (as amended) (see PARA 1013 et seq post), s 288(10)(a) (see PARA 47 ante), s 306 (as amended) (see PARA 50 ante), s 325(9) (see PARA 57 ante), s 336(2), (3) (see PARAS 1010, 1012 post), s 1(5), Sch 1 para 18 (see PARA 1027 post), Sch 8 (as amended) (see PARA 705 et seq ante), Sch 13 (as amended) (see PARA 979 et seq ante) and Sch 14 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 802 et seq): s 262(4) (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 paras 8, 22, Sch 19 Pt II).

8 le subject to the Town and Country Planning Act 1990 s 262(5)-(5B) (as amended): see the text and notes 12, 14 infra.

9 As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 835 et seq.

10 As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq (sewerage undertakers); WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

11 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

12 The Town and Country Planning Act 1990 s 262(4) (as amended: see note 7 supra) applies (1) as respects a universal postal service provider in connection with the provision of a universal postal service, as if the reference to ss 55, 247(4)(b), 253 and 257(2) (as amended) were omitted; and (2) as respects a universal postal service provider in connection with the provision of a universal postal service, the Civil Aviation Authority and a person who holds a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended) (air traffic services: see AIR LAW vol 2 (2008) PARA 139 et seq) as if (a) the references to the Town and Country Planning Act 1990 s 245 (as amended), s 263(1), (2) and s 336(2), (3) were omitted; and (b) after the words '266 to 283' there were inserted the words '(except section 271 as applied by section 13 of the Opencast Coal Act 1958)' (now repealed): Town and Country Planning Act 1990 s 262(5) (amended by the Transport Act 2000 s 37, Sch 5 para 6(1), (3); the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 80(1), (3)). The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for the purposes of the Town and Country Planning Act 1990; and references in that Act to his undertaking are to be construed accordingly: s 262(5B) (added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 80(1), (4)).

13 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq. See also note 12 supra.

14 le under the Transport Act 2000 Pt I Ch I (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq. See also note 12 supra. For the purposes of the Town and Country Planning Act 1990: (1) a person who holds a licence under the Transport Act 2000 Pt I Ch I (as amended) is not to be considered to be a statutory undertaker unless the person is carrying out activities authorised by the licence; (2) the person's undertaking is not to be considered to be a statutory undertaking except to the extent that it is the person's undertaking as licence holder: Town and Country Planning Act 1990 s 262(5A) (added by the Transport Act 2000 s 37, Sch 5 para 6(1), (4)).

15 Town and Country Planning Act 1990 s 262(3) (amended by the Transport Act 2000 s 37, Sch 5 para 6(1), (2); by virtue of the Utilities Act 2000 s 76(7); and by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 80(1), (2)).

16 le under the Electricity Act 1989 s 6 (as substituted and amended): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1065.

17 le for the purposes of the provisions mentioned in the Town and Country Planning Act 1990 s 262(7)(a)-(c) (amended by the Planning and Compensation Act 1991 Sch 6 paras 8, 22, Sch 19 Pt II). The provisions so referred to are: (1) the Town and Country Planning Act 1990 s 55 (as amended) (see PARAS 217-223 ante), s 108(3) (see PARA 915 ante), ss 139-141 (as amended) (see PARAS 970-972 ante), s 143 (see PARA 974 ante), s 148 (as amended) (see PARAS 966, 970 ante), s 236(2)(a) (see PARA 955 ante), s 237 (as amended) (see PARA 954 ante), s 245 (as amended) (see PARA 944 ante), s 253 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 798), s 263(1), (2) (see PARA 1010 post), s 264 (as amended) (see PARA 1011 post), ss 266-283 (as amended) (see PARA 1013 et seq post), s 288(10)(a) (see PARA 47 ante), s 306 (as amended) (see PARA 50 ante), s 325(9) (see PARA 57 ante), s 336(2), (3) (see PARAS 1010, 1012 post), Sch 1 para 18 (see PARA 1027 post), Sch 13 (as amended) (see PARA 979 et seq ante); (2) s 170(12)(b) (see PARA 991 ante), ss 238-241 (see PARAS 956-958 ante); (3) ss 247(4), 257(2), Sch 14 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 802 et seq): s 262(7)(a)-(c) (as so amended).

18 le for the purposes of the provisions mentioned (1) in ibid s 262(7)(a) (as amended) (see note 17 head (1) supra), if he holds a licence under the Electricity Act 1989 s 6(1) (as substituted and amended); (2) in the Town and Country Planning Act 1990 s 262(7)(b) (see note 17 head (2) supra), if he is entitled to exercise any power

conferred by the Electricity Act 1989 s 10(1), Sch 3 (as amended); and (3) in the Town and Country Planning Act 1990 s 262(7)(c) (see note 17 head (3) supra), if he is entitled to exercise any power conferred by the Electricity Act 1989 s 10(1), Sch 4 para 1 (as amended): Town and Country Planning Act 1990 s 262(6)(a)-(c). See further FUEL AND ENERGY vol 19(1) (2007 Reissue) PARA 768.

19 Ibid s 262(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(1) IN GENERAL/1010. Meaning of 'operational land'.

1010. Meaning of 'operational land'.

'Operational land' means¹, in relation to statutory undertakers²;

- 3857 (1) land³ which is used for the purpose of carrying on their undertaking; and
- 3858 (2) land in which an interest is held for that purpose⁴;

but heads (1) and (2) above do not include land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings⁵.

Further, heads (1) and (2) above do not apply:

- 3859 (a) in relation to a person who holds a licence under the provisions of the Transport Act 2000⁶ relating to air traffic services⁷;
- 3860 (b) in relation to a universal postal service provider⁸,

and alternative definitions of 'operational land' apply for those purposes⁹. For the purposes of specified provisions of the Town and Country Planning Act 1990¹⁰, however, 'operational land', in relation to a universal postal service provider and the Civil Aviation Authority¹¹, means land of the provider's or, as the case may be, of the Authority's of any such class as may be prescribed by regulations¹². Such regulations:

- 3861 (i) must be made, in the case of a universal postal service provider, by the appropriate minister¹³ and the Secretary of State or, in relation to Wales, the National Assembly for Wales¹⁴ acting jointly and in the case of the Civil Aviation Authority, by the appropriate minister;
- 3862 (ii) may define a class of land by reference to any circumstances whatsoever; and
- 3863 (iii) in the case of the Civil Aviation Authority, may make provision for different circumstances, including prescribing different classes of land for the purposes of different provisions¹⁵.

If, in relation to anything required or authorised to be done under the Town and Country Planning Act 1990, any question arises whether land of statutory undertakers is operational land, that question must be determined by the minister who is the appropriate minister in relation to those undertakers¹⁶.

1 Ie for the purposes of the Town and Country Planning Act 1990 but subject to ss 263(2)-(4), 264 (as amended): see the text and notes 2-15 infra; and PARA 1011 post.

2 For the meaning of 'statutory undertakers' see PARA 1009 ante.

3 For the meaning of 'land' para 2 note 10 ante.

4 Town and Country Planning Act 1990 ss 263(1), 336(1).

5 Ibid s 263(2). For the meaning of 'statutory undertaking' see PARA 1009 ante. The question whether land falls within s 263(2) is a question of fact: see *R v Minister of Fuel and Power, ex p Warwickshire County Council* [1957] 2 All ER 731 at 735, [1957] 1 WLR 861 at 865, DC, per Lord Goddard CJ (decided under previous legislation).

6 Ie under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

7 Town and Country Planning Act 1990 s 263(2A) (s 263(2A)-(2C) added by the Transport Act 2000 s 37, Sch 5 para 7). Subject to the Town and Country Planning Act 1990 s 264 (as amended) (see PARA 1011 post), in the Town and Country Planning Act 1990 'operational land' means, in relation to a person who holds a licence under the Transport Act 2000 Ch I Pt I (as amended), land (1) which is used by the licence holder, or by a company associated with it, for the purpose of carrying out activities authorised by the licence; or (2) in which the licence holder, or a company associated with it, holds an interest for that purpose: Town and Country Planning Act 1990 s 263(2B) (as so added). If for the purposes of the Town and Country Planning Act 1990 a question arises whether land is operational land in relation to a person who holds such a licence the question must be decided by the Secretary of State: s 263(2C) as so added).

8 Ibid s 263(2D) (s 263(2D)-(2E) added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 81(1), (2)). Subject to the Town and Country Planning Act 1990 ss 263(3), (4), 264 (as amended), in the Town and Country Planning Act 1990 'operational land' means, in relation to a universal postal service provider, land (1) which is used by the provider, or by a company associated with him, for any purpose in connection with the provision of a universal postal service; or (2) in which the provider, or a company associated with him, holds an interest for any such purpose: s 263(2E) (as so added).

9 See notes 7-8 supra.

10 Ie for the purposes of the Town and Country Planning Act 1990 s 108(3) (see PARA 915 ante), ss 266-283 (as amended) (see PARA 1013 et seq post), and s 101(4), Sch 8 Pt II (see PARA 704 note 3 ante).

12 Town and Country Planning Act 1990 s 263(3) (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 paras 8, 23, Sch 19 Pt II; and by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 81(1), (3)).

13 For the meaning of 'the appropriate minister' see PARA 1012 post.

14 Subject to the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(b)-(f), all functions of the Secretary of State for Wales under the Town and Country Planning Act 1990 s 263(3), (4) (as amended) are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

15 Town and Country Planning Act 1990 s 263(4) (amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 81(1), (4)).

At the date at which this title states the law no such regulations had been made but, by virtue of the Planning (Consequential Provisions) Act 1990 s 2, the Post Office Operational Land Regulations 1973, SI 1973/310 (as amended), and the Civil Aviation Authority (Operational Land) Regulations 1984, SI 1984/575, partly have effect as if so made. As to the making of regulations generally see PARA 3 ante.

Land of a universal service provider used by him or in which an interest is held by him for any of the following purposes in connection with the provision of a universal postal service (within the meaning of the Postal Services Act 2000): (1) a postal sorting office; (2) a postmen's delivery office, is operational land: Post Office Operational Land Regulations 1973, SI 1973/310, reg 2 (amended by SI 2001/1149).

Land which is used, or in which an interest is held, by the Civil Aviation Authority for any of the following purposes: (a) the operation of an aerodrome or any purpose ancillary to such use; (b) the provision of facilities for the control of air traffic or for assisting the navigation of aircraft, is operational land: Civil Aviation Authority (Operational Land) Regulations 1984, SI 1984/575, regs 2, 3.

16 Town and Country Planning Act 1990 s 336(3). Subject to the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(b)-(f), all functions of the Secretary of State for Wales under the Town

and Country Planning Act 1990 s 336(3) are, in so far as exercisable in relation to Wales, transferred to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2(a), Sch 1 (as amended).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(1) IN GENERAL/1011. Cases in which land is to be treated as not being operational land.

1011. Cases in which land is to be treated as not being operational land.

Where an interest in land¹ is held by statutory undertakers² for the purpose of carrying on their undertaking and:

- 3864 (1) the interest was acquired by them on or after 6 December 1968; or
- 3865 (2) it was held by them immediately before that date but the circumstances were then such that the land did not fall to be treated³ as operational land⁴,

then, notwithstanding the general provisions relating to operational land⁵, the land is not treated⁶ as operational land unless:

- 3866 (a) there is, or at some time has been, in force with respect to it a specific planning permission⁷ for its development and that development, if carried out, would involve or have involved its use⁸ for the purpose of the carrying on of the statutory undertakers' undertaking⁹; or
- 3867 (b) the undertakers' interest in the land was acquired by them as the result of a transfer under specified statutory provisions¹⁰ from other statutory undertakers¹¹, and immediately before transfer the land was operational land of those other undertakers¹².

The above provisions do not apply:

- 3868 (i) in the case of certain Post Office land¹³;
- 3869 (ii) where an interest in land is held by the Civil Aviation Authority¹⁴, or by a person who holds a licence under the relevant provisions of the Transport Act 2000 relating to air traffic services¹⁵ or a company associated with that person, for the purpose of determining whether the land is¹⁶ operational land in relation to the authority or the licence holder¹⁷.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'statutory undertakers' see PARA 1009 ante.

3 Ie for the purposes of the Town and Country Planning Act 1962 (repealed).

4 For the meaning of 'operational land' see PARA 1010 ante.

5 Ie the Town and Country Planning Act 1990 s 263 (as amended): see PARA 1010 ante.

6 Ie for the purposes of the Town and Country Planning Act 1990.

7 A specific planning permission for these purposes is a planning permission (1) granted on an application in that behalf made under *ibid* Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante); or (2) granted by provisions of a development order or a local development order granting planning permission generally for

development which has received specific parliamentary approval; or (3) granted by a special development order in respect of development specifically described in the order; or (4) deemed to be granted by virtue of a direction of a government department under s 90(1) (as amended) (see PARA 238 ante): s 264(5) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(k)).

The reference (a) in the Town and Country Planning Act 1990 s 264(5)(a) to Pt III (as amended) includes a reference to the Town and Country Planning Act 1971 Pt III (ss 22-53) (repealed) and the enactments in force before the commencement of that Act and replaced by Pt III (ss 22-53) (repealed); (b) in the Town and Country Planning Act 1990 s 264(5)(b) (as amended) to development which has received specific parliamentary approval is a reference to development authorised (i) by a local or private Act of Parliament; (ii) by an order approved by both Houses of Parliament; or (iii) by an order which has been brought into operation in accordance with the provisions of the Statutory Orders (Special Procedure) Act 1945 (see PARLIAMENT vol 34 (Reissue) PARA 912 et seq), being an Act or order which designates specifically both the nature of the development authorised by it and the land upon which it may be carried out; (c) in the Town and Country Planning Act 1990 s 264(5)(d) to s 90(1) (as amended) includes a reference to the Town and Country Planning Act 1971 s 40 (repealed), the Town and Country Planning Act 1962 s 41 (repealed) and the Town and Country Planning Act 1947 s 35 (repealed): Town and Country Planning Act 1990 ss 264(6), 336(1). For the meaning of 'planning permission' generally see PARA 43 note 6 ante; for the meaning of 'development order' see PARA 252 ante; as to general and special development orders see PARA 252 et seq ante and as to local development orders see PARA 419 et seq ante; for the meaning of 'development' see PARA 217 ante; for the meaning of 'government department' see PARA 3 note 5 ante; and for the meaning of 'enactment' see PARA 2 note 11 ante.

8 For the meaning of 'use' see PARA 221 note 4 ante.

9 Town and Country Planning Act 1990 s 264(1)-(3).

10 Ie under the provisions of the Transport Act 1968, the Transport (London) Act 1969, the Gas Act 1986, the Airports Act 1986, the Water Act 1989 or the Water Industry Act 1991: Town and Country Planning Act 1990 s 264(4) (amended by the Water Consolidation (Consequential Provisions) Act 1991 s 2(1), Sch 1 para 54).

11 For these purposes an interest in land acquired by Transport for London or any of its subsidiaries (within the meaning of the Greater London Authority Act 1999) under or by virtue of that Act is to be taken to have been acquired by Transport for London or that subsidiary at the time and in the manner in which it was acquired by the relevant predecessor; and 'relevant predecessor' means London Regional Transport or such other predecessor in title of Transport for London or the subsidiary of Transport for London as last acquired the interest in question (1) as the result of such a transfer as is mentioned in the Town and Country Planning Act 1990 s 264(4)(a) (as amended) (see the text to note 10 supra) and (2) in such circumstances as are mentioned in ss 264(4)(b) (see the text to note 12 infra: s 264(4A), (4B) (added by the Transport for London (Consequential Provisions) Order 2003, SI 2003/1615, art 2, Sch 1 Pt 1 para 14).

12 Town and Country Planning Act 1990 s 264(1), (2), (4) (as amended: see note 10 supra).

13 Ie to land in the case of which an interest of the Postmaster General's vested in the Post Office by virtue of the Post Office Act 1969 s 16 (repealed): Town and Country Planning Act 1990 s 264(7).

14 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

15 Ie under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

16 See note 6 supra.

17 Town and Country Planning Act 1990 s 264(8) (amended by the Transport Act 2000 (Consequential Amendments) Order 2001, SI 2001/4050, art 2, Schedule Pt III para 13(a)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(1) IN GENERAL/1012. Meaning of 'the appropriate minister'.

1012. Meaning of 'the appropriate minister'.

Specified powers¹ under the Town and Country Planning Act 1990 may be exercised by the appropriate minister or, in relation to Wales, by the Secretary of State or the National Assembly for Wales².

Subject to certain exceptions³, for these purposes, 'the appropriate minister' means:

- 3870 (1) in relation to statutory undertakers⁴ carrying on any railway, light railway, tramway, road transport, dock, harbour, pier or lighthouse undertaking, the Civil Aviation Authority⁵, a person who holds a licence under the provisions of the Transport Act 2000 relating to air traffic services⁶ or a relevant airport operator⁷, the Secretary of State for Transport⁸;
- 3871 (2) in relation to statutory undertakers carrying on an undertaking for the supply of hydraulic power, the Secretary of State for Trade and Industry⁹;
- 3872 (3) in relation to a universal postal service provider, the Secretary of State for Trade and Industry¹⁰; and
- 3873 (4) in relation to any other statutory undertakers, the First Secretary of State¹¹.

For specified purposes only, 'the appropriate minister':

- 3874 (a) means¹², in relation to a gas transporter¹³ or a holder of a licence under the Electricity Act 1989¹⁴, the Secretary of State for Trade and Industry¹⁵;
- 3875 (b) means¹⁶, in relation to the Environment Agency¹⁷, the Secretary of State or the Secretary of State for the Environment, Food and Rural Affairs¹⁸;
- 3876 (c) means¹⁹, in relation to a water or sewerage undertaker, the Secretary of State²⁰, whose functions are transferred, in relation to Wales, to the National Assembly for Wales²¹.

References in the Town and Country Planning Act 1990 to the Secretary of State and the appropriate minister are to be construed, in relation to England:

- 3877 (i) if the appropriate minister is not the one concerned as the Secretary of State, as references to the Secretary of State and the appropriate minister; and
- 3878 (ii) if the one concerned as the Secretary of State is also the appropriate minister, as references to him alone,

and similarly with references to a minister²² and the appropriate minister and with any provision requiring the Secretary of State to act jointly with the appropriate minister²³. Certain functions of the Secretary of State in relation to Wales are, however, transferred to the National Assembly for Wales²⁴.

If, in relation to anything required or authorised to be done under the Town and Country Planning Act 1990, any question arises as to which minister is or was the appropriate minister in relation to any statutory undertakers, that question must be determined by the Treasury²⁵; and this function is not transferred, in relation to Wales, to the Assembly²⁶.

1 See eg the Town and Country Planning Act 1990 s 277(1); and PARA 1025 post.

2 As to the Secretary of State and the Assembly see PARAS 19-20 ante.

3 Ie subject to the Town and Country Planning Act 1990 s 265(2)-(4) (as amended): see the text and notes 4-23 infra.

4 For the meaning of 'statutory undertakers' see PARA 1009 ante.

5 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

6 le under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

7 le within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended): see AIR LAW vol 2 (2008) PARA 189.

8 Town and Country Planning Act 1990 s 265(1)(a) (substituted by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 15(1), (4)(a)). As to the Secretary of State for Transport see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 236.

9 Town and Country Planning Act 1990 s 265(1)(b). As to the Secretary of State for Trade and Industry see TRADE AND INDUSTRY vol 97 (2010) PARA 802.

10 Ibid s 265(1)(c) (amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 82).

11 Town and Country Planning Act 1990 s 265(1)(d) (substituted by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 15(1), (4)(b)).

12 le for the purposes of the Town and Country Planning Act 1990 s 170(12) (see PARA 991 ante), ss 266-280 (as amended) (see PARA 1013 et seq post), s 325(9) (see PARA 57 ante), s 336(2) (see the text and notes 25-26 infra), s 336(3) (see PARA 1010 ante) and s 101(4), Sch 8 Pt II (paras 6-7) (see PARA 704 note 3 ante).

13 As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 835 et seq.

14 le a licence under the Electricity Act 1989 s 6 (as substituted and amended): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1065.

15 Town and Country Planning Act 1990 s 265(2) (amended by the Transfers of Functions (Energy) Order 1992, SI 1992/1314, art 3, Schedule para 1(f); and by virtue of the Utilities Act 2000 s 76(7)).

16 le for the purposes of the Town and Country Planning Act 1990 s 170(12), ss 266-280 (as amended), s 325(9), s 336(2), (3), Sch 8 Pt II (as to these provisions see note 12 supra) and s 259, Sch 14 (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 802 et seq).

17 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

18 Town and Country Planning Act 1990 s 265(3)(a) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1). The statutory wording is 'or the Minister of Agriculture, Fisheries and Food'; but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.

19 See note 16 supra.

20 Town and Country Planning Act 1990 s 265(3)(b).

In the Town and Country Planning Act 1990, except in so far as the context otherwise requires, 'the appropriate minister' has the meaning given in s 265 (as amended): s 336(1).

21 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

22 For the meaning of 'minister' see PARA 3 note 5 ante.

23 Town and Country Planning Act 1990 s 265(4).

24 See note 21 supra.

25 Town and Country Planning Act 1990 s 336(2).

26 See note 21 supra.

UPDATE

1012 Meaning of 'the appropriate minister'

TEXT AND NOTE 11--Head (4) now refers to the Secretary of State for Communities and Local Government: 1990 Act s 265(1)(d) (substituted by SI 2006/1926).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(2) APPLICATION OF PROVISIONS CONTROLLING DEVELOPMENT/1013. Applications for planning permission by statutory undertakers.

(2) APPLICATION OF PROVISIONS CONTROLLING DEVELOPMENT

1013. Applications for planning permission by statutory undertakers.

Where, in relation to:

- 3879 (1) operational land¹; and
- 3880 (2) land² in which the statutory undertakers³ hold or propose to acquire an interest with a view to its being used for the purpose of carrying on their undertaking, where the planning permission⁴, if granted on the application or appeal, would be for development⁵ involving the use⁶ of the land for that purpose⁷,

either:

- 3881 (a) an application for planning permission to develop such land is made by statutory undertakers and is referred to the Secretary of State⁸ or, in relation to Wales, to the National Assembly for Wales⁹; or
- 3882 (b) an appeal is made to the Secretary of State or the Assembly¹⁰ from the decision on such an application; or
- 3883 (c) such an application is deemed to be made¹¹ on an appeal against an enforcement notice¹²,

the application or appeal must be dealt with by the Secretary of State (or the Assembly) and the appropriate minister¹³.

Subject to the statutory provisions relating to compensation¹⁴, the provisions of the Town and Country Planning Act 1990 apply to an application which is so dealt with by the Secretary of State (or the Assembly) and the appropriate minister as if it had been dealt with by the Secretary of State or the Assembly¹⁵.

The above provisions do not apply in relation to the display of advertisements¹⁶ on operational land of statutory undertakers¹⁷.

1 For the meaning of 'operational land' see PARA 1010 ante.

2 For the meaning of 'land' see PARA 2 note 10 ante.

3 For the meaning of 'statutory undertakers' see PARA 1009 ante.

4 For the meaning of 'planning permission' see PARA 43 note 6 ante.

5 For the meaning of 'development' see PARA 217 ante.

6 For the meaning of 'use' see PARA 221 note 4 ante.

7 Town and Country Planning Act 1990 s 266(2). Section 266(2)(b) has effect in relation to the Civil Aviation Authority as if for the reference to development involving the use of land for the purpose of carrying on the Civil Aviation Authority's undertaking there were substituted a reference to development involving the use of land for such of the purposes of carrying on that undertaking as may be prescribed by the appropriate minister: s 266(5). For the meaning of 'prescribed' see PARA 16 note 5 ante; and for the meaning of 'the appropriate minister' see PARA 1012 ante. The prescribed purposes of carrying on the Civil Aviation Authority's undertaking are (1) the operation of an aerodrome or any purpose ancillary to such use; (2) the provision of facilities for the control of air traffic or for assisting the navigation of aircraft: Civil Aviation Authority (Operational Land) Regulations 1984, SI 1984/575, regs 2(a), (b), 3; Planning (Consequential Provisions) Act 1990 s 2.

8 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante. As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Town and Country Planning Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 See notes 8-9 supra.

11 le under ibid s 177(5) (as amended): see PARA 610 ante.

12 le under ibid s 174 (as amended): see PARA 603 ante.

13 Ibid s 266(1).

14 le the provisions of the Town and Country Planning Act 1990 Pt XI (ss 262-283) (as amended) as to compensation: see PARA 1027 et seq post.

15 Ibid s 266(4). As to the application of s 266 (as amended) in relation to Crown land see PARAS 11, 13 et seq ante.

16 For the meaning of 'advertisement' see PARA 770 ante.

17 Town and Country Planning Act 1990 s 283. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 898 ante.

UPDATE

1013 Applications for planning permission by statutory undertakers

TEXT AND NOTES 1-13--The 1990 Act s 266(1) has effect in relation to an application or appeal relating to land in England only if the Secretary of State or the appropriate minister has given a direction for it to have effect in relation to the application or appeal (and the direction has not been revoked): Town and Country Planning Act 1990 s 266(1A) (added by the Planning Act 2008 s 195).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(2) APPLICATION OF PROVISIONS CONTROLLING DEVELOPMENT/1014. Conditional grants of planning permission.

1014. Conditional grants of planning permission.

Notwithstanding anything in the statutory provisions relating to control of development¹, planning permission² to develop³ operational land⁴ of statutory undertakers⁵ may not, except with their consent, be granted subject to conditions requiring:

- 3884 (1) that any buildings or works⁶ authorised by the permission are to be removed; or
 3885 (2) that any use⁷ of the land so authorised is to be discontinued,

at the end of a specified period⁸.

The above provisions do not apply in relation to the display of advertisements⁹ on operational land of statutory undertakers¹⁰.

1 le the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'operational land' see PARA 1010 ante.

5 For the meaning of 'statutory undertakers' see PARA 1009 ante.

6 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.

7 For the meaning of 'use' see PARA 221 note 4 ante.

8 Town and Country Planning Act 1990 s 267. As to the application of s 267 in relation to Crown land see PARAS 11, 13 et seq ante.

9 For the meaning of 'advertisement' see PARA 770 ante.

10 Town and Country Planning Act 1990 s 283. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 898 ante.

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1015. Development requiring authorisation of government department.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales², and the appropriate minister³ are not required⁴ to deal with an application for planning permission⁵ for the development⁶ of operational land⁷ if the authorisation of a government department⁸ is required in respect of that development⁹; but this provision does not apply where the relevant authorisation has been granted without any direction as to the grant of planning permission¹⁰.

For these purposes, development is taken to be authorised by a government department if:

- 3886 (1) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment¹¹;
 3887 (2) a compulsory purchase order is confirmed by the department authorising the purchase of land¹² for the purpose of the development;
 3888 (3) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;

- 3889 (4) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
- 3890 (5) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants,

and references to the authorisation of a government department are to be construed accordingly¹³.

The above provisions do not apply in relation to the display of advertisements¹⁴ on operational land of statutory undertakers¹⁵.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Town and Country Planning Act 1990 ss 266(1), 268, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 For the meaning of 'the appropriate minister' see PARA 1012 ante.
- 4 Ie under the Town and Country Planning Act 1990 s 266(1): see PARA 1013 ante.
- 5 For the meaning of 'planning permission' see PARA 43 note 6 ante.
- 6 For the meaning of 'development' see PARA 217 ante.
- 7 For the meaning of 'operational land' see PARA 1010 ante.
- 8 For the meaning of 'government department' see PARA 3 note 5 ante.
- 9 Town and Country Planning Act 1990 s 268(1).
- 10 Ibid s 268(2).
- 11 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 12 For the meaning of 'land' see PARA 2 note 10 ante.
- 13 Town and Country Planning Act 1990 s 268(3). As to the application of s 268 in relation to Crown land see PARAS 11, 13 et seq ante.
- 14 For the meaning of 'advertisement' see PARA 770 ante.
- 15 Town and Country Planning Act 1990 s 283. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 898 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(2) APPLICATION OF PROVISIONS CONTROLLING DEVELOPMENT/1016. Revocation or modification of permission to develop operational land.

1016. Revocation or modification of permission to develop operational land.

In relation to any planning permission¹ granted on the application of statutory undertakers² for the development³ of operational land⁴, the statutory provisions⁵ relating to the revocation and modification of planning permission have effect as if for any reference in them to the Secretary

of State⁶ or, in relation to Wales, the National Assembly for Wales⁷, there were substituted a reference to the Secretary of State (or the Assembly) and the appropriate minister⁸.

The above provisions do not apply in relation to the display of advertisements⁹ on operational land of statutory undertakers¹⁰.

1 For the meaning of 'planning permission' see PARA 43 note 6 ante.

2 For the meaning of 'statutory undertakers' see PARA 1009 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 For the meaning of 'operational land' see PARA 1010 ante.

5 I.e. the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 269, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Town and Country Planning Act 1990 s 269. As to the application of s 269 in relation to Crown land see PARAS 11, 13 et seq ante.

9 For the meaning of 'advertisement' see PARA 770 ante.

10 Town and Country Planning Act 1990 s 283. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 898 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(2) APPLICATION OF PROVISIONS CONTROLLING DEVELOPMENT/1017. Order requiring discontinuance of use etc of operational land.

1017. Order requiring discontinuance of use etc of operational land.

The statutory provisions¹ relating to the making of orders:

- 3891 (1) requiring the discontinuance of any use² of land³;
- 3892 (2) imposing conditions on the continuance of it⁴; or
- 3893 (3) requiring buildings or works⁵ on land to be altered or removed⁶,

and the statutory provisions⁷ relating to the making of orders for the discontinuance of mineral workings⁸ have effect in relation to operational land⁹ of statutory undertakers¹⁰ as if for any reference in them to the Secretary of State¹¹ or, in relation to Wales, to the National Assembly for Wales¹², there were substituted a reference to the Secretary of State (or the Assembly) and the appropriate minister¹³.

The above provisions do not apply in relation to the display of advertisements¹⁴ on operational land of statutory undertakers¹⁵.

1 I.e. the provisions of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

- 2 For the meaning of 'use' see PARA 221 note 4 ante.
- 3 See PARA 546 et seq ante. For the meaning of 'land' see PARA 2 note 10 ante.
- 4 See PARA 546 et seq ante.
- 5 For the meaning of 'buildings or works' and of references to their removal see PARA 43 note 9 ante.
- 6 See note 4 supra.
- 7 In the provisions of the Town and Country Planning Act 1990 s 102(8), Sch 9 (as amended): see PARA 757 et seq ante.
- 8 In orders under ibid Sch 9 (as amended): see PARA 757 et seq ante.
- 9 For the meaning of 'operational land' see PARA 1010 ante.
- 10 For the meaning of 'statutory undertakers' see PARA 1009 ante.
- 11 As to the Secretary of State see PARA 19 ante.
- 12 As to the transfer of functions under the Town and Country Planning Act 1990 s 270, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 13 Town and Country Planning Act 1990 s 270. For the meaning of 'the appropriate minister' see PARA 1012 ante. As to the application of s 270 in relation to Crown land see PARAS 11, 13 et seq ante.
- 14 For the meaning of 'advertisement' see PARA 770 ante.
- 15 Town and Country Planning Act 1990 s 283. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 898 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(3) MODIFICATIONS OF COMPULSORY PURCHASE PROCEDURES/1018. Modifications of compulsory purchase procedures in relation to land of statutory undertakers.

(3) MODIFICATIONS OF COMPULSORY PURCHASE PROCEDURES

1018. Modifications of compulsory purchase procedures in relation to land of statutory undertakers.

Certain statutory provisions¹ do not apply to a compulsory purchase order:

- 3894 (1) under:
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45. (a) the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990;
46. (b) certain provisions of the Local Government, Planning and Land Act 1980²;
47. (c) certain provisions of the Welsh Development Agency Act 1975³,
- 285
- 3895 authorising the acquisition of land which has been acquired by statutory undertakers⁴ for the purposes of their undertaking; and
- 3896 (2) confirmed or made by the appropriate minister⁵ jointly with the minister or ministers who would otherwise have power to make or confirm it⁶.

Where, in accordance with these provisions, a compulsory acquisition is effected under a compulsory purchase order confirmed or made without the appropriate minister's certificate, special statutory provisions with regard to compensation⁷ apply⁸.

Where any land an interest in which was held, or which was used, for the carrying on of a statutory undertaking is purchased compulsorily under the enactments relating to the acquisition of land for planning purposes, the undertakers may be relieved of obligations, or their rights and duties may be extended or modified by ministerial order⁹.

1 le the Acquisition of Land Act 1981 s 16(2), Sch 3 para 3(2) (minister's certificate in relation to statutory undertakers' land): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 607.

2 le under the Local Government, Planning and Land Act 1980 s 142 (as amended) or s 143 (as amended) (acquisition by urban development corporation): see PARA 1455 et seq post.

3 le under the Welsh Development Agency Act 1975 s 21A, Sch 4 (as added and amended): see TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq. As to the Welsh Development Agency see PARA 1309 post.

4 For the meaning of 'statutory undertakers' for these purposes see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 561; and as to its meaning for the purposes of the Town and Country Planning Act 1990 see PARA 1009 ante.

5 For the meaning of 'the appropriate minister' for these purposes see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 564; and as to its meaning for the purposes of the Town and Country Planning Act 1990 see PARA 1012 ante.

6 Acquisition of Land Act 1981 s 31(1), (2) (s 31(1) amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 53 and by the Government of Wales Act 1998 ss 128, 135(3), 152, Sch 14 para 19, Sch 18 Pt V; the Acquisition of Land Act 1981 s 31(2) substituted by the Planning and Compensation Act 1991 s 70, Sch 15 para 10(2)).

7 le the Town and Country Planning Act 1990 ss 280-282 (as amended): see PARA 1028 et seq post. As to the scope of the provision see *National Carriers Ltd v Secretary of State for Transport* (1978) 35 P & CR 245, Lands Tribunal (decided under previous legislation).

8 Acquisition of Land Act 1981 s 31(4) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 53(2)).

9 See the Town and Country Planning Act 1990 ss 275-278; and PARA 1023 et seq post.

UPDATE

1018-1020 Modifications of compulsory purchase procedures in relation to land of statutory undertakers ... Extinguishment of rights of electronic communications code network operators; preliminary notices

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1018 Modifications of compulsory purchase procedures in relation to land of statutory undertakers

NOTE 3--1975 Act s 21A substituted, Sch 4 amended: Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226.

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(4) EXTINGUISHMENT OF STATUTORY UNDERTAKERS' RIGHTS

1019. Extinguishment of rights; preliminary notices.

Where any land¹ has been acquired by a minister², a local authority³ or statutory undertakers⁴ under the statutory provisions relating to the acquisition and appropriation of land for planning purposes⁵, or compulsorily under any other enactment⁶ or has been appropriated by a local authority for planning purposes⁷, and:

- 3897 (1) there subsists over that land a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, being a right of way or a right of laying down, erecting, continuing or maintaining any apparatus on, under or over the land; or
- 3898 (2) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking,

the following provisions apply⁸.

If the acquiring or appropriating authority⁹ is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development¹⁰ with a view to which the land was acquired or appropriated, the authority may serve on the statutory undertakers a notice:

- 3899 (a) stating that at the end of the relevant period¹¹ the right will be extinguished; or
- 3900 (b) requiring that before the end of that period the apparatus is to be removed¹².

The statutory undertakers on whom such a notice is served may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority stating that they object to all or any of the provisions of the notice and specifying the grounds of their objection¹³.

If no such counter-notice is served, any right to which the notice relates is extinguished at the end of the relevant period; and, if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit¹⁴.

If, however, such a counter-notice is served:

- 3901 (i) on a local authority or on statutory undertakers, the authority or undertakers may either withdraw the notice, without prejudice to the service of a further notice, or apply to the Secretary of State¹⁵ (or, in relation to Wales, to the National Assembly for Wales¹⁶) and the appropriate minister¹⁷ for an order¹⁸ embodying the provisions of the notice, with or without modification¹⁹;
- 3902 (ii) on a minister, he may withdraw the notice, without prejudice to the service of a further notice, or he and the appropriate minister may make an order²⁰ embodying the provisions of the notice, with or without modification²¹.

- 1 For the meaning of 'land' see PARA 2 note 10 ante.
- 2 For the meaning of 'minister' see PARA 3 note 5 ante.
- 3 For the meaning of 'local authority' see PARA 3 note 3 ante. The Town and Country Planning Act 1990 s 271 has effect as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990: see the Environment Act 1995 s 65, Sch 8 para 2(3)(a). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 4 For the meaning of 'statutory undertakers' see PARA 1009 ante.
- 5 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante) or the Planning (Listed Building and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post).
- 6 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 7 For these purposes, any reference to the appropriation of land for planning purposes is to be construed in accordance with the Town and Country Planning Act 1990 s 246(1) (see PARA 945 note 3 ante), as if s 271 were in Pt IX (ss 226-246) (as amended): s 271(7).
- 8 Ibid s 271(1).
- 9 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.
- 10 For the meaning of 'development' see PARA 217 ante.
- 11 For these purposes, the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of the notice or such longer period as may be specified in it in relation to that right or apparatus: Town and Country Planning Act 1990 s 271(8). As to the service of notices see PARA 54 ante.
- 12 Ibid s 271(2). As to the application of this provision to land in relation to which a highway has been stopped up or diverted under the Highways Acts see the Highways Act 1980 s 21(3)(b), Sch 5 Pt II (as amended); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 715.
- 13 Town and Country Planning Act 1990 s 271(3).
- 14 Ibid s 271(4).
- 15 As to the Secretary of State see PARA 19 ante.
- 16 As to the transfer of functions under the Town and Country Planning Act 1990 s 271, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 17 For the meaning of 'the appropriate minister' see PARA 1012 ante.
- 18 Ie under the Town and Country Planning Act 1990 s 271. As to the making of orders see PARA 1021 post.
- 19 Ibid s 271(5).
- 20 See note 18 supra.
- 21 Town and Country Planning Act 1990 s 271(6).

UPDATE

1018-1020 Modifications of compulsory purchase procedures in relation to land of statutory undertakers ... Extinguishment of rights of electronic communications code network operators; preliminary notices

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(4) EXTINGUISHMENT OF STATUTORY UNDERTAKERS' RIGHTS/1020. Extinguishment of rights of electronic communications code network operators; preliminary notices.

1020. Extinguishment of rights of electronic communications code network operators; preliminary notices.

Where any land¹ has been acquired by a minister², a local authority³ or statutory undertakers⁴ under the statutory provisions relating to the acquisition and appropriation of land for planning purposes⁵, or compulsorily under any other enactment⁶ or has been appropriated by a local authority for planning purposes⁷, and:

- 3903 (1) there subsists over that land a right conferred by or in accordance with the electronic communications code⁸ on the operator of an electronic communications code network, being a right of way or a right of laying down, erecting, continuing or maintaining any apparatus on, under or over the land; or
- 3904 (2) there is on, under or over the land electronic communications apparatus kept installed for the purposes of any such network,

the following provisions apply⁹.

If the acquiring or appropriating authority¹⁰ is satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus is necessary for the purpose of carrying out any development¹¹ with a view to which the land was acquired or appropriated, the authority may serve on the operator of the electronic communications code network a notice stating that at the end of the relevant period¹² the right will be extinguished, or requiring that before the end of that period the apparatus is to be removed¹³. The operator of the electronic communications code network on whom such a notice is served may, before the end of the period of 28 days from the date of service of the notice, serve a counter-notice on the acquiring or appropriating authority stating that he objects to all or any of the provisions of the notice and specifying the grounds of his objection¹⁴.

If no such counter-notice is served, any right to which the notice relates is extinguished at the end of the relevant period; and, if at the end of that period any requirement of the notice as to the removal of any apparatus has not been complied with, the acquiring or appropriating authority may remove the apparatus and dispose of it in any way the authority may think fit¹⁵. If, however, such a counter-notice is served:

- 3905 (a) on a local authority or on statutory undertakers, the authority or undertakers may either withdraw the notice, without prejudice to the service of a further notice, or apply to the Secretary of State¹⁶ (or, in relation to Wales, to the National Assembly for Wales¹⁷) and the Secretary of State for Trade and Industry¹⁸ for an order¹⁹ embodying the provisions of the notice, with or without modification²⁰;
- 3906 (b) on a minister, he may withdraw the notice, without prejudice to the service of a further notice, or he and the Secretary of State for Trade and Industry may

make an order²¹ embodying the provisions of the notice, with or without modification²².

- 1 For the meaning of 'land' see PARA 2 note 10 ante.
- 2 For the meaning of 'minister' para 3 note 5 ante.
- 3 For the meaning of 'local authority' see PARA 3 note 3 ante. The Town and Country Planning Act 1990 s 272 (as amended) has effect as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990: see the Environment Act 1995 s 65, Sch 8 para 2(3)(a). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 4 For the meaning of 'statutory undertakers' see PARA 1009 ante.
- 5 Ie under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post).
- 6 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 7 For these purposes, any reference to the appropriation of land for planning purposes is to be construed in accordance with the Town and Country Planning Act 1990 s 246(1) (see PARA 945 note 3 ante), as if s 272 (as amended) were in Pt IX (ss 226-246) (as amended): s 272(7).
- 8 For the meaning of 'the electronic communications code' see TELECOMMUNICATIONS vol 97 (2010) PARA 151.
- 9 Town and Country Planning Act 1990 s 272(1) (s 272(1)-(3) amended by the Communications Act 2003 s 406(1), Sch 17 para 103(1)(e), (2)). The Town and Country Planning Act 1990 s 273 (as amended) (notice given by statutory undertakers to developing authority: see PARA 1022 post) also applies to operators of electronic communications code networks: see s 273(7) (as amended); and PARA 1022 note 3 post.
- 10 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.
- 11 For the meaning of 'development' see PARA 217 ante.
- 12 For these purposes, the relevant period, in relation to a notice served in respect of any right or apparatus, is the period of 28 days from the date of service of the notice or such longer period as may be specified in it in relation to that right or apparatus: Town and Country Planning Act 1990 s 272(8). As to the service of notices see PARA 54 ante.
- 13 Ibid s 272(2) (as amended: see note 9 supra).
- 14 Ibid s 272(3) (as amended: see note 9 supra).
- 15 Ibid s 272(4).
- 16 As to the Secretary of State see PARA 19 ante.
- 17 As to the transfer of functions under the Town and Country Planning Act 1990 s 272 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 18 The functions of the Secretary of State for Trade and Industry under the Town and Country Planning Act 1990 s 272(5), (6), so far as exercisable in relation to Wales, are exercisable by him and not by the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 2000, SI 2000/253, arts 4, 5, Sch 3.
- 19 Ie under the Town and Country Planning Act 1990 s 272 (as amended). As to the making of orders see PARA 1021 post.
- 20 Ibid s 272(5).
- 21 See note 18 supra.
- 22 Town and Country Planning Act 1990 s 272(6).

UPDATE

1018-1020 Modifications of compulsory purchase procedures in relation to land of statutory undertakers ... Extinguishment of rights of electronic communications code network operators; preliminary notices

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(4) EXTINGUISHMENT OF STATUTORY UNDERTAKERS' RIGHTS/1021. Orders for extinguishment of rights.

1021. Orders for extinguishment of rights.

Where a minister¹ and the appropriate minister² propose to make an order after a counter-notice has been served on a minister³, they must prepare a draft of the order⁴.

Before making an order for the extinguishment of rights⁵, the ministers proposing to make the order must give the statutory undertakers⁶ or, as the case may be, the operator of the electronic communications code network⁷, on whom notice was served⁸ an opportunity of objecting to the application for, or proposal to make, the order⁹. If any such objection is made, before making the order the ministers must consider the objection and give those statutory undertakers or, as the case may be, that operator, and, in specified cases where a counter-notice was served¹⁰, the local authority¹¹ or statutory undertakers on whom it was served, an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State and the appropriate minister (or, in relation to Wales, by the National Assembly for Wales)¹².

After complying with these requirements¹³, the ministers may, if they think fit, make the order in accordance with the application or, as the case may be, in accordance with the draft order, either with or without modification¹⁴. Where such an order is made:

- 3907 (1) any right to which the order relates is extinguished at the end of the period specified in that behalf in the order; and
- 3908 (2) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring or appropriating authority¹⁵ may remove the apparatus and dispose of it in any way the authority may think fit¹⁶.

1 For the meaning of 'minister' see PARA 3 note 5 ante.

2 For these purposes, references to the appropriate minister are to be taken, in the case of an order under the Town and Country Planning Act 1990 s 272 (as amended) (see PARA 1020 ante), as references to the Secretary of State for Trade and Industry: s 274(6). For the meaning of 'the appropriate minister' generally see PARA 1012 ante. Certain ministerial functions under s 274 are transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante. Functions of the Secretary of State for Trade and Industry under the Town and Country Planning Act 1990 s 272 are not, however, so transferred: see PARA 1020 note 21 ante.

3 ie an order under ibid s 271(6) (see PARA 1019 ante) or s 272(6) (see PARA 1020 ante).

- 4 Ibid s 274(1).
- 5 Ie under ibid s 271(5) or (6) (see PARA 1019 ante) or s 272(5) or (6) (see PARA 1020 ante).
- 6 For the meaning of 'statutory undertakers' see PARA 1009 ante.
- 7 For the meaning of 'electronic communications code network' see TELECOMMUNICATIONS vol 97 (2010) PARA 174.
- 8 Ie under the Town and Country Planning Act 1990 s 271(2) (see PARA 1019 ante) or s 272(2) (as amended) (see PARA 1020 ante).
- 9 Ibid s 274(2) (amended by the Communications Act 2003 s 406(1), Sch 17 para 103(1)(g), (2)(d)).
- 10 Ie under the Town and Country Planning Act 1990 s 271(5) (see PARA 1019 ante) or s 272(5) (see PARA 1020 ante).
- 11 For the meaning of 'local authority' see PARA 3 note 3 ante. Ibid s 274 (as amended) has effect as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990: see the Environment Act 1995 s 65, Sch 8 para 2(3)(b). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 12 Town and Country Planning Act 1990 s 274(3). See also note 2 supra.
- 13 Ie ibid s 274(2), (3) (as amended): see the text and notes 5-12 supra.
- 14 Ibid s 274(4).
- 15 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.
- 16 Town and Country Planning Act 1990 s 274(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(4) EXTINGUISHMENT OF STATUTORY UNDERTAKERS' RIGHTS/1022. Notice given by statutory undertakers to developing authority.

1022. Notice given by statutory undertakers to developing authority.

Where land¹ has been acquired or appropriated² and:

- 3909 (1) there is on, under or over the land any apparatus vested in or belonging to statutory undertakers³; and
- 3910 (2) the undertakers claim that development⁴ to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of their undertaking, the removal or resiting of the apparatus affected by the development.

the undertakers may serve on the acquiring or appropriating authority⁵ a notice claiming the right to enter on the land and carry out such works for the removal or resiting of the apparatus or any part of it as may be specified in the notice⁶. No such notice may, however, be served later than 21 days after the beginning of the development of land which has been so acquired or appropriated⁷.

Where such a notice is served, the authority on which it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice stating that it objects to all or any of the provisions of the notice, and specifying the grounds of

the authority's objection⁸. If no such counter-notice is served, the statutory undertakers have, after the end of that period, the rights claimed in their notice⁹.

If, however, a counter-notice is so served, the statutory undertakers who served the notice may either withdraw it or may apply to the Secretary of State¹⁰ (or, in relation to Wales, to the National Assembly for Wales¹¹) and the appropriate minister¹² for an order¹³ conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State (or the Assembly) and the appropriate minister think it expedient to confer on them¹⁴.

Where statutory undertakers so have¹⁵ the right to execute works for the removal or resiting of apparatus, they may arrange with the acquiring or appropriating authority for the works to be carried out by that authority, under the superintendence of the undertakers, instead of by the undertakers themselves¹⁶.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 Ie as mentioned in the Town and Country Planning Act 1990 s 271(1): see PARA 1019 ante.

3 For these purposes, the reference to apparatus vesting in or belonging to statutory undertakers includes a reference to electronic communications apparatus kept installed for the purposes of an electronic communications code network; and for those purposes, in *ibid* s 273 (as amended) (see the text and notes 4-16 *infra*), except in s 273(1)(a) (see head (1) in the text), references to statutory undertakers have effect as references to the operator of any such network: s 273(7), (8)(a) (amended by the Communications Act 2003, s 406(1), Sch 17 para 103(1)(f), (2)(c)). For the meaning of 'statutory undertakers' generally see PARA 1009 ante; and for the meaning of 'electronic communications apparatus' and 'electronic communications code network' see TELECOMMUNICATIONS vol 97 (2010) PARAS 99, 163, 174.

4 For the meaning of 'development' see PARA 217 ante.

5 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.

6 Town and Country Planning Act 1990 s 273(1).

7 *Ibid* s 273(2).

8 *Ibid* s 273(3).

9 *Ibid* s 273(4).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of functions under the Town and Country Planning Act 1990 s 273 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 For the meaning of 'the appropriate minister' see PARA 1012 ante. For the purposes of the Town and Country Planning Act 1990 s 273(7) (as amended) (see note 3 *supra*), references to the appropriate minister have effect as references to the Secretary of State for Trade and Industry: s 273(8)(b).

13 Ie under *ibid* s 273 (as amended).

14 *Ibid* s 273(5).

15 Ie by virtue of *ibid* s 273 (as amended) or of an order of ministers thereunder.

16 *Ibid* s 273(6).

(5) EXTENSION OR MODIFICATION OF STATUTORY UNDERTAKERS' FUNCTIONS

1023. Power to extend or modify functions.

Where the relevant statutory powers¹ are exercisable, the Secretary of State² (or, in relation to Wales, the National Assembly for Wales³) and the appropriate minister⁴ may, if they think fit, by order⁵ provide for such extension or modification of the powers and duties of the statutory undertakers⁶ as appears to them to be requisite in order to secure the services⁷ or the adjustment⁸ in question, as the case may be⁹.

The statutory powers are exercisable:

- 3911 (1) where, on a representation made by statutory undertakers, it appears to the Secretary of State (or the Assembly) and the appropriate minister to be expedient that the powers and duties of those undertakers should be extended or modified, in order:
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48. (a) to secure the provision of services which would not otherwise be provided or satisfactorily provided, for any purpose in connection with which a local authority¹⁰ or minister¹¹ may be authorised¹² to acquire land¹³, or in connection with which any such person may compulsorily acquire land under any other enactment¹⁴; or
49. (b) to facilitate an adjustment of the carrying on of the undertaking necessitated by any of the specified¹⁵ acts and events¹⁶;
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- 3912 (2) where, on a representation made by a local authority or minister, it appears to the Secretary of State (or the Assembly) and the appropriate minister to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or the extension of existing services, for any purpose in connection with which the local authority or the minister making the representation may be authorised¹⁷ to acquire land or in connection with which the local authority or minister may compulsorily acquire land under any other enactment¹⁸.

Without prejudice to the generality of these provisions, an order so made may make provision:

- 3913 (i) for empowering the statutory undertakers to acquire, whether compulsorily or by agreement, any land specified in the order, and to erect or construct any buildings or works¹⁹ so specified;
- 3914 (ii) for applying in relation to the acquisition of any such land or the construction of any such works enactments relating to the acquisition of land and the construction of works;
- 3915 (iii) where it has been represented that the making of the order is expedient for purposes relating to the provision of services²⁰, for giving effect to such financial arrangements between the local authority or minister and the statutory undertakers as they may agree, or as, in default of agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order;
- 3916 (iv) for such incidental and supplemental matters as appear to the Secretary of State (or the Assembly) and the appropriate minister to be expedient for the purposes of the order²¹.

- 1 le the powers conferred by the Town and Country Planning Act 1990 s 275: see the text and notes 2-21 infra.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the Town and Country Planning Act 1990 s 275, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 4 For the meaning of 'the appropriate minister' see PARA 1012 ante.
- 5 As to the making of orders see PARA 1024 post.
- 6 For the meaning of 'statutory undertakers' see PARA 1009 ante.
- 7 le as mentioned in the Town and Country Planning Act 1990 s 275(1)(a) or (3): see heads (1)(a), (2) in the text.
- 8 le as mentioned in ibid s 275(1)(b): see head (1)(b) in the text.
- 9 Ibid s 275(4).
- 10 For the meaning of 'local authority' see PARA 3 note 3 ante. Ibid s 275 has effect as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990: see the Environment Act 1995 s 65, Sch 8 para 2(3)(b). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 11 For the meaning of 'minister' see PARA 3 note 5 ante.
- 12 le under the Town and Country Planning Act 1990 Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post).
- 13 For the meaning of 'land' see PARA 2 note 10 ante.
- 14 For the meaning of 'enactment' see PARA 2 note 11 ante.
- 15 The acts and events so specified are: (1) the acquisition under the Town and Country Planning Act 1990 Pt IX (as amended) or the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch V (as amended) or compulsorily under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question; (2) the extinguishment of a right or the imposition of any requirement by virtue of the Town and Country Planning Act 1990 s 271 (see PARA 1019 ante) or s 272 (as amended) (see PARA 1020 ante); (3) a decision on an application made by the statutory undertakers for planning permission to develop any such land as is mentioned in head (1) supra; (4) the revocation or modification of planning permission granted on any such application; (5) the making of an order under s 102 (as amended) (see PARA 547 ante) or s 102(8), Sch 9 para 1 (as amended) (see PARA 757 ante) in relation to any such land: s 275(2). For the meaning of 'planning permission' see PARA 43 note 6 ante; and for the meaning of 'develop' see PARA 217 ante.
- 16 Ibid s 275(1).
- 17 See note 12 supra.
- 18 Town and Country Planning Act 1990 s 275(3).
- 19 For the meaning of 'buildings or works' see PARA 43 note 9 ante.
- 20 le for the purposes mentioned in the Town and Country Planning Act 1990 s 275(1)(a) or (3): see heads (1)(a), (2) in the text.
- 21 Ibid s 275(5).

UPDATE

1023 Power to extend or modify functions

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(5) EXTENSION OR MODIFICATION OF STATUTORY UNDERTAKERS' FUNCTIONS/1024. Orders extending or modifying functions; procedure.

1024. Orders extending or modifying functions; procedure.

As soon as possible after making a representation¹, the statutory undertakers², the local authority³ or minister⁴ making the representation must:

- 3917 (1) publish notice of the representation⁵; and
- 3918 (2) if the Secretary of State⁶ (or, in relation to Wales, the National Assembly for Wales⁷) and the appropriate minister⁸ so direct, serve a similar notice on such persons, or persons of such classes, as they may direct⁹.

Orders extending or modifying the functions¹⁰ of statutory undertakers¹¹, if made in relation to England, are subject to special parliamentary procedure¹².

1 le under the Town and Country Planning Act 1990 s 275(1) or (3): see PARA 1023 ante.

2 For the meaning of 'statutory undertakers' see PARA 1009 ante.

3 For the meaning of 'local authority' see PARA 3 note 3 ante. The Town and Country Planning Act 1990 s 276 has effect as if a National Park authority were a local authority for the purposes of the Town and Country Planning Act 1990: see the Environment Act 1995 s 65, Sch 8 para 2(3)(b). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 For the meaning of 'minister' see PARA 3 note 5 ante.

5 Such a notice must (1) be published in such form and manner as the Secretary of State (or the National Assembly for Wales) and the appropriate minister may direct; (2) give such particulars as they may direct of the matters to which the representation relates; and (3) specify the time within which, and the manner in which, objections to the making of an order on the representation may be made: Town and Country Planning Act 1990 s 276(2); and see note 7 infra. For the meaning of 'the appropriate minister' see PARA 1012 ante. As to objections to orders under s 275 see PARA 1026 post.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Town and Country Planning Act 1990 s 276, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 See note 5 supra.

9 Town and Country Planning Act 1990 s 276(1). As to the service of notices see PARA 54 ante.

10 For the meaning of 'functions' see PARA 2 note 1 ante.

11 le orders under the Town and Country Planning Act 1990 s 275: see PARA 1023 ante.

12 Ibid s 276(3). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq; and as to such procedure in relation to orders by the National Assembly for Wales see the Government of Wales Act 1998 s 44; and PARA 20 ante.

UPDATE

1024 Orders extending or modifying functions; procedure

NOTE 12--1998 Act s 44 repealed; see now the Government of Wales Act 2006 Sch 3 para 9, Sch 11 para 33.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(5) EXTENSION OR MODIFICATION OF STATUTORY UNDERTAKERS' FUNCTIONS/1025. Relief of statutory undertakers from obligations rendered impracticable.

1025. Relief of statutory undertakers from obligations rendered impracticable.

Where, on a representation made by statutory undertakers¹, the appropriate minister² is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by an act or event to which these provisions apply³, the appropriate minister may, if he thinks fit, direct by order that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order⁴.

The appropriate minister may direct statutory undertakers who have made such a representation to him to publicise it in either or both of the following ways:

- 3919 (1) by publishing in such form and manner as he may direct a notice, giving such particulars as he may direct of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made⁵;
- 3920 (2) by serving such a notice on such persons, or persons of such classes, as he may direct⁶;

and the statutory undertakers must comply with any direction so given to them as soon as possible after the making of the representation⁷. If any objection to the making of such an order is duly made and is not withdrawn before the order is made, the order, if made in relation to England, is subject to special parliamentary procedure⁸.

Immediately after an order is so made by the appropriate minister, he must:

- 3921 (a) publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours; and
 - 3922 (b) serve a similar notice:
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- 50. (i) on any person who duly made an objection to the order and has sent to the appropriate minister a request in writing to serve him with the notice so required, specifying an address for service; and
 - 51. (ii) on such other persons, if any, as the appropriate minister thinks fit⁹;
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and, except in the case of an order subject to special parliamentary procedure¹⁰, such an order becomes operative¹¹ on the date on which the notice so required is first published¹².

1 For the meaning of 'statutory undertakers' see PARA 1009 ante.

2 For the meaning of 'the appropriate minister' see PARA 1012 ante. As to the transfer of certain ministerial functions under the Town and Country Planning Act 1990 s 277, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 The Town and Country Planning Act 1990 s 277(1) applies to the following acts and events: (1) the compulsory acquisition under Pt IX (ss 226-246) (as amended) (see PARA 934 et seq ante) or under the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt 1 Ch V (ss 47-59) (as amended) (see PARA 1154 et seq post) or under any other enactment of any land in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers; and (2) the acts and events specified in the Town and Country Planning Act 1990 s 275(2)(b)-(e) (see PARA 1023 note 15 heads (2)-(5) ante): s 277(2). For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante; for the meaning of 'enactment' see PARA 2 note 11 ante; and for the meaning of 'land' see PARA 2 note 10 ante.

4 Ibid s 277(1).

5 As to objections see PARA 1026 post.

6 Town and Country Planning Act 1990 s 277(3).

7 Ibid s 277(4).

8 Ibid s 277(5). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq; and as to such procedure in relation to orders by the National Assembly for Wales see the Government of Wales Act 1998 s 44; and PARA 20 ante.

9 Ibid s 277(6).

10 Ie in accordance with ibid s 277(5): see the text and note 8 supra.

11 Ie subject to the provisions of ibid Pt XII (ss 284-292) (as amended): see PARAS 43 et seq 648 ante.

12 Ibid s 277(7), (8).

UPDATE

1025 Relief of statutory undertakers from obligations rendered impracticable

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

NOTE 8--1998 Act s 44 repealed; see now the Government of Wales Act 2006 Sch 3 para 9, Sch 11 para 33.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(5) EXTENSION OR MODIFICATION OF STATUTORY UNDERTAKERS' FUNCTIONS/1026. Objections to orders concerning functions or obligations of statutory undertakers.

1026. Objections to orders concerning functions or obligations of statutory undertakers.

Where an objection to the making of an order¹ is duly made² and is not withdrawn, the following provisions have effect in relation to it³.

Unless the appropriate minister⁴ decides without regard to the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, before he makes a final decision⁵, he:

- 3923 (1) must consider the grounds of the objection as set out in the statement of grounds⁶; and
- 3924 (2) may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates⁷.

Before making a final decision, the appropriate minister must give the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the appropriate minister⁸; and, if the objector takes that opportunity, the appropriate minister must give an opportunity of appearing and being heard on the same occasion to the statutory undertakers⁹, local authority¹⁰ or minister¹¹ on whose representation the order is proposed to be made, and to any other persons to whom it appears to him to be expedient to give such an opportunity¹². In so far, however, as the appropriate minister, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation¹³, he may treat the objection as irrelevant for the purpose of making a final decision¹⁴; and if:

- 3925 (a) after considering the grounds of the objection as so set out, the appropriate minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to the matters to which the objection relates; or
- 3926 (b) in a case where a further statement has been required, it is not submitted within the specified period,

the appropriate minister may make a final decision without further investigation as to those matters¹⁵.

If it appears to the appropriate minister that the matters to which the objection relates are such as to require investigation by public local inquiry¹⁶ before he makes a final decision, he must¹⁷ cause such an inquiry to be held¹⁸; and, where he determines to cause such an inquiry to be held, any of the statutory requirements¹⁹ to which effect has not been given at the time of that determination must be dispensed with²⁰.

1 le for the purposes of the Town and Country Planning Act 1990 ss 275-277: see PARAS 1023-1025 ante.

2 For the purposes of *ibid* ss 275-277, an objection to the making of an order is not treated as duly made unless (1) the objection is made within the time and in the manner specified in the notice required by s 276 (see PARA 1024 ante) or, as the case may be, s 277 (see PARA 1025 ante); and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: s 278(1).

3 *Ibid* s 278(2).

4 In the application of *ibid* s 278 to an order under s 275 (see PARA 1023 ante), any reference to the appropriate minister is to be construed as a reference to the Secretary of State (or, in relation to Wales, to the National Assembly for Wales) and the appropriate minister: s 278(11). For the meaning of 'the appropriate minister' see PARA 1012 ante; as to the transfer of functions under s 278, so far as exercisable in relation to

Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For these purposes, any reference to making a final decision in relation to an order is a reference to deciding whether to make the order or what modification, if any, ought to be made: Town and Country Planning Act 1990 s 278(10).

6 As to the statement of grounds see note 2 supra.

7 Town and Country Planning Act 1990 s 278(3).

8 Ibid s 278(6).

9 For the meaning of 'statutory undertakers' see PARA 1009 ante.

10 For the meaning of 'local authority' see PARA 3 note 3 ante.

11 For the meaning of 'minister' see PARA 3 note 5 ante.

12 Town and Country Planning Act 1990 s 278(7).

13 As to compensation see PARA 1027 et seq post.

14 Town and Country Planning Act 1990 s 278(4).

15 Ibid s 278(5).

16 As to public local inquiries see PARA 651 et seq ante.

17 Ie notwithstanding anything in the Town and Country Planning Act 1990 s 278(1)-(7): see the text and notes 1-15 supra.

18 Ibid s 278(8).

19 Ie the requirements of ibid s 278(3)-(7): see the text and notes 4-12 supra.

20 Ibid s 278(9).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(6) COMPENSATION/1027. Right to compensation in respect of certain decisions and orders.

(6) COMPENSATION

1027. Right to compensation in respect of certain decisions and orders.

Statutory undertakers¹ are entitled² to compensation from the local planning authority³ in respect of:

3927 (1) any decision⁴ by which planning permission⁵ to develop⁶ operational land⁷ of those undertakers is refused or is granted subject to conditions where:

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52. (a) planning permission for that development would have been granted by a development order⁸ or a local development order⁹ but for a direction given under such an order that planning permission so granted should not apply to the development; and

53. (b) it is not development which has received specific parliamentary approval¹⁰;

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3928 (2) any order¹¹ by which planning permission which was granted on the application of those undertakers for the development of any such land is revoked or modified¹².

Where any right vested in or belonging to statutory undertakers is extinguished¹³, or any requirement is imposed¹⁴ on statutory undertakers, those undertakers are entitled to compensation from the acquiring or appropriating authority¹⁵ at whose instance the right was extinguished or the requirement imposed¹⁶.

Where any right vested in or belonging to an operator of an electronic communications code network¹⁷ is extinguished¹⁸, or any requirement is imposed¹⁹ on such an operator, the operator is entitled to compensation from the acquiring or appropriating authority at whose instance the right was extinguished or the requirement imposed²⁰.

Where works are carried out for the removal or resiting of statutory undertakers' apparatus, and the undertakers have the right to carry out those works²¹, the undertakers are entitled to compensation from the acquiring or appropriating authority²².

1 For the meaning of 'statutory undertakers' see PARA 1009 ante.

2 Ie subject to the Town and Country Planning Act 1990 ss 279-283 (as amended): see the text and notes 3-23 infra; and PARAS 1028-1030 post.

3 As to local planning authorities see PARA 28 et seq ante.

4 Ie made in accordance with the Town and Country Planning Act 1990 s 266 (as amended): see PARA 1013 ante.

5 For the meaning of 'planning permission' see PARA 43 note 6 ante.

6 For the meaning of 'develop' see PARA 217 ante.

7 For the meaning of 'operational land' see PARA 1010 ante.

8 For the meaning of 'development order' see PARA 252 ante.

9 As to local development orders see PARA 419 et seq ante.

10 Ie within the meaning of the Town and Country Planning Act 1990 s 264(6): see PARA 1011 ante. The local planning authority by which compensation is to be paid under s 279(1)(a) (as amended) (see head (1) in the text) to statutory undertakers is the authority which referred the application for planning permission to the Secretary of State (or, in relation to Wales, to the National Assembly for Wales) and the appropriate minister, or from whose decision the appeal was made to them or which served the enforcement notice appealed against, as the case may be: Sch 1 para 18; Sch 1A paras 3, 10 (added by the Local Government (Wales) Act 1994 s 18(7), Sch 4). The Town and Country Planning Act 1990 Sch 1 para 18 does not, however, apply in Greater London: Sch 1 para 21(1). As to the Secretary of State and the Assembly see PARAS 19-20 ante. For the meaning of 'enforcement notice' see PARA 561 ante; and for the meaning of 'the appropriate minister' see PARA 1012 ante. As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

11 Ie under the Town and Country Planning Act 1990 s 97 (as amended) (see PARA 541 ante) as modified by s 269 (see PARA 1016 ante).

12 Ibid s 279(1) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(l); at the date at which this title states the law, that amendment was in force for limited purposes only: see PARA 4 note 8 ante). The Town and Country Planning Act 1990 s 279(1) (as so amended) does not apply in respect of a decision or order if (1) it relates to land acquired by the statutory undertakers after 7 January 1947; and (2) the Secretary of State (or, in relation to Wales, the Assembly) and the appropriate minister include in the decision or order a direction that s 279(1) (as so amended) shall not apply to it: s 279(5). The Secretary of State (or the Assembly) and the appropriate minister may only give such a direction if they are satisfied, having regard to the nature, situation and existing development of the land and of any neighbouring land, and to any other material considerations, that it is unreasonable that compensation should be recovered in respect of the decision or order in question: s 279(6). As to the transfer of certain functions under s 279 (as amended), so far as

exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante.

The Town and Country Planning Act 1990 s 279(1), (5), (6) does not apply in relation to the display of advertisements on operational land of statutory undertakers: s 283. For the meaning of 'advertisement' see PARA 770 ante. As to the application of s 283 in relation to statutory undertakers who are local planning authorities see s 316A (as added); and PARA 556 ante.

For the purposes of s 279 (as amended), the conditions referred to in s 91 (as amended) (see PARA 537 ante) and s 92 (as amended) (see PARA 519 ante) must be disregarded: s 279(7).

Compensation payable under s 279(1) (as amended) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the decision made in accordance with the Town and Country Planning Act 1990 s 266 (as amended) (see PARA 1013 ante) or of the order under s 97 (as amended) (see PARA 541 ante) until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt 1. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

13 Ie by virtue of the Town and Country Planning Act 1990 s 271: see PARA 1019 ante.

14 See note 13 supra.

15 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.

16 Town and Country Planning Act 1990 s 279(2). As to the measure of compensation see PARA 1028 post. Compensation payable under s 279(2) carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the right is extinguished or the requirement is imposed until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt 1. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

Any expenses incurred by any government department, including the Secretary of State or, in relation to Wales, the National Assembly for Wales, for these purposes must be paid out of money provided by Parliament: see the Town and Country Planning Act 1990 s 311(2)(b); and PARA 51 ante at head (b) in the text.

17 For the meaning of 'electronic communications code network' see TELECOMMUNICATIONS vol 97 (2010) PARA 174.

18 Ie by virtue of the Town and Country Planning Act 1990 s 272 (as amended): see PARA 1020 ante.

19 See note 18 supra.

20 Town and Country Planning Act 1990 s 279(3) (amended by the Communications Act 2003, s 406(1), Sch 17 para 103(1)(h), (2)(b)).

21 Ie by virtue of the Town and Country Planning Act 1990 s 273 (as amended) (see PARA 1022 ante) or an order of ministers thereunder. For the meaning of 'minister' see PARA 3 note 5 ante.

22 Ibid s 279(4). See also note 12 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(6) COMPENSATION/1028. Measure of compensation.

1028. Measure of compensation.

Where statutory undertakers¹ are entitled to compensation in respect of certain decisions or orders² or in respect of a compulsory acquisition³ of land⁴ which has been acquired by those undertakers for the purposes of their undertaking, where the first-mentioned acquisition is effected under a compulsory purchase order confirmed or made without the appropriate minister's certificate⁵, or the operator of an electronic communications code network⁶ is entitled to compensation⁷, the amount of the compensation is⁸ an amount calculated in accordance with the following provisions⁹.

That amount is the aggregate of:

- 3929 (1) the amount of any expenditure reasonably incurred in acquiring land, providing apparatus, erecting buildings¹⁰ or doing work for the purpose of any adjustment of the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network rendered necessary by the proceeding giving rise to compensation¹¹ (a 'business adjustment');
- 3930 (2) the appropriate amount for loss of profits¹²; and
- 3931 (3) where the compensation is in respect of the imposition of a requirement to remove apparatus¹³, the amount of any expenditure reasonably incurred by the statutory undertakers or, as the case may be, the operator in complying with the requirement, reduced by the value after removal of the apparatus removed¹⁴.

Where a business adjustment is made, that aggregate amount must be reduced by such amount, if any, as appears to the Lands Tribunal to be appropriate to offset:

- 3932 (a) the estimated value of any property, whether movable or immovable, belonging to the statutory undertakers or the operator and used for the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network, which in consequence of the adjustment ceases to be so used, in so far as the value of the property has not been taken into account under head (3) above; and
- 3933 (b) the estimated amount of any increase in net receipts from the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network in the period after the adjustment has been completed, in so far as that amount has not been taken into account in determining the amount mentioned in head (2) above and is directly attributable to the adjustment¹⁵;

and must be further reduced by any amount which appears to the Lands Tribunal to be appropriate, having regard to any increase in the capital value of immovable property belonging to the statutory undertakers or the operator which is directly attributable to the adjustment, allowance being made for any reduction made under head (b) above¹⁶.

Where the compensation is for works related to the removal or resiting of apparatus¹⁷ and the acquiring or appropriating authority¹⁸ carries out the works, then, in addition to any reduction falling to be made under the above provisions¹⁹, the aggregate amount must be reduced by the actual cost to the authority of carrying out the works²⁰.

1 For the meaning of 'statutory undertakers' see PARA 1009 ante.

2 le as mentioned in the Town and Country Planning Act 1990 s 279(1), (2), or (4) (as amended) (see PARA 1027 ante) or under the provisions of s 115 (see PARA 923 ante) in respect of an order made under s 102 (as amended) (see PARAS 546-547 ante) or s 102(8), Sch 9 paras 1, 3, 5 (as amended) or Sch 9 para 6 (see PARA 757 et seq ante) as modified by s 270 (see PARA 1017 ante).

3 For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For these purposes, 'the appropriate minister's certificate' means such a certificate as is mentioned in the Acquisition of Land Act 1981 s 16 (as amended) or Sch 3 para 3 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 564, 607): Town and Country Planning Act 1990 s 280(8). As to compulsory acquisition without such a certificate see PARA 1018 ante.

6 For the meaning of 'electronic communications code network' see TELECOMMUNICATIONS vol 97 (2010) PARA 174.

7 le as mentioned in the Town and Country Planning Act 1990 s 279(3) (as amended): see PARA 1027 ante.

8 le subject to *ibid* s 281: see PARA 1029 post.

9 *Ibid* s 280(1) (s 280(1)-(4) amended by the Communications Act 2003 s 406(1), Sch 17, PARA 104).

10 For the meaning of 'building' see PARA 2 note 10 ante.

11 For these purposes, 'proceeding giving rise to compensation' means (1) except in relation to compensation under the Town and Country Planning Act 1990 s 279(4) (see PARA 1027 ante), the particular action, ie the decision, order, extinguishment of a right, imposition of a requirement or acquisition, in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken; and (2) in relation to compensation under s 279(4), the circumstances making it necessary for the apparatus in question to be removed or resited: s 280(8). For the meaning of 'development' see PARA 217 ante.

12 For these purposes, 'the appropriate amount for loss of profits' means (1) where a business adjustment is made, the aggregate of (a) the estimated amount of any decrease in net receipts from the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation; and (b) such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment; (2) where no business adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking or, as the case may be, the provision of the electronic communications code network which is directly attributable to the proceeding giving rise to compensation: *ibid* s 280(3) (as amended: see note 9 supra). References to a decrease in net receipts are to be construed as references (i) to the amount by which a balance of receipts over expenditure is decreased; (ii) to the amount by which a balance of expenditure over receipts is increased; or (iii) where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, to the aggregate of the two balances; and references to an increase in net receipts are to be construed accordingly: s 280(7).

13 le under *ibid* s 279(2) or (3) (as amended): see PARA 1027 ante.

14 *Ibid* s 280(2) (as amended: see note 9 supra).

15 *Ibid* s 280(4) (as amended: see note 9 supra).

16 *Ibid* s 280(5).

17 le under *ibid* s 274(4): see PARA 1027 ante.

18 For the meaning of 'acquiring authority' see PARA 933 note 11 ante.

19 le under the Town and Country Planning Act 1990 s 280(4) (as amended) or s 280(5): see the text and notes 15-16 supra.

20 *Ibid* s 280(6).

UPDATE

1028 Measure of compensation

TEXT AND NOTES 15, 16--References to the Lands Tribunal are now to the Upper Tribunal: Town and Country Planning Act 1990 s 280(4), (5) amended: SI 2009/1307.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(6) COMPENSATION/1029. Exclusion of measure of compensation at option of statutory undertakers.

1029. Exclusion of measure of compensation at option of statutory undertakers.

Where statutory undertakers¹ are entitled to compensation in respect of a compulsory acquisition², the statutory undertakers may by notice in writing³ elect that the compensation shall be ascertained in accordance with the enactments⁴ which would be applicable apart from the statutory provisions⁵ relating to the measure of compensation⁶; and, if the statutory undertakers so elect, the compensation must be ascertained accordingly⁷.

An election may be so made either in respect of the whole of the land⁸ comprised in the compulsory acquisition in question or in respect of part of that land⁹.

1 For the meaning of 'statutory undertakers' see PARA 1009 ante.

2 I.e. such a compulsory acquisition as is mentioned in the Town and Country Planning Act 1990 s 280(1)(c): see PARA 1028 ante. For the meaning of 'compulsory acquisition' see PARA 930 note 4 ante.

3 Any notice under *ibid* s 281 must be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers: s 281(4). For the meaning of 'acquiring authority' see PARA 933 note 11 ante. As to service of notice to treat see PARA 933 note 5 ante; and as to the service of notices generally see PARA 54 ante.

4 I.e. other than the Land Compensation Act 1961 s 5 r 5: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 754, 800. For the meaning of 'enactment' see PARA 2 note 11 ante.

5 I.e. the Town and Country Planning Act 1990 s 280 (as amended): see PARA 1028 ante.

6 *Ibid* s 281(1).

7 *Ibid* s 281(2).

8 For the meaning of 'land' see PARA 2 note 10 ante.

9 Town and Country Planning Act 1990 s 281(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/12. STATUTORY UNDERTAKERS/(6) COMPENSATION/1030. Procedure for assessing compensation.

1030. Procedure for assessing compensation.

Where the amount of any compensation¹ falls to be ascertained in accordance with the statutory provisions relating to the measure of compensation², the compensation must, in default of agreement, be assessed by the Lands Tribunal if it would not otherwise fall to be so assessed³.

1 I.e. any such compensation as is mentioned in the Town and Country Planning Act 1990 s 280(1): see PARA 1028 ante.

2 I.e. *ibid* s 280 (as amended): see PARA 1028 ante.

3 *Ibid* s 282(1). For the purposes of any proceedings arising before the Lands Tribunal in respect of compensation falling to be so ascertained, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 apply as they apply to proceedings on a question referred to the tribunal under s 1, but with the substitution in s 4, for references to the acquiring authority, of references to the person from whom the

compensation is claimed: Town and Country Planning Act 1990 s 282(2). See further COMPULSORY ACQUISITION OF LAND.

UPDATE

1030 Procedure for assessing compensation

TEXT AND NOTES--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). Town and Country Planning Act 1990 s 282(1) amended: SI 2009/1307. Lands Compensation act 1961 s 2 omitted: Town and Country Planning Act 1990 s 282(2) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1031. General planning controls on caravan sites.

13. LICENSING AND CONTROL OF CARAVAN SITES

(1) IN GENERAL

1031. General planning controls on caravan sites.

In addition to the statutory regime discussed below¹, caravan sites are subject to development control in the normal way². Thus planning permission³ is normally required for the use of land as a caravan site⁴, although in certain circumstances such use is permitted development for the purposes of the Town and Country Planning (General Permitted Development) Order 1995⁵. The general permission granted by the 1995 Order for temporary uses of land⁶ does not, however, extend to such use as a caravan site⁷.

Before a local planning authority⁸ grants planning permission for the use of land as a caravan site⁹, the authority must, unless it is also the authority with power to issue a site licence¹⁰ for that land, consult¹¹ the local authority¹² with that power¹³. An application for permission to develop a permanent camp site or caravan site, where the area of the development exceeds 1 hectare, requires an environmental impact assessment¹⁴.

A temporary stop notice may prohibit the stationing of caravans on land¹⁵; but where a caravan is already stationed on the land before the issue of the notice and is at that time occupied by a person as his main residence, there must be a serious risk of harm to a compelling public interest in order for such a prohibition to be effective in relation to that caravan¹⁶.

1 Ie the Caravan Sites and Control of Development Act 1960: see PARA 1032 et seq post.

2 As to the overlap between planning legislation and controls under the Caravan Sites and Control of Development Act 1960 see *Esdell Caravan Parks Ltd v Hemel Hempstead Rural District Council* [1966] 1 QB 895, [1965] 3 All ER 737, CA.

3 For the meaning of 'planning permission' see PARA 43 note 6 ante.

4 The enforcement of planning controls against gypsies and other travelling people will often involve a balancing exercise between, on the one hand, the claimants' Convention rights under the Human Rights Act 1998 to respect for private and family life and to the peaceful enjoyment of possessions and, on the other hand,

the interests of the community as a whole. For a discussion of recent case law see PARA 7 the text and notes 24-26 ante; and as to the meaning of 'gypsy' see PARA 1053 note 9 post. As to whether there is a general evidential burden upon a gypsy, who has taken up unauthorised occupation of a site within a Green Belt area, to establish that he has carried out searches for alternative sites see *R (on the application of Simmons) v First Secretary of State* [2005] EWHC 287 (Admin), (2005) Times, 15 April, [2005] All ER (D) 38 (Mar).

In considering whether to grant an application for planning permission, fear of crime may be a material consideration (see PARA 485 ante); however, a caravan site is not like a polluting factory or bail hostel, likely of its very nature to produce difficulties for its neighbours, and it is not right to view land use for the purpose of a gypsy caravan site as inherently creating the real concern that attaches to an institution such as a bail hostel: see *Smith v First Secretary of State* [2005] EWCA Civ 859 at [10], [2005] All ER (D) 313 (Jul) per Buxton LJ. Planning permission may be granted retrospectively under the Town and Country Planning Act 1990 s 73A (as added): see PARA 525 ante.

Where caravans are dotted about a field with open spaces between them, the whole field is the caravan site: *Thomas David (Porthcawl) Ltd v Penybont RDC* [1972] 3 All ER 1092 at 1095, [1972] 1 WLR 1526 at 1530, CA, obiter per Lord Denning MR. The purpose for which a caravan has been stationed on land may be relevant in determining whether there has been a material change of use: *Restormel Borough Council v Secretary of State for the Environment and Rabey* [1982] JPL 785. See also *Wealden District Council v Secretary of State for the Environment and Colin Day* [1988] JPL 268, CA (use of caravan for storage of feed and shelter). A significant increase in the number of caravans stationed on a site would be a material change of use: see *Childs v First Secretary of State* [2005] All ER (D) 190 (Oct).

Notwithstanding anything in the Town and Country Planning Act 1990 s 57(7), Sch 4 paras 1-3 (special provisions about established uses), the use of land as a caravan site is not treated, by virtue of Sch 4 paras 1-3, as a use for which planning permission is not required, unless the land was so used on one occasion at least during the period of two years ending with 9 March 1960: see Sch 4 para 4; and PARA 237 ante.

5 See the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 5, Classes A, B; and PARAS 300-301 ante.

6 See *ibid* Sch 2 Pt 4, Class B; and PARA 298 ante.

7 See *ibid* Sch 2 Pt 4 para B.1; and PARA 299 ante.

8 As to local planning authorities see PARA 28 et seq ante.

9 For the meaning of 'caravan site' for these purposes see PARA 237 note 16 ante (applying the definition set out in PARA 1032 note 4 post).

10 For the meaning of 'site licence' for these purposes see PARA 473 note 10 ante (applying the definition set out in PARA 1032 note 5 post).

11 For the meaning of 'consult' see PARA 2 note 1 ante.

12 For the meaning of 'local authority' see PARA 3 note 3 ante.

13 See the Town and Country Planning Act 1990 s 71(3); and PARA 473 ante.

14 Such development is 'Schedule 2 development' for the purposes of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293 (as amended): see PARA 490 ante.

15 As to temporary stop notices see PARA 573 et seq ante.

16 See the Town and Country Planning (Temporary Stop Notice) (England) Regulations 2005, SI 2005/206, art 2(1), (2); and PARA 574 ante. At the date at which this title states the law, no similar restriction had been imposed in relation to Wales.

UPDATE

1031 General planning controls on caravan sites

NOTE 4--*Smith*, cited, reported at [2006] JPL 386.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1032. Prohibition of use of land as caravan site without licence.

1032. Prohibition of use of land as caravan site without licence.

No occupier¹ of land may² cause or permit³ any part of the land to be used as a caravan site⁴ unless he is the holder of a site licence⁵ for the time being in force as respects the land so used⁶. If the occupier of any land contravenes this provision, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale⁷. Where, however, a local authority⁸, being required⁹ to issue a site licence in respect of any land, fails to do so within the requisite period¹⁰, no such offence is committed in respect of the land by the person by whom the application for the site licence was made at any time after the expiration of that period and before a site licence is issued in pursuance of that application¹¹.

1 For these purposes, the expression 'occupier' means, in relation to any land, the person who, by virtue of an estate or interest therein held by him, is entitled to possession thereof or would be so entitled but for the rights of any other person under any licence granted in respect of the land; but, where land amounting to not more than 400 square yards in area is let under a tenancy entered into with a view to the use of the land as a caravan site, 'occupier' means, in relation to that land, the person who would be entitled to possession of the land but for the rights of any person under that tenancy; and 'occupied' and 'occupation' are to be construed accordingly: Caravan Sites and Control of Development Act 1960 ss 1(3), 29(1). As to the responsibility of the occupier of land subject to a licence or special tenancy see PARA 1034 post; as to the occupier's right of entry to ensure compliance with the conditions attached to a site licence see PARA 1048 post; and as to Crown land see PARA 1035 post.

2 Ie subject to the provisions of *ibid* Pt I (ss 1-32) (as amended): see the text and notes 3-11 *infra*; and PARA 1033 *et seq* post. As to exemptions from the prohibition see PARA 1036 post.

3 For the meaning of 'cause or permit' see *Waddell v Winter* (1967) 18 P & CR 497, DC; *Bromsgrove District Council v Carthy* (1975) 30 P & CR 34, DC. See also PARA 1034 note 4 post.

4 For these purposes, the expression 'caravan site' means land on which a caravan is stationed for the purposes of human habitation and land which is used in conjunction with land on which a caravan is so stationed: Caravan Sites and Control of Development Act 1960 ss 1(4), 29(1). As to the extent of the use which is necessary see *Biss v Smallburgh RDC* [1965] Ch 335, [1964] 2 All ER 543, CA. For the meaning of 'caravan' see PARA 1033 post.

5 For these purposes, 'site licence' means a licence under the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended) authorising the use of land as a caravan site: ss 1(1), 29(1).

6 *Ibid* s 1(1). The Public Health Act 1936 s 269 (as amended) (licensing of movable dwellings: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 960 *et seq*) no longer has effect in relation to caravans but continues to apply to tents and sheds: see the Caravan Sites and Control of Development Act 1960 s 30(1).

7 *Ibid* s 1(2) (amended by the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 *ante*. As to authorised local authority officers' right of entry for the purpose of ascertaining whether there is or has been a contravention of the licensing provisions see PARA 1037 post at head (2) in the text.

8 For these purposes, 'local authority' means a council of a London borough or a district, the Common Council of the City of London and the Council of the Isles of Scilly but, in relation to Wales, means the council of a Welsh county or county borough: Caravan Sites and Control of Development Act 1960 s 29(1) (definition amended by the London Government Act 1963 s 83(1), Sch 17 para 21(1); the Greater London Council (General Powers) Act 1976 s 11; and the Local Government (Wales) Act 1994 s 66(6), Sch 16, PARA 16(3)). For the meaning of 'London borough' see PARA 28 note 7 *ante*; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 *et seq*; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

9 Ie under the Caravan Sites and Control of Development Act 1960 s 3 (as amended): see PARA 1039 post.

10 le the period within which it is required to issue a site licence by *ibid* s 3 (as amended): see PARA 1039 post.

11 *Ibid* s 6.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1033. Meaning of 'caravan'.

1033. Meaning of 'caravan'.

For the purposes of the statutory provisions relating to the licensing of caravan sites¹, 'caravan' means any structure designed or adapted for human habitation which is capable of being moved from one place to another, whether by being towed, or by being transported on a motor vehicle or trailer, and any motor vehicle so designed or adapted, but does not include:

- 3934 (1) any railway rolling stock which is for the time being on rails forming part of a railway system; or
 - 3935 (2) any tent²; or
 - 3936 (3) a structure designed or adapted for human habitation which:
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- 54. (a) is composed of not more than two sections separately constructed and designed to be assembled on a site by means of bolts, clamps or other devices; and
 - 55. (b) is, when assembled, physically capable of being moved by road from one place to another whether by being towed, or by being transported on a motor vehicle or trailer,
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if its dimensions when assembled³ exceed any of the prescribed⁴ limits⁵.

A structure falling within heads (3)(a) and 3(b) above is not, however, treated as not being, or as not having been, a caravan for those purposes by reason only that it cannot lawfully be so moved on a highway when assembled⁶.

A motor vehicle is not a caravan unless it has been designed, or physically altered so as to adapt it, for human habitation⁷.

1 le the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended): see PARA 1032 ante; the text and notes 2-6 *infra*; and PARA 1034 et seq post.

2 *Ibid* s 29(1). The word 'caravan', when appearing in a planning application or permission, is to be construed in accordance with the statutory definition in s 29(1) and not in accordance with its ordinary and natural meaning: *Wyre Forest District Council v Secretary of State for the Environment* [1990] 2 AC 357, [1990] 1 All ER 780, HL, disapproving *Hammond v Horsham District Council* (1989) 58 P & CR 410, DC.

3 The prescribed limits are: (1) length, exclusive of any drawbar, 60 feet (18.288 metres); (2) width 20 feet (6.096 metres); (3) overall height of living accommodation, measured internally from the floor at the lowest level to the ceiling at the highest level, 10 feet (3.048 metres); Caravan Sites Act 1968 s 13(2)(a)-(c). The Secretary of State or, in relation to Wales, the National Assembly for Wales, may by order made by statutory instrument, after consultation with such persons or bodies as appear to him or it to be concerned, substitute for any figure mentioned in s 13(2) such other figure as may be specified in the order (ss 13(3), 16); and any statutory instrument so made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament (s 13(4)). At the date at which this title states the law no such order had been made. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under ss 13, 16, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions)

Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly and the making of subordinate legislation by the Assembly see PARA 20 ante.

4 The words 'when assembled' require mobility to be tested by reference to the circumstances of where and how the structure has been assembled and do not simply mean 'in its assembled state': *Byrne v Secretary of State for the Environment and Arun District Council* (1997) 74 P & CR 420.

5 Caravan Sites Act 1968 s 13(2).

6 Ibid s 13(1).

7 *Backer v Secretary of State for the Environment* [1983] 2 All ER 1021, [1983] 1 WLR 1485, DC.

UPDATE

1033 Meaning of 'caravan'

NOTE 3--Now, in relation to England and Wales, heads (1) 20 meters (65.616 feet); (2) 6.8 meters (22.309 feet); and (3) 3.05 meters (10.006 feet): Caravan Sites Act 1968 s 13(2)(a)-(c) amended: SI 2006/2374, art 2 (modified by correction slip) (England); and SI 2007/3163 (Wales).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1034. Responsibility of occupier of land subject to a licence or special tenancy.

1034. Responsibility of occupier of land subject to a licence or special tenancy.

It is a condition of any licence or of any tenancy of land which is entered into with a view to the use of the land as a caravan site¹ that, if any person in exercise of rights under the licence or tenancy does anything which would constitute an offence under the statutory provisions relating to the licensing of caravan sites² if that person were the occupier³ of the land, the person who is the occupier of the land may take possession of the land and terminate the licence or tenancy⁴.

1 Ie any such tenancy as is mentioned in the Caravan Sites and Control of Development Act 1960 s 1(3): see PARA 1032 note 1 ante. For the meaning of 'caravan site' see PARA 1032 note 4 ante.

2 Ie under ibid s 1 (as amended): see PARA 1032 ante.

3 For the meaning of 'occupier' see PARA 1032 note 1 ante.

4 Caravan Sites and Control of Development Act 1960 s 12(1). In determining whether the occupier of the land has permitted the land to be used as a caravan site, account must be taken of any powers so exercisable by him: s 12(1). Section 12(1) has effect subject to the Caravan Sites Act 1968 ss 1-5(3) (as amended) (provisions for protection of residential occupiers: see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1281 et seq): s 5(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1035. Crown land.

1035. Crown land.

The statutory provisions relating to the licensing of caravan sites¹ apply to land the occupier² of which is not the Crown notwithstanding that an interest in the land belongs to Her Majesty in right of the Crown or the Duchy of Lancaster, or to the Duchy of Cornwall, or belongs to a government department or is held in trust for Her Majesty for the purposes of a government department³.

1 The Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended): see PARAS 1032-1033 ante, PARA 1036 et seq post.

2 For the meaning of 'occupier' see PARA 1032 note 1 ante.

3 Caravan Sites and Control of Development Act 1960 s 28.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(1) IN GENERAL/1036. Exemptions.

1036. Exemptions.

No site licence¹ is required for the use as a caravan site² of land:

3937 (1) if the use is incidental to the enjoyment as such of a dwelling house within the curtilage of which the land is situated³;

3938 (2) by a person travelling with a caravan who brings it on to the land for a period which includes not more than two nights if:

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56. (a) during that period no other caravan is stationed for the purposes of human habitation on that land or any adjoining land in the same occupation⁴; and

57. (b) in the period of 12 months ending with the day on which the caravan is brought on to the land, the number of days on which a caravan was stationed anywhere on that land or that adjoining land for the purposes of human habitation did not exceed 28⁵;

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3939 (3) which comprises, together with any adjoining land which is in the same occupation and has not been built on, not less than five acres⁶ if:

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58. (a) in the period of 12 months ending with the day on which the land is used as a caravan site the number of days on which a caravan was stationed anywhere on that land or on that adjoining land for the purposes of human habitation did not exceed 28⁷; and

59. (b) if in that period of 12 months not more than three caravans were so stationed at any one time⁸;

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3940 (4) which is occupied by an organisation which holds for the time being a certificate of exemption⁹ (an 'exempted organisation') if the use is for purposes of recreation and is under the supervision of the organisation¹⁰;

3941 (5) as respects which there is in force a certificate issued¹¹ by an exempted organisation stating that the land has been approved by the exempted organisation for use by its members for the purposes of recreation if not more than five

- caravans are at the time stationed for the purposes of human habitation on the land to which the certificate relates¹²;
- 3942 (6) if the use is under the supervision of an exempted organisation and is in pursuance of arrangements made by that organisation for a meeting for its members lasting not more than five days¹³;
- 3943 (7) if the use is of agricultural land for the accommodation during a particular season of a person or persons employed in farming operations on land in the same occupation¹⁴;
- 3944 (8) for the accommodation during a particular season of a person or persons employed on land in the same occupation, being land used for the purposes of forestry, including afforestation¹⁵;
- 3945 (9) which forms part of, or adjoins, land on which building or engineering operations¹⁶ are being carried out if that use is for the accommodation of a person or persons employed in connection with those operations¹⁷;
- 3946 (10) by a travelling showman who is a member of an organisation of travelling showmen which holds for the time being a certificate granted for these purposes¹⁸, and who is, at the time, travelling for the purposes of his business or who has taken up winter quarters on the land with his equipment for some period falling between the beginning of October in any year and the end of March in the following year¹⁹;
- 3947 (11) occupied²⁰ by the local authority²¹ in whose area the land is situated²²; or
- 3948 (12) occupied by a county council²³ as a caravan site providing accommodation for gypsies²⁴.

On the application of a local authority, the Secretary of State or, in relation to Wales, the National Assembly for Wales may by order provide that, in relation to such land situated in its area as may be specified in the order, the above provisions shall have effect as if heads (2) to (10) above, or such one or more of them as may be so specified, were omitted²⁵.

1 For the meaning of 'site licence' see PARA 1032 note 5 ante.

2 For the meaning of 'caravan site' see PARA 1032 note 4 ante; and for the meaning of 'caravan' see PARA 1033 ante.

3 Caravan Sites and Control of Development Act 1960 s 2, Sch 1 para 1.

4 Ibid Sch 1 para 2(a). For the meaning of 'occupation' see PARA 1032 note 1 ante.

5 Ibid Sch 1 para 2(b). Schedule 1 para 2 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 2.

6 The Secretary of State or, in relation to Wales, the National Assembly for Wales may by order contained in a statutory instrument provide that, in any such area as may be specified in the order, ibid Sch 1 para 3 shall have effect subject to the modification: (1) that for the reference to five acres there shall be substituted a reference to such smaller acreage as may be specified in the order; or (2) that for the condition specified in Sch 1 para 3(1)(a) (see head (3)(a) in the text) there shall be substituted a condition that the use in question falls between such dates in any year as may be specified in the order, or subject to modification in both such respects; and he or the Assembly may so make different orders as respects different areas and any such order may be varied by a subsequent order so made: Sch 1 para 3(2), (3). Such an order comes into force on such date as may be specified in the order, being a date not less than three months after the order is made; and the Secretary of State or the Assembly must publish notice of the order in a local newspaper circulating in the locality affected by the order and in such other ways as appear to him or to the Assembly to be expedient for the purpose of drawing the attention of the public to the order: Sch 1 para 3(4). At the date at which this title states the law, no such order had been made. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Caravan Sites and Control of Development Act 1960 para 3(1)(a); and see note 6 supra.

8 Ibid Sch 1 para 3(1)(b). Schedule 1 para 3(1) is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 3(1).

9 Ie an organisation which holds for the time being a certificate of exemption granted under ibid Sch 1 para 12. For the purposes of Sch 1 paras 4-6 (see heads (4)-(6) in the text), the Secretary of State or the Assembly may grant a certificate of exemption to any organisation as to which he or the Assembly is satisfied that its objects include the encouragement or promotion of recreational activities; and a certificate so granted may be withdrawn by him or by the Assembly at any time: Sch 1 para 12(1), (2).

10 Ibid Sch 1 para 4. Schedule 1 para 4 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 4.

11 Ie under ibid Sch 1 para 5. For these purposes, an exempted organisation may issue as respects any land a certificate stating that the land has been approved by the exempted organisation for use by its members for the purposes of recreation: Sch 1 para 5(2). The certificate must be issued to the occupier of the land to which it relates, and the organisation must send particulars to the Secretary of State or to the Assembly of all certificates so issued by it: Sch 1 para 5(3). A certificate so issued by an exempted organisation must specify the date on which it is to come into force and the period for which it is to continue in force, being a period not exceeding one year: Sch 1 para 5(4). For the meaning of 'occupier' see PARA 1032 note 1 ante.

12 Ibid Sch 1 para 5(1). Schedule 1 para 5(1) is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 5(1). See also note 9 supra.

13 Ibid Sch 1 para 6. Schedule 1 para 6 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 6. See also note 9 supra.

14 Ibid Sch 1 para 7; and see *North v Brown* (1974) 231 Estates Gazette 737, DC; *Vale of White Horse District Council v Mirmalek-Sani* (1993) 25 HLR 387, DC (accommodation for workers on a poultry farm not accommodation during a particular season). The Caravan Sites and Control of Development Act 1960 Sch 1 para 7 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 7. For the meaning of 'occupation' see PARA 1032 note 1 ante.

15 Ibid Sch 1 para 8. Schedule 1 para 8 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 8.

16 Ie operations for the carrying out of which permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) has, if required, been granted.

17 Caravan Sites and Control of Development Act 1960 Sch 1 para 9; Planning (Consequential Provisions) Act 1990 s 2(4). The Caravan Sites and Control of Development Act 1960 Sch 1 para 9 is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 9.

18 Ie granted under ibid Sch 1 para 10. The Secretary of State or the Assembly may grant a certificate for these purposes to any organisation recognised by him or by the Assembly as confining its membership to bona fide travelling showmen; and a certificate so granted may be withdrawn by him or by the Assembly at any time: Sch 1 para 10(2). The Showmen's Guild of Great Britain holds such a certificate: see ODPM (ex DOE) Circular 22/91 *Travelling Showpeople* para 3.

19 Caravan Sites and Control of Development Act 1960 Sch 1 para 10(1); and see *Holmes v Cooper* [1985] 3 All ER 114, [1985] 1 WLR 1060, CA. The Caravan Sites and Control of Development Act 1960 Sch 1 para 10(1) is subject to the provisions of Sch 1 para 13 (see the text and note 25 infra): Sch 1 para 10(1).

20 For the meaning of 'occupied' see PARA 1032 note 1 ante.

21 For the meaning of 'local authority' see PARA 1032 note 8 ante. Head (11) in the text has effect as if a National Park authority were a local authority for these purposes and as if the relevant Park were that authority's area: see the Environment Act 1995 s 70, Sch 9 para 4.

22 Caravan Sites and Control of Development Act 1960 Sch 1 para 11; and see note 21 supra.

23 As to county councils see PARA 28 ante.

24 Caravan Sites and Control of Development Act 1960 Sch 1 para 11A (added by the Local Government, Planning and Land Act 1980 s 176). A caravan site falling within the Caravan Sites and Control of Development Act 1960 Sch 1 para 11A (as so added) is a protected site for the purposes of the Caravan Sites Act 1968 Pt I (ss 1-5) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1281 et seq): see s 1(2) (amended by the Housing Act 2004 s 209(1), (2), with effect from 18 January 2005); for the effect of that amendment see s

209(3), (4). As to the previous position see *Stoke-on-Trent City Council v Frost* (1991) 64 P & CR 135, 24 HLR 290, CA. As to the meaning of 'gypsies' see PARA 1053 note 9 post.

25 Caravan Sites and Control of Development Act 1960 Sch 1 para 13(1). Such an order (1) comes into force on such date as may be specified in it; and (2) may, on the application of the local authority on whose application it was made, be varied or revoked by a subsequent order so made: Sch 1 para 13(2)(a), (b). Except in the case of an order the sole effect of which is to revoke in whole or part a previous order, the local authority must, not less than three months before the order comes into force, cause a notice setting out the effect of the order and the date on which it comes into force to be published in the London Gazette and in a local newspaper circulating in the locality in which the land to which the order relates is situated: Sch 1 para 13(2).

The use of land as a caravan site in the circumstances specified in Sch 1 paras 2-10 (see heads (2)-(10) in the text) is permitted development for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 Pt 5, Class A, but in relation to the Caravan Sites and Control of Development Act 1960 Sch 1 para 10, such use does not include use for winter quarters: see PARA 300 ante.

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1037. Right of entry without warrant.

Any authorised officer of a local authority¹, on producing, if so required, some duly authenticated document showing his authority, has a right² at all reasonable hours to enter any land which is used as a caravan site³ or in respect of which an application for a site licence⁴ has been made, for the purpose of:

- 3949 (1) enabling the local authority to determine what conditions should be attached to a site licence or whether conditions so attached should be altered⁵;
- 3950 (2) ascertaining whether there is, or has been, on or in connection with the land any contravention of the statutory provisions⁶ relating to the licensing of caravan sites⁷;
- 3951 (3) ascertaining whether or not circumstances exist which would authorise the local authority to take any action, or execute any work, under those provisions⁸; or
- 3952 (4) taking any action, or executing any work, authorised by those provisions to be taken or executed by the local authority⁹.

Admission to any land may not, however, be demanded as of right unless 24 hours' notice of the intended entry has been given to the occupier¹⁰.

An authorised officer so entering any land may take with him such other persons as may be necessary¹¹.

A person who wilfully obstructs any person acting in the execution of the above rights is liable on summary conviction to a fine not exceeding level 1 on the standard scale¹².

1 For the meaning of 'local authority' see PARA 1032 note 8 ante.

2 Ie subject to the provisions of the Caravan Sites and Control of Development Act 1960 s 26 (as amended): see the text and notes 2-12 infra; and PARA 1038 post.

3 For the meaning of 'caravan site' see PARA 1032 note 4 ante.

4 For the meaning of 'site licence' see PARA 1032 note 5 ante.

5 Caravan Sites and Control of Development Act 1960 s 26(1)(a). As to the conditions which may be attached to a site licence see PARA 1043 post; and as to alteration of conditions see PARA 1045 post.

6 *Ibid* Pt I (ss 1-32) (as amended): see PARA 1032 et seq ante, PARA 1038 et seq post.

7 *Ibid* s 26(1)(b).

8 *Ibid* s 26(1)(c). As to the local authority's power to carry out works see PARA 1049 post.

9 *Ibid* s 26(1)(d).

10 *Ibid* s 26(1) proviso. For the meaning of 'occupier' see PARA 1032 note 1 ante.

11 *Ibid* s 26(3).

12 *Ibid* s 26(5) (amended by the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

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1038. Right of entry under warrant.

If it is shown to the satisfaction of a justice of the peace:

3953 (1) that admission to any land has been refused, or that refusal is apprehended, or that the occupier¹ of the land is temporarily absent and the case is one of urgency, or that an application for admission would defeat the object of the entry; and

3954 (2) that there is reasonable ground for entering on the land for any specified purpose²,

the justice may by warrant under his hand authorise the local authority³ by any authorised officer to enter the land, if need be by force⁴. Such a warrant may not, however, be issued unless the justice is satisfied either that notice of the intention to apply for the warrant has been given to the occupier, or that the occupier is temporarily absent and the case is one of urgency, or that the giving of such notice would defeat the object of the entry⁵. Every warrant so granted continues in force until the purpose for which the entry is necessary has been satisfied⁶.

An authorised officer entering any land by virtue of a warrant so issued may take with him such other persons as may be necessary⁷. A person who wilfully obstructs any person acting in the execution of such a warrant is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁸.

1 For the meaning of 'occupier' see PARA 1032 note 1 ante.

2 *Ie* any such purpose as is mentioned in the Caravan Sites and Control of Development Act 1960 s 26(1): see PARA 1037 ante at heads (1)-(4) in the text.

3 For the meaning of 'local authority' see PARA 1032 note 8 ante.

4 Caravan Sites and Control of Development Act 1960 s 26(2).

5 *Ibid* s 26(2) proviso.

6 Ibid s 26(4).

7 Ibid s 26(3).

8 Ibid s 26(5) (amended by the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

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(2) LICENSING OF CARAVAN SITES

(i) Issue, Duration and Transfer of Licences

1039. Issue of site licences.

An application¹ for the issue of a site licence² in respect of any land may be made by the occupier³ of the land to the local authority in whose area the land is situated⁴. Either at the time of making the application or subsequently, the applicant must give to the local authority such other information as it may reasonably require⁵.

On such an application, the local authority may issue a site licence in respect of the land if, and only if, the applicant is, at the time when the site licence is issued, entitled to the benefit of a permission for the use of the land as a caravan site⁶ granted⁷ otherwise than by a development order⁸.

If at the date when the applicant duly gives the required information⁹, he is entitled to the benefit of such a permission, the local authority must issue a site licence in respect of the land within two months of that date or, if the applicant and the authority agree in writing that the local authority shall be afforded a longer period within which to grant a site licence, within the period so agreed¹⁰. If, however, the applicant becomes entitled to the benefit of such a permission at some time after duly giving that information¹¹, the local authority must issue a site licence in respect of the land within six weeks of the date on which he becomes so entitled or, if the applicant and the local authority agree in writing that the local authority shall be afforded a longer period within which to grant a site licence, within the period so agreed¹².

A local authority may not¹³ at any time issue a site licence to a person who to its knowledge has held a site licence which has been revoked¹⁴ less than three years before that time¹⁵.

1 Such an application must be in writing and must specify the land in respect of which the application is made: Caravan Sites and Control of Development Act 1960 s 3(2). A simple letter may be a valid application: see *Chelmsford RDC v Powell* [1963] 1 All ER 150, [1963] 1 WLR 123, DC. As to the particulars to be given see the Caravan Sites (Licence Applications) Order 1960, SI 1960/1474, art 2, Schedule.

2 For the meaning of 'site licence' see PARA 1032 note 5 ante.

3 For the meaning of 'occupier' see PARA 1032 note 1 ante. If an application is made under the Caravan Sites and Control of Development Act 1960 s 10(1) (see PARA 1041 post) for consent to the transfer of a site licence to a person who is to become the occupier of the land, that person may apply for a site licence under s 3 (as amended) (see the text and notes 1-2 supra, 4-15 infra) as if he were the occupier of the land; and, if the local authority at any time before issuing a site licence in compliance with that application gives its consent to the transfer, it need not proceed with the application for the site licence: s 10(3). For the meaning of 'local authority' see PARA 1032 note 8 ante.

4 Ibid s 3(1).

5 Ibid s 3(2) (amended by the Local Government, Planning and Land Act 1980 s 1(3), Sch 3 para 10(1)).

6 For the meaning of 'caravan site' see PARA 1032 note 4 ante.

7 Ie under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante. For these purposes, any reference to permission so granted for the use of land as a caravan site is to be taken as a reference to such permission whether or not restricted in any way or subject to any condition or limitation; and any reference to such permission includes permission deemed to be granted under Pt III (as amended) or granted on the designation of an enterprise zone under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended) (see PARA 1491 et seq post): Caravan Sites and Control of Development Act 1960 s 29(4) (amended by the Planning (Consequential Provisions) Act 1990 ss 2(4), 4, Sch 2 para 8). The use of land as a caravan site before 1 July 1948 does not exempt such a use from the requirement for planning permission except in specified circumstances: see PARA 237 ante. A certificate of lawfulness of an existing use or development has effect for these purposes as if it were a grant of planning permission: see the Town and Country Planning Act 1990 s 191(7) (as substituted); and PARA 586 ante.

8 Caravan Sites and Control of Development Act 1960 s 3(3). As to registration of site licences see PARA 1042 post. For these purposes, 'development order' means an order made under the Town and Country Planning Act 1990 s 59 (as amended) (see PARA 252 ante), under which orders may be made which, in some cases, themselves grant permission for development and, in other cases, provide that permission shall be granted on an application in that behalf: Caravan Sites and Control of Development Act 1960 s 29(1); Planning (Consequential Provisions) Act 1990 s 2(4).

9 Ie required by virtue of the Caravan Sites and Control of Development Act 1960 s 3(2) (as amended: see note 5 supra).

10 Ibid s 3(4) (amended by the Local Government, Planning and Land Act 1980 Sch 3 para 10(2)). As to failure by the local authority to issue a site licence within the requisite period see PARA 1032 text and notes 8-11 ante.

11 See note 9 supra.

12 Caravan Sites and Control of Development Act 1960 s 3(5) (amended by the Local Government, Planning and Land Act 1980 Sch 3 para 10(2)). See also note 10 supra.

13 Ie notwithstanding anything in the Caravan Sites and Control of Development Act 1960 s 3(1)-(5) (as amended): see the text and notes 1-12 supra.

14 Ie in pursuance of the provisions of ibid Pt I (ss 1-32) (as amended). As to revocation of site licences see PARA 1049 post.

15 Ibid s 3(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(i) Issue, Duration and Transfer of Licences/1040. Duration of site licences.

1040. Duration of site licences.

Where permission for the use of any land as a caravan site¹ has been granted otherwise than by a development order², and has been so granted in terms such that it will expire³ at the end of a specified period, any site licence⁴ issued in respect of the land by virtue of the existence of that permission expires, and must be stated to expire, at the end of that period. A site licence may not otherwise be issued for a limited period only⁵.

If, after a site licence is issued, the terms of the permission are varied by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷ on an appeal relating to planning permission⁸, the local authority⁹ which issued the licence must make in the site licence any alteration required to secure that its terms comply with the above provisions¹⁰.

- 1 lie under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante. For the meaning of references to such permission see PARA 1039 note 7 ante; and for the meaning of 'caravan site' see PARA 1032 note 4 ante.
- 2 For the meaning of 'development order' see PARA 1039 note 8 ante.
- 3 For these purposes, permission so granted for the use of land for intermittent periods is not regarded as expiring at any time so long as the permission authorises the use of the land for further intermittent periods: Caravan Sites and Control of Development Act 1960 s 29(3).
- 4 For the meaning of 'site licence' see PARA 1032 note 5 ante.
- 5 Caravan Sites and Control of Development Act 1960 s 4(1).
- 6 As to the Secretary of State see PARA 19 ante.
- 7 As to the transfer of functions under the Caravan Sites and Control of Development Act 1960 s 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 8 lie an appeal under the Town and Country Planning Act 1990 s 78 (as amended): see PARA 598 ante.
- 9 For the meaning of 'local authority' see PARA 1032 note 8 ante.
- 10 Caravan Sites and Control of Development Act 1960 s 4(2); Planning (Consequential Provisions) Act 1990 s 2(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(i) Issue, Duration and Transfer of Licences/1041. Transfer and transmission of site licences.

1041. Transfer and transmission of site licences.

When the holder of a site licence¹ in respect of any land ceases to be the occupier² of the land, he may, with the consent of the local authority³ in whose area the land is situated, transfer the licence to the person who then becomes the occupier of the land⁴.

Where any person becomes, by operation of law, entitled to an estate or interest in land in respect of which a site licence is in force and, by virtue of his holding that estate or interest, is the occupier of the land, he is treated⁵ as having become the holder of the licence on the day on which he became the occupier of the land⁶. If an application in that behalf is made to it, the local authority in whose area the land is situated must indorse his name and that date on the licence⁷.

- 1 For the meaning of 'site licence' see PARA 1032 note 5 ante.
- 2 For the meaning of 'occupier' see PARA 1032 note 1 ante.
- 3 For the meaning of 'local authority' see PARA 1032 note 8 ante.
- 4 Caravan Sites and Control of Development Act 1960 s 10(1). Where a local authority gives its consent to the transfer of a site licence, it must indorse on the licence the name of the person to whom it is to be transferred and the date agreed between the parties to the transfer as the date on which that person is to be treated as having become the holder of the licence for the purposes of Pt I (ss 1-32) (as amended) (see PARA 1032 et seq ante, PARA 1042 et seq post): s 10(2). As to the power of the authority to require delivery up of a

licence for alteration see PARA 1046 post; as to the position where the transferee has applied for a site licence see PARA 1039 note 3 ante; and as to entry in the register of site licences see PARA 1042 post.

5 le for the purposes of *ibid* Pt I (ss 1-32) (as amended).

6 *Ibid* s 10(4).

7 See note 6 *supra*.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(i) Issue, Duration and Transfer of Licences/1042. Register of site licences.

1042. Register of site licences.

Every local authority¹ must keep a register of site licences² issued in respect of land situated in its area; and every such register must be open for inspection by the public at all reasonable times³.

Where a local authority indorses⁴ on a site licence the name of any person on transfer or transmission of the licence⁵, the authority must record his name, and the date entered in the licence, in the register of site licences⁶.

1 For the meaning of 'local authority' see PARA 1032 note 8 ante.

2 For the meaning of 'site licence' see PARA 1032 note 5 ante.

3 Caravan Sites and Control of Development Act 1960 s 25(1).

4 le under *ibid* s 10(2) or (4): see PARA 1041 ante.

5 le in the circumstances described in *ibid* s 10(2) or (4): see PARA 1041 ante.

6 *Ibid* s 25(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1043. Power to attach conditions to site licences.

(ii) Conditions of Site Licences

1043. Power to attach conditions to site licences.

A site licence¹ issued by a local authority² in respect of any land may be so issued subject to such conditions as the authority may think it necessary or desirable to impose on the occupier³ of the land in the interests of persons dwelling on the land in caravans⁴, or of any other class of persons, or of the public at large⁵. In particular, but without prejudice to the generality of the above provisions, a site licence may be issued subject to conditions for:

- 3955 (1) restricting the occasions on which caravans are stationed on the land for the purposes of human habitation, or the total number of caravans which are so stationed at any one time⁶;
- 3956 (2) controlling, whether by reference to their size, the state of their repair or any other feature⁷, the types of caravan which are stationed on the land⁸;
- 3957 (3) regulating the positions in which caravans are stationed on the land for the purposes of human habitation; and for prohibiting, restricting or otherwise regulating the placing or erection on the land, at any time when caravans are so stationed, of structures and vehicles of any description whatsoever and of tents⁹;
- 3958 (4) securing the taking of any steps for preserving or enhancing the amenity¹⁰ of the land, including the planting and replanting of the land with trees and bushes¹¹;
- 3959 (5) securing that, at all times when caravans are stationed on the land, proper measures are taken for preventing and detecting the outbreak of fire and adequate means of fighting fire are provided and maintained¹²;
- 3960 (6) securing that adequate sanitary facilities, and such other facilities, services or equipment as may be specified, are provided for the use of persons dwelling on the land in caravans and that, at all times when caravans are stationed on the land for the purposes of human habitation, any facilities and equipment so provided are properly maintained¹³.

No condition may, however, be attached to a site licence controlling the types of caravans which are stationed on the land by reference to the materials used in their construction¹⁴.

A site licence issued in respect of any land must contain, unless it is issued subject to a condition restricting to three or less the total number of caravans which may be stationed on the land at any one time, an express condition that, at all times when caravans are stationed on the land for the purposes of human habitation, a copy of the licence as for the time being in force shall be displayed on the land in some conspicuous place¹⁵.

A condition attached to a site licence may, if it requires the carrying out of any works¹⁶ on the land in respect of which the licence is issued, prohibit or restrict the bringing of caravans on to the land for the purposes of human habitation until such time as the local authority has certified in writing that the works have been completed to its satisfaction; and, where the land to which the site licence relates is at the time in use as a caravan site¹⁷, the condition may, whether or not it contains any such prohibition or restriction, require the works to be completed to the satisfaction of the authority within a stated period¹⁸.

The Secretary of State¹⁹ or, in relation to Wales, the National Assembly for Wales²⁰ may from time to time specify model standards for these purposes with respect to the layout of, and the provision of facilities, services and equipment for, caravan sites or particular types of caravan site; and in deciding what, if any, conditions to attach to a site licence, a local authority must have regard to any standards so specified²¹. Without prejudice to these powers, the Secretary of State or the Assembly may also by order²² prescribe minimum standards with respect to the layout of, and the provision of facilities, services and equipment for, protected sites²³ on which there are mobile homes²⁴ occupied as an only or main residence²⁵.

1 For the meaning of 'site licence' see PARA 1032 note 5 ante.

2 For the meaning of 'local authority' see PARA 1032 note 8 ante.

3 For the meaning of 'occupier' see PARA 1032 note 1 ante. As to the occupier's right of entry on the land to ensure compliance with any conditions attached to a site licence see PARA 1048 post.

4 For the meaning of 'caravan' see PARA 1033 ante.

5 Caravan Sites and Control of Development Act 1960 s 5(1). As to authorised officers' right of entry for the purpose of enabling the local authority to determine what conditions should be so attached see PARA 1037 ante at head (1) in the text.

The power so to impose conditions in a site licence confers a wide discretion on the local authority, but that discretion must be exercised in a manner confined to the subject matter of s 5 (as amended), and may not be used to impose eg a system of rent control in favour of caravan dwellers on a site: *Chertsey UDC v Mixnam's Properties Ltd* [1965] AC 735, [1964] 2 All ER 627, HL. See also *Babbage v North Norfolk District Council* [1990] 1 PLR 65, 88 LGR 235, CA (condition designed to preserve the visual amenity of a caravan site for the benefit of the public requiring the removal of all caravans during winter held to relate to planning considerations, not to a site consideration; could not be validly imposed). Where a local authority's objectives in imposing a condition can be achieved in a way which is less burdensome on the owner of the caravan site, the condition may be invalid: *Goodwin v Stratford-upon-Avon District Council* (1996) 73 P & CR 524. Development required by the conditions of a site licence for the time being in force is permitted development for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 5, Class B: see PARA 301 ante.

6 Caravan Sites and Control of Development Act 1960 s 5(1)(a).

7 le subject to the provisions of *ibid* s 5(2): see the text and note 14 *infra*.

8 *Ibid* s 5(1)(b).

9 *Ibid* s 5(1)(c).

10 As to the meaning of 'amenity' see PARA 158 note 8 ante.

11 Caravan Sites and Control of Development Act 1960 s 5(1)(d).

12 *Ibid* s 5(1)(e). The local authority must consult the fire and rescue authority as to the extent to which any model standards relating to fire precautions which have been specified under s 5(6) (see the text and note 21 *infra*) are appropriate to the land: s 5(3A) (s 5(3A), (3B) added by the Local Government (Miscellaneous Provisions) Act 1982 s 8(2)(a); amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 14). If no such standards have been specified or any standard that has been specified appears to the fire and rescue authority to be inappropriate to the land, the local authority must consult the fire and rescue authority as to what conditions relating to fire precautions ought to be attached to the site licence instead: Caravan Sites and Control of Development Act 1960 s 5(3B) (as so added and amended). With effect from 1 April 2006, however, s 5(3A), (3B) as so added and amended) are not apply where the Regulatory Reform (Fire Safety) Order 2005 applies to the land: Caravan Sites and Control of Development Act 1960 s 5(3C) (s 5(2A), (3C), (6A) prospectively added by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 1(3), 53(1), Sch 2 para 5(1), (2)(a)-(c)).

For these purposes, 'fire and rescue authority', in relation to any land, means the fire and rescue authority under the Fire and Rescue Services Act 2004 for the area in which the land is situated: Caravan Sites and Control of Development Act 1960 s 29(1) (definition substituted by the Fire and Rescue Services Act 2004 Sch 1 para 14). 'Fire precautions' means precautions to be taken for any of the purposes specified in the Caravan Sites and Control of Development Act 1960 s 5 (as amended) for which conditions may be imposed by virtue thereof: s 5(8) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 8(2)(b); prospectively amended by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 1(3), 53(1), Sch 2 para 5(1), (2) (d)). Until 1 April 2006, the specified purposes referred to in this definition are those specified in the Caravan Sites and Control of Development Act 1960 s 5(1)(e) (see head (5) in the text): see s 5(8) (as originally added). For the meaning of 'consult' see PARA 2 note 1 ante.

13 *Ibid* s 5(1)(f).

14 *Ibid* s 5(2). Nor, with effect from 1 April 2006, where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 applies to the land, may a condition be attached to a site licence in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order: Caravan Sites and Control of Development Act 1960 s 5(2A) (as added: see note 12 *supra*).

15 *Ibid* s 5(3). There is no right of appeal against this condition under s 7(1): see PARA 1044 note 4 post.

16 For these purposes, any reference to the carrying out of works includes a reference to the planting of trees and shrubs and the carrying out of other operations for preserving or enhancing the amenity of land: *ibid* s 29(2). For the avoidance of doubt, a condition attached to a site licence is valid notwithstanding that it can be complied with only by the carrying out of works which the holder of the site licence is not entitled to carry out as of right: s 5(5).

17 For the meaning of 'caravan site' see PARA 1032 note 4 ante.

18 Caravan Sites and Control of Development Act 1960 s 5(4). See also s 7(2); and PARA 1044 post.

19 As to the Secretary of State see PARA 19 ante.

20 As to the transfer of functions under the Caravan Sites and Control of Development Act 1960 s 5 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

21 Caravan Sites and Control of Development Act 1960 s 5(6). The duty so imposed on a local authority to have regard to specified standards is to be construed, as regards standards relating to fire precautions which are so specified, as a duty to have regard to them subject to any advice given by the fire and rescue authority under the Caravan Sites and Control of Development Act 1960 s 5(3A) or (3B) (as added and amended: see note 12 supra); s 5(7) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 8(2)(b); amended by the Fire and Rescue Services Act 2004 Sch 1 para 14). With effect from 1 April 2006, however, no model standards may be so specified in relation to land to which the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541 applies in so far as the standards relate to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order: Caravan Sites and Control of Development Act 1960 s 5(6A) (as added: see note 12 supra).

The model standards are not binding: see *Clyde Caravans (Longbank) Ltd v Renfrew County Council* 1962 SLT (Sh Ct) 20.

22 The power to make such orders is exercisable by statutory instrument, subject in the case of an order made by the Secretary of State to annulment in pursuance of a resolution of either House of Parliament (see the Mobile Homes Act 1975 s 7(3), (4)); and includes a power to make an order varying or revoking any order previously made under that provision (s 7(5)). As to the transfer of functions under s 7, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as parliamentary procedure in relation to orders made by the Assembly see PARA 20 ante.

23 There is no specific statutory definition of 'protected site' for these purposes, but for the meaning of 'protected site' for the purposes of the Mobile Homes Act 1983 see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1268.

24 For these purposes, 'mobile home' has the same meaning as in the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) as amended by the Caravan Sites Act 1968 (see PARA 1033 ante): Mobile Homes Act 1975 s 9(1).

25 Ibid s 7(1). An order so made may apply generally or to a particular area or to protected sites in a particular category and may prescribe different minimum standards in relation to protected sites in different categories: s 7(2). See further LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1270.

UPDATE

1043 Power to attach conditions to site licences

NOTES 12, 14, 21--References to 1 April 2006 are now to 1 October 2006: SI 2005/1541 art 1(3) (amended by SI 2006/484).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1044. Effective date of condition requiring works to be carried out.

1044. Effective date of condition requiring works to be carried out.

In so far as the effect of a condition, in whatever words expressed, subject to which a site licence¹ is issued in respect of any land is to require the carrying out on the land of any works²,

the condition does not have effect during the period within which the person to whom the site licence is issued is entitled to appeal³ against the condition, nor thereafter whilst an appeal against the condition is pending⁴.

1 For the meaning of 'site licence' see PARA 1032 note 5 ante; and as to conditions which may be attached to site licences see PARA 1043 ante.

2 For the meaning of references to the carrying out of works see PARA 1043 note 16 ante.

3 As to appeals see PARA 1047 post. The period within which an appeal may be brought is 28 days: see PARA 1047 post.

4 Caravan Sites and Control of Development Act 1960 s 7(2). Section 7(2) does not, however, apply to the condition referred to in s 5(3) (see PARA 1043 ante) against which there is no right of appeal: see s 7(1); and PARA 1047 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1045. Power to alter conditions attached to site licences.

1045. Power to alter conditions attached to site licences.

The conditions attached to a site licence¹ may be altered at any time by the local authority², whether by the variation or cancellation of existing conditions, or by the addition of new conditions, or by a combination of any such methods; but, before so exercising its power, the authority must afford to the holder of the licence an opportunity of making representations³.

The alteration by a local authority of the conditions attached to any site licence does not have effect until written notification of the alteration has been received by the holder of the licence; and, in so far as such alteration imposes a requirement on the holder to carry out on the land to which the licence relates any works⁴ which he would not otherwise be required to carry out, the alteration does not have effect during the period within which the holder is entitled to appeal against the alteration⁵, nor, thereafter, whilst an appeal against the alteration is pending⁶.

1 For the meaning of 'site licence' see PARA 1032 note 5 ante; and as to conditions which may be attached to site licences see PARA 1043 ante.

2 For the meaning of 'local authority' see PARA 1032 note 8 ante.

3 Caravan Sites and Control of Development Act 1960 s 8(1). As to authorised officers' right of entry for the purpose of enabling the local authority to determine whether conditions should be so altered see PARA 1037 ante at head (1) in the text. With effect from 1 April 2006, however, where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, applies to the land to which the site licence relates, no condition may be so attached to a site licence in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by or under that Order: Caravan Sites and Control of Development Act 1960 s 8(1A) (s 8(1A), (5A) prospectively added by the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, arts 1(3), 53(1), Sch 2 para 5(1), (3)).

In exercising the powers so conferred, a local authority must have regard amongst other things to any standards which may have been specified by the Secretary of State or, in relation to Wales, by the National Assembly for Wales under the Caravan Sites and Control of Development Act 1960 s 5(6) (see PARA 1043 ante): s 8(4). The local authority must consult the fire and rescue authority before exercising the powers so conferred in relation to a condition attached to a site licence for the purposes set out in the Caravan Sites and Control of Development Act 1960 s 5(1)(e) (see PARA 1043 ante at head (5) in the text): s 8(5) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 8(2)(c); amended by the Fire and Rescue Services Act 2004 s

53(1), Sch 1 para 14). With effect from 1 April 2006, however, the Caravan Sites and Control of Development Act 1960 s 8(5) (as so added and amended) is not to apply where the Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541, applies to the land: Caravan Sites and Control of Development Act 1960 s 8(5A) (as prospectively added). For the meaning of 'fire and rescue authority' see PARA 1043 note 12 ante; as to the Secretary of State see PARA 19 ante; as to the transfer of functions under ss 5, 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of references to the carrying out of works see PARA 1043 note 16 ante.

5 le under the Caravan Sites and Control of Development Act 1960 s 8(2): see PARA 1047 post. The period within which an appeal may be brought is 28 days: see PARA 1047 post.

6 Ibid s 8(3). As to the licence holder's duty to surrender his licence for alteration see PARA 1046 post.

UPDATE

1045 Power to alter conditions attached to site licences

NOTE 3--References to 1 April 2006 are now to 1 October 2006: SI 2005/1541 art 1(3) (amended by SI 2006/484).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1046. Duty to surrender site licence for alteration.

1046. Duty to surrender site licence for alteration.

A local authority¹ which has issued a site licence² may at any time require the holder to deliver it up so as to enable the authority to enter in it any alteration³ of the conditions or other terms of the licence⁴. If the holder of a site licence fails without reasonable excuse to comply with a requirement duly made under these provisions, he is liable on summary conviction to a fine not exceeding level 1 on the standard scale⁵.

1 For the meaning of 'local authority' see PARA 1032 note 8 ante.

2 For the meaning of 'site licence' see PARA 1032 note 5 ante.

3 le any alteration made in pursuance of the provisions of the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended): see PARA 1032 et seq ante, PARA 1047 et seq post. As to the alteration of conditions see PARA 1045 ante.

4 Ibid s 11(1).

5 Ibid s 11(2) (amended by the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1047. Appeals.

1047. Appeals.

Any person aggrieved¹ by any condition subject to which a site licence² has been issued to him in respect of any land, other than the condition requiring a copy of the licence to be displayed on the land³, may appeal to a magistrates' court⁴ within 28 days of the date on which the licence was so issued⁵. If it is satisfied, having regard amongst other things to any standards which have been specified⁶ by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸, that the condition is unduly burdensome⁹, the court may vary or cancel the condition¹⁰.

Where the holder of a site licence is aggrieved by any alteration of the conditions attached thereto, or by the refusal of the local authority¹¹ of an application by him for the alteration of those conditions, he may appeal to a magistrates' court within 28 days of the date on which written notification of the alteration or refusal is received by him; and the court may, if it allows the appeal, give to the local authority such directions as may be necessary to give effect to the court's decision¹².

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 For the meaning of 'site licence' see PARA 1032 note 5 ante; and as to the conditions which may be attached to site licences see PARA 1043 ante.

3 Ie other than the condition referred to in the Caravan Sites and Control of Development Act 1960 s 5(3): see PARA 1043 ante.

4 As to magistrates' courts see generally MAGISTRATES.

5 Caravan Sites and Control of Development Act 1960 s 7(1) (ss 7(1), 8(2) amended by the Courts Act 2003 s 109(1), (3), Sch 8 paras 108, 109, Sch 10).

6 Ie under the Caravan Sites and Control of Development Act 1960 s 5(6): see PARA 1043 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Caravan Sites and Control of Development Act 1960 ss 5, 7, 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 'Unduly burdensome' means burdensome in a respect which was unnecessary or unreasonable in all the circumstances of the case: *Llanfyllin RDC v Holland* (1964) 62 LGR 459, 16 P & CR 140, DC.

10 Caravan Sites and Control of Development Act 1960 s 7(1) (as amended: see note 5 supra).

11 For the meaning of 'local authority' see PARA 1032 note 8 ante.

12 Caravan Sites and Control of Development Act 1960 s 8(2) (as amended: see note 5 supra). In exercising the powers so conferred upon it, a magistrates' court must have regard amongst other things to any standards which may have been specified by the Secretary of State or by the Assembly under the Caravan Sites and Control of Development Act 1960 s 5(6) (see PARA 1043 ante): s 8(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1048. Occupier's right of entry.

1048. Occupier's right of entry.

The occupier¹ of any land subject to a licence or subject to a tenancy entered into with a view to the use of the land as a caravan site² has the right, as against any person claiming under the licence or tenancy, to enter on the land and do anything on the land reasonably required for the purpose of complying with any conditions attached to a site licence³ issued with respect to the land⁴.

1 For the meaning of 'occupier' see PARA 1032 note 1 ante.

2 Ie any such tenancy as is mentioned in the Caravan Sites and Control of Development Act 1960 s 1(3): see PARA 1032 note 1 ante.

3 For the meaning of 'site licence' see PARA 1032 note 5 ante; and as to the conditions which may be attached to a site licence see PARA 1043 ante.

4 Caravan Sites and Control of Development Act 1960 s 12(2). See also PARA 1034 ante. Persons entitled to station caravans on a protected site have statutory protection from eviction and harassment under the Caravan Sites Act 1968 Pt I (ss 1-5) (as amended) (see LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1281 et seq) and the occupier's right of entry for these purposes must be exercised in accordance with those provisions, but is not made expressly subject to them: see s 5(4); the Caravan Sites and Control of Development Act 1960 s 12(1); and PARA 1034 note 4 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(2) LICENSING OF CARAVAN SITES/(ii) Conditions of Site Licences/1049. Provisions as to breaches of condition.

1049. Provisions as to breaches of condition.

If an occupier¹ of land fails to comply with any condition for the time being attached to a site licence² held by him in respect of the land, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale³.

Where a person so convicted for failing to comply with a condition attached to a site licence has on two or more previous occasions been so convicted for failing to comply with a condition attached to that licence, the court before which he is convicted may, if an application in that behalf is made at the hearing by the local authority⁴ in whose area the land is situated, make an order for the revocation of that site licence to come into force on such date as the court may specify in the order, being a date not earlier than the expiration of any period within which notice of appeal, whether by case stated or otherwise, may be given against the conviction; and, if before the date so specified an appeal is brought, the order is of no effect pending the final determination or withdrawal of the appeal⁵.

The person convicted or the local authority which issued the site licence may apply to the magistrates' court which has made such an order revoking a site licence for an order extending the period at the end of which the revocation is to come into force; and, if satisfied that adequate notice of the application has been given to the local authority or, as the case may be, to the person convicted, the magistrates' court may make an order extending that period⁶.

Where an occupier of land fails within the time specified in a condition attached to a site licence held by him to complete to the satisfaction of the local authority in whose area the land is situated any works required by the condition to be so completed, the local authority may carry out those works⁷, and may recover as a simple contract debt in any court of competent jurisdiction from that person any expenses reasonably incurred by the authority in that behalf⁸.

1 For the meaning of 'occupier' see PARA 1032 note 1 ante. As to the occupier's right of entry to ensure compliance with a condition see PARA 1048 ante.

2 For the meaning of 'site licence' see PARA 1032 note 5 ante; and as to the conditions which may be attached to site licences see PARA 1043 ante.

3 Caravan Sites and Control of Development Act 1960 s 9(1) (amended by the Criminal Justice Act 1982 ss 35, 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to authorised officers' right of entry for the purpose of ascertaining whether there is or has been a contravention of the Caravan Sites and Control of Development Act 1960 Pt I (ss 1-32) (as amended) see PARA 1037 ante at head (2) in the text.

4 For the meaning of 'local authority' see PARA 1032 note 8 ante.

5 Caravan Sites and Control of Development Act 1960 s 9(2) (amended by the Courts Act 1971 s 56(1), Sch 8 para 39).

6 See note 5 supra.

7 For the meaning of references to carrying out works see PARA 1043 note 16 ante.

8 Caravan Sites and Control of Development Act 1960 s 9(3). As to authorised officers' right of entry for the purpose of ascertaining whether or not circumstances exist which would authorise the authority to execute such works and for the purpose of executing those works see PARA 1037 ante at heads (3)-(4) in the text.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(3) POWER TO PROHIBIT CARAVANS ON COMMONS/1050. Power to prohibit caravans on commons.

(3) POWER TO PROHIBIT CARAVANS ON COMMONS

1050. Power to prohibit caravans on commons.

The council of a district in England¹ or of a county or county borough in Wales² may make with respect to any land in its area to which these provisions apply an order prohibiting, either absolutely or except in such circumstances as may be specified in the order, the stationing of caravans³ on the land for the purposes of human habitation⁴.

These provisions apply to any land in the area of a such a council which is or forms part of a common⁵, not being land falling within any of the following descriptions, that is to say:

- 3961 (1) land to which certain statutory provisions relating to the rights of the public⁶ for the time being apply;
- 3962 (2) land which is subject to a scheme under Part I of the Commons Act 1899⁷ under which schemes may be made for the regulation and management of certain commons; and
- 3963 (3) land as respects which a site licence⁸ is for the time being in force⁹.

These provisions have effect in relation to any registered common¹⁰ which is within any National Park for which a National Park authority is the local planning authority¹¹ and is not owned by, or vested in, any other body which is a local authority, as if the National Park authority were a local authority for these purposes and as if the relevant Park were that authority's area¹².

Any person who stations a caravan on any land in contravention of such an order for the time being in force with respect to the land is¹³ guilty of an offence and liable on summary conviction to a fine not exceeding level 1 on the standard scale¹⁴.

- 1 As to district councils see PARA 28 ante.
- 2 As to Welsh county or county borough councils see PARA 28 ante.
- 3 For the meaning of 'caravan' see PARA 1033 ante.
- 4 Caravan Sites and Control of Development Act 1960 s 23(2), (9) (respectively amended by the Local Authorities, etc (Miscellaneous Provision) (No 3) Order 1975/1636, art 4(3); and added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 16(1)).
- 5 For these purposes, the word 'common' includes any land subject to be inclosed under the Inclosure Acts 1845-1882 (see COMMONS vol 13 (2009) PARA 418 et seq) and any town or village green: Caravan Sites and Control of Development Act 1960 s 23(8). As to inclosure generally see COMMONS vol 13 (2009) PARA 418 et seq.
- 6 In the Law of Property Act 1925 s 193 (as amended) (see COMMONS vol 13 (2009) PARAS 581-582), which does not apply to any common or manorial waste held for naval, military or air force purposes and in respect of which rights of common have been extinguished or cannot be exercised (see s 193(6)).
- 7 In the Commons Act 1899 Pt I (ss 1-15) (as amended): see COMMONS vol 13 (2009) PARA 590 et seq.
- 8 For the meaning of 'site licence' see PARA 1032 note 5 ante.
- 9 Caravan Sites and Control of Development Act 1960 s 23(1) (amended by the Local Government Act 1972 s 251, Sch 29 para 14).
- 10 For these purposes, 'registered common' means any land registered as common land or as a town or village green under the Commons Registration Act 1965: Environment Act 1995 s 70, Sch 9 para 1(6).
- 11 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 12 Environment Act 1995 Sch 9 para 1(1), (2)(c).
- 13 In the Commons Act 1989 s 1 (as amended): see PARA 1032 ante.
- 14 Ibid s 23(3) (amended by the Criminal Justice Act 1982 ss 38, 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

UPDATE

1050 Power to prohibit caravans on commons

NOTE 10--The reference is now to the Commons Act 2006 Part 1 (ss 1-25): 1995 Act Sch 9 para 1(6) (amended by the Commons Act 2006 Sch 5 para 6(b), Sch 6 Pt 2 (not yet in force)).

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1051. Procedure on making order imposing prohibition.

Before making an order prohibiting the stationing of caravans on commons¹ with respect to land which is or forms part of a common² of which conservators have been appointed under any local Act or under any order made under an Act of Parliament, the appropriate local council or National Park authority³ must consult⁴ with the conservators⁵.

Before making an order prohibiting the stationing of caravans on commons⁶, other than an order the sole effect of which is to revoke or vary a previous such order⁷, the appropriate local council or National Park authority must publish in one or more local newspapers circulating in the locality in which the land is situated a notice:

- 3964 (1) stating the general effect of the order;
- 3965 (2) specifying a place in that locality where a copy of the draft order may be inspected by any person free of charge at all reasonable hours during a period of 28 days from the date of the first publication of the notice; and
- 3966 (3) stating that, within that period, any person may by notice to the council or authority object to the making of the order⁸.

Not later than the date on which the notice is first published, the appropriate local council or National Park authority must serve a copy⁹ of it on every person entitled as lord of the manor or otherwise to the soil of the land, unless it is satisfied that the persons entitled to the soil of the land are numerous, or cannot after diligent inquiry be ascertained¹⁰.

If, before the expiration of a period of 28 days beginning with the date of the first publication of the notice, an objection to the making of the order to which the notice relates is duly made to the appropriate local council or National Park authority by any person entitled to the soil of the land, and the notice is not subsequently withdrawn, the council or authority may not proceed with the making of the order¹¹. Otherwise, the council or authority may, at any time within one year after the expiration of that period, make an order in the terms of the draft order; but, if any objection to the making of the order was duly made within that period by a person who was not entitled to the soil of the land, and the objection has not been withdrawn at the date on which the order is made, the order does not take effect until it is confirmed by the Secretary of State¹² or, in relation to Wales, by the National Assembly for Wales¹³. Where the council or authority submits an order to the Secretary of State or the Assembly for his or its confirmation, it must send to him a copy of every such objection; and, after considering every such objection and causing, if he or it thinks fit, a local inquiry¹⁴ to be held, the Secretary of State or the Assembly may confirm or refuse to confirm the order and, if he or it confirms the order, may do so subject to such modifications, if any, as he or it may think desirable¹⁵.

It is the duty of an appropriate local council or National Park authority to take all reasonable steps to secure that copies of any order¹⁶ which is for the time being in force with respect to any land in its area are so displayed on the land as to give to persons entering on the land adequate warning of the existence of the order; and the council or authority has the right to place on the land such notices as it considers necessary for the performance of that duty¹⁷.

1 le an order under the Caravan Sites and Control of Development Act 1960 s 23 (as amended): see PARA 1050 ante; the text and notes 2-17 infra; and PARA 1052 post.

2 For the meaning of 'common' see PARA 1050 note 5 ante.

3 le (1) in England the district council; (2) in Wales the county or county borough council; or (3) in the circumstances described in the Environment Act 1995 s 70, Sch 9 para 1(1), a National Park authority: see PARA 1050 ante.

4 For the meaning of 'consult' see PARA 2 note 1 ante.

5 Caravan Sites and Control of Development Act 1960 s 23(7), Sch 2 para 1 (amended by the Local Government Act 1972 s 272(1), Sch 30; the Caravan Sites and Control of Development Act 1960 s 23, Sch 2 modified by the Caravan Sites and Control of Development Act 1960 s 23(9) (as added: see PARA 1050 note 4 ante) and by the Environment Act 1995 s 70, Sch 9 para 1(1), (2)(c) (see PARA 1050 notes 10-12 ante)).

6 See note 1 supra.

7 le under the Caravan Sites and Control of Development Act 1960 s 23 (as amended and modified): see PARA 1052 post.

8 Ibid Sch 2 para 2 (as modified (see note 5 supra); amended by the Local Government Act 1972 Sch 30).

9 Such a notice may be served on any person by sending it in a registered letter addressed to him at his usual or last known address: Caravan Sites and Control of Development Act 1960 Sch 2 para 3(2).

10 Ibid Sch 2 para 3(1) (as modified (see note 5 supra); amended by the Local Government Act 1972 Sch 30; the Local Government Act 1974 ss 35(1), (2), 42(2) Sch 6 para 13, Sch 8).

Where it is proposed so to make an order with respect to land in which there is a Crown or Duchy interest, and the nature of that interest is such that the person to whom the interest belongs would otherwise be entitled to a copy of the notice, the Caravan Sites and Control of Development Act 1960 Sch 2 para 3 (as so modified and amended) has effect as if it required the copy to be served instead on the appropriate authority: Sch 2 para 6(1) (a). For these purposes, 'Crown or Duchy interest' means an interest belonging to Her Majesty in right of the Crown or of the Duchy of Lancaster, or belonging to the Duchy of Cornwall, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department; and 'the appropriate authority': (1) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (2) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (3) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; and (4) in relation to land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department: Sch 2 para 6(2)(a)-(d). If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: Sch 2 para 6(2). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

11 Ibid Sch 2 para 4(1) (as modified (see note 5 supra); amended by the Local Government Act 1972 Sch 30). Where it is proposed to make an order with respect to land in which there is a Crown or Duchy interest, and the nature of that interest is such that the person to whom the interest belongs would otherwise be entitled to a copy of the notice, the Caravan Sites and Control of Development Act 1960 Sch 2 para 4(1) (as so modified and amended) does not apply in relation to the order; but the appropriate local council or National Park authority may not make the order unless and until it has obtained the consent in writing thereto of the appropriate authority: Sch 2 para 6(1)(b) (as so modified).

12 As to the Secretary of State see PARA 19 ante.

13 Caravan Sites and Control of Development Act 1960 Sch 2 para 4(2) (as modified: see note 5 supra). As to the transfer of functions under Sch 2 (as amended and modified), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 As to inquiries so held see PARA 653 ante.

15 Caravan Sites and Control of Development Act 1960 Sch 2 para 4(3) (as modified: see note 5 supra).

16 le any order under ibid s 23 (as modified and amended): see PARA 1050 ante, PARA 1052 post.

17 Ibid s 23(4) (as modified (see note 5 supra); amended by the Local Government Act 1972 s 251, Sch 29 para 14).

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1052. Cessation and variation of orders.

An order prohibiting caravans on commons¹ may be revoked at any time by a subsequent order made² by the appropriate local council or National Park authority³, or may be so varied either so

as to exclude any land from the operation of the order or so as to introduce any exception, or further exception, from the prohibition imposed by the order⁴. Before making any such subsequent order with respect to land which is or forms part of a common⁵ of which conservators have been appointed under any local Act or under any order made under an Act of Parliament, the council or authority must consult⁶ with the conservators⁷. Where the sole effect of such an order is to revoke or vary a previous order⁸, the council or authority must serve such notices and take such other steps as appear to it to be appropriate for informing the persons entitled to the soil of the land of the effect of the order⁹.

Where the whole or a part of any land with respect to which an order¹⁰ is in force ceases to be land to which these provisions apply¹¹, that order thereupon ceases to have effect with respect to that land or part¹². It is the duty of an appropriate local council or National Park authority to take all reasonable steps to secure that copies of any such order which is for the time being in force with respect to any land in its area are so displayed on the land as to give to persons entering thereon adequate warning of the existence of the order; and the council or authority has the right to place on the land such notices as it considers necessary for the performance of that duty¹³. Where an order ceases¹⁴ to have effect with respect to a part only of any land, the council or authority must cause any copy of the order which is displayed on that part of the land with respect to which the order continues in force to be amended accordingly¹⁵.

1 Ie an order under the Caravan Sites and Control of Development Act 1960 s 23 (as modified and amended): see PARAS 1050-1051 ante.

2 Ie made under *ibid* s 23 (as modified and amended: see PARAS 1050-1051 ante).

3 Ie (1) in England the district council; (2) in Wales the county or county borough council; or (3) in the circumstances described in the Environment Act 1995 s 70, Sch 9 para 1(1), a National Park authority: see PARA 1050 ante.

4 Caravan Sites and Control of Development Act 1960 s 23(5) (amended by the Local Government Act 1972 s 251(2), Sch 29 para 14; the Caravan Sites and Control of Development Act 1960 s 23, Sch 2 modified by the Caravan Sites and Control of Development Act 1960 s 23(9) (as added: see PARA 1050 note 4 ante) and by the Environment Act 1995 s 70, Sch 9 para 1(1), (2)(c) (see PARA 1050 notes 10-12 ante)).

5 For the meaning of 'common' see PARA 1050 note 5 ante.

6 For the meaning of 'consult' see PARA 2 note 1 ante.

7 Caravan Sites and Control of Development Act 1960 s 23(5), Sch 2 para 1 (as modified (see note 4 supra); amended by the Local Government Act 1972 s 272(1), Sch 30).

8 Ie made under the Caravan Sites and Control of Development Act 1960 s 23 (as modified and amended), so that Sch 2 paras 2-4 (as modified and amended) (see PARA 1051 ante) do not apply.

9 Ibid Sch 2 para 5 (as modified (see note 4 supra); amended by the Local Government Act 1972 Sch 30).

10 See note 1 supra.

11 As to the land to which the Caravan Sites and Control of Development Act 1960 s 23 (as modified and amended) applies: see PARA 1050 ante at heads (1)-(3) in the text.

12 Ibid s 23(6).

13 Ibid s 23(4) (as modified (see note 4 supra); amended by the Local Government Act 1972 s 251, Sch 29 para 14).

14 Ie under the Caravan Sites and Control of Development Act 1960 s 23(6) (as modified and amended: see note 15 infra).

15 Ibid s 23(6) (as modified (see note 4 supra); amended by the Local Government Act 1972 Sch 29 para 14).

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(4) PROVISION OF CARAVAN SITES BY LOCAL AUTHORITIES

1053. Power to provide sites.

A local authority¹ has power² within its area to provide sites where caravans³ may be brought, whether for holidays or other temporary purposes or for use as permanent residences⁴. The authority has power to do anything appearing to it desirable in connection with the provision of such sites, and in particular:

- 3967 (1) to acquire land which is in use as a caravan site⁵, or which has been laid out as a caravan site⁶; or
- 3968 (2) to provide for the use of those occupying caravan sites any services or facilities⁷ for their health or convenience⁸; or
- 3969 (3) to provide, in or in connection with sites for the accommodation of gypsies⁹, working space and facilities for the carrying on of such activities as are normally carried on by them¹⁰.

In exercising these powers the local authority must have regard to any standards which may have been specified¹¹ by the Secretary of State¹² or, in relation to Wales, by the National Assembly for Wales¹³. A local authority does not, however, have power under these provisions to provide caravans¹⁴.

In the performance of its functions under these provisions, a local authority has power to acquire land, or any interest in land, compulsorily, where it appears to the authority that a caravan site or an additional caravan site is needed in its area, or that land which is in use as a caravan site should in the interest of the users of caravans be taken over by the local authority¹⁵. The power so to acquire land, or any interest in land, compulsorily is exercisable in any particular case on the local authority's being authorised to do so by the Secretary of State or by the Assembly¹⁶.

1 For these purposes, the expression 'local authority' includes the council of a county in England: Caravan Sites and Control of Development Act 1960 s 24(8) (definition amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 16(2), Sch 18; and by the Environment Act 1995 s 120, Sch 24). The Caravan Sites and Control of Development Act 1960 s 24 (as amended) has effect as if a National Park authority were a local authority for these purposes and as if the relevant Park were that authority's area: Environment Act 1995 s 70, Sch 9 para 4. As to county councils see PARA 28 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 The former statutory duty to provide sites for gypsies was removed by the Criminal Justice and Public Order Act 1994 ss 80(1), 168(3), Sch 11, repealing the Caravan Sites Act 1968 Pt II (ss 6-12). As to the development control aspects of providing private and local authority sites for gypsies see generally para 1031 ante. As to the meaning of 'gypsy' see note 9 infra.

Central government funding in the form of gypsy site refurbishment grant ('GSRG') may be available to local authorities wishing to refurbish and extend their gypsy and traveller sites. Guidance for local authority bids is published by the Office of the Deputy Prime Minister and was accessible at the date at which this title states the law at www.odpm.gov.uk. See also ODPM news release 2004/0327 (21 December 2004).

As to the duty of a local housing authority to take the accommodation needs of travellers and gypsies into account when undertaking a review of housing needs in its district see the Housing Act 2004 ss 225, 226; and **HOUSING** vol 22 (2006 Reissue) PARA 274. At the date at which this title states the law, those provisions were not fully in force.

3 For the meaning of 'caravan' see PARA 1033 ante.

4 Caravan Sites and Control of Development Act 1960 s 24(1). Before exercising such a power the local authority must consult the fire and rescue authority, if it is not itself that authority: (1) as to measures to be taken for preventing and detecting the outbreak of fire on the site; and (2) as to the provision and maintenance of means of fighting fire on it: s 24(2A) (added by the Local Government (Miscellaneous Provisions) Act 1982 s 8(2)(d); amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 14). For the meaning of 'consult' see PARA 2 note 1 ante; and for the meaning of 'fire and rescue authority' see PARA 1043 note 12 ante. No site licence is required: see PARA 1036 ante at head (11) in the text.

Local authorities may acquire or appropriate land under the Caravan Sites and Control of Development Act 1960 s 24 (as amended) for use as sites for travelling showpeople and lease it to the Showmen's Guild for the use of its members: see ODPM (ex DOE) Circular 22/91 *Travelling Showpeople* para 15. Increasingly showpeople's quarters need to be occupied by some members of the family permanently; older family members will stay on for most of the year and there are plainly advantages in children living there all year to benefit from uninterrupted education: para 2. As to the development control aspects of providing private and local authority sites for travelling showpeople see generally para 1031 ante; and as to the status of guidance given by departmental circulars see PARA 9 ante.

5 For the meaning of 'caravan site' see PARA 1032 note 4 ante.

6 Caravan Sites and Control of Development Act 1960 s 24(2)(a).

7 The services and facilities may be made available for those who do not normally reside in the area: see PARA 1054 post.

8 Caravan Sites and Control of Development Act 1960 s 24(2)(b).

9 For these purposes, 'gypsies' means persons of nomadic habit of life, whatever their race or origin, but does not include members of an organised group of travelling showmen, or persons engaged in travelling circuses, travelling together as such: *ibid* s 24(8) (definition added by the Criminal Justice and Public Order Act 1994 s 80(2)(b)). The wording of this definition is identical to that in the Caravan Sites Act 1968 s 16, which is now repealed except for the purposes of the definition of 'protected site' in the Mobile Homes Act 1983 s 5(1) (see *LANDLORD AND TENANT* vol 27(2) (2006 Reissue) PARA 1268). That repeal does not affect the interpretation of the word 'gypsies' in any document embodying the terms of any planning permission granted under the Town and Country Planning Act 1990 before 3 November 1994: see the Criminal Justice and Public Order Act 1994 ss 80(4), 172(4). For a discussion and criticism of the current statutory definition see Goodman 'We'll Go No More A-Roving: Seeking a New Definition of Gypsy and Traveller' [2005] JPL 1159. The following decisions have been made under the 1968 definition: (1) a person may be a gypsy within the statutory meaning if he leads a nomadic life only seasonally and regularly returns to the same site for part of each year (*Greenwich London Borough Council v Powell* [1989] AC 995, [1989] 1 All ER 65, HL; distinguished in *Clarke-Gowan v Secretary of State for Local Government and the Regions* [2002] All ER (D) 68 (Jun); and see also *R v Shropshire County Council, ex p Bungay* (1990) 23 HLR 195 (not perverse or irrational for council to conclude that a family still retained its nomadic habit of life notwithstanding the fact that travelling had not been in evidence during a substantial period of time)); (2) persons who are travelling showpeople are totally excluded from the statutory definition of 'gypsies'; they do not merely fall outside the definition when they are actually travelling from fair to fair (*Hammond v Secretary of State for the Environment and Tandridge District Council, Smith v Secretary of State for the Environment and Runnymede Borough Council* (1988) 57 P & CR 258, CA); (3) in the context of a local development plan, the term 'gypsy' does not refer to Romany gypsies as an ethnic minority; it refers, in a broader sense, to any person of nomadic habit of life, whatever their race or origin (*R v Runnymede Borough Council, ex p Smith* (1994) 70 P & CR 244); (4) the statutory definition as 'persons of nomadic habit of life' imports the requirement that there must be some recognisable connection between the wandering or travelling from place to place and the means whereby the persons concerned make or seek their livelihood; the statutory definition does not therefore apply to persons or individuals who move from place to place merely as the fancy takes them and without any connection between the movement and their means of livelihood (*R v South Hams District Council, ex p Gibb*; *R v Gloucestershire CC, ex p Davies*; *R v Dorset CC, ex p Rolls* [1995] QB 158, [1994] 4 All ER 1012, CA); (5) whether applicants for planning permission are of a 'nomadic way of life' as a matter of planning law and policy is a functional test to be applied to their way of life at the time of the determination (*Wrexham County Borough Council v National Assembly for Wales* [2003] EWCA Civ 835, [2003] All ER (D) 246 (Jun); *Basildon District Council v First Secretary of State* [2004] EWCA Civ 473, [2004] All ER (D) 478 (Mar)).

As to whether gypsy status may be retained if a gypsy ceases to lead a nomadic life for reasons of ill health see *Basildon District Council v First Secretary of State* [2004] 17 LS Gaz R 33, [2004] All ER (D) 164 (Apr).

10 Caravan Sites and Control of Development Act 1960 s 24(2)(c) (added by the Criminal Justice and Public Order Act 1994 s 80(2)(a)).

11 *le* under the Caravan Sites and Control of Development Act 1960 s 5(6): see PARA 1043 ante.

12 As to the Secretary of State see PARA 19 ante.

13 Caravan Sites and Control of Development Act 1960 s 24(2). As to the transfer of functions under s 24 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 Caravan Sites and Control of Development Act 1960 s 24(7).

15 Ibid s 24(5). The Acquisition of Land Act 1981 has effect in relation to the acquisition of land, or any interest in land, under the Caravan Sites and Control of Development Act 1960 s 24(5): s 24(6) (amended by the Acquisition of Land Act 1981 s 34, Sch 4 para 1, Sch 6 Pt I). See generally COMPULSORY ACQUISITION OF LAND.

16 Caravan Sites and Control of Development Act 1960 s 24(6).

UPDATE

1053 Power to provide sites

NOTE 2--Housing Act 2004 ss 225, 226 now fully in force in relation to England: SI 2006/3191.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(4) PROVISION OF CARAVAN SITES BY LOCAL AUTHORITIES/1054. Management of sites.

1054. Management of sites.

A local authority¹ has power to manage the sites it provides² or to lease them to some other person³. The local authority must make in respect of the use of sites managed by it, and of any services or facilities provided or made available⁴, such reasonable charges as it may determine⁵.

A local authority may make available the services and facilities so provided for those who do not normally reside in the area of the local authority as freely as for those who do⁶.

1 For the meaning of 'local authority' for these purposes see PARA 1053 note 1 ante.

2 Ie the caravan sites provided under the Caravan Sites and Control of Development Act 1960 s 24 (as amended): see PARA 1053 ante.

3 Ibid s 24(1).

4 Ie under ibid s 24 (as amended).

5 Ibid s 24(3).

6 Ibid s 24(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(5) REMOVAL OF

UNAUTHORISED CAMPERS/1055. Local authority's power to direct unauthorised campers to leave land.

(5) REMOVAL OF UNAUTHORISED CAMPERS

1055. Local authority's power to direct unauthorised campers to leave land.

If it appears to a local authority¹ that persons are for the time being residing² in a vehicle³ or vehicles within that authority's area on any land⁴ forming part of a highway, on any other unoccupied land or on any occupied land without the consent of the occupier⁵, the authority may give a direction that those persons and any others with them are to leave the land and remove the vehicle or vehicles and any other property they have with them on the land⁶. Such a direction operates to require persons who re-enter the land within a specified three-month period with vehicles or other property to leave and remove the vehicles or other property as it operates in relation to the persons and vehicles or other property on the land when the direction was given⁷.

Notice of such a direction must be served on the persons to whom the direction applies, but it is sufficient for this purpose for the direction to specify the land and, except where the direction applies to only one person, to be addressed to all occupants of the vehicles on the land, without naming them⁸.

If a person knowing that such a direction has been given which applies to him:

- 3970 (1) fails, as soon as practicable, to leave the land or remove from the land any vehicle or other property which is the subject of the direction; or
- 3971 (2) having removed any such vehicle or property again enters the land with a vehicle within the period of three months beginning with the day on which the direction was given,

he commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

In proceedings for an offence under these provisions it is a defence for the accused to show that his failure to leave or to remove the vehicle or other property as soon as practicable or his re-entry with a vehicle was due to illness, mechanical breakdown or other immediate emergency¹⁰.

1 For these purposes, 'local authority' means (1) in Greater London, a London borough or the Common Council of the City of London; (2) in England outside Greater London, a county council, a district council or the Council of the Isles of Scilly; (3) in Wales, a county council or a county borough council: Criminal Justice and Public Order Act 1994 s 77(6). As to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

2 For these purposes, a person may be regarded as residing on any land notwithstanding that he has a home elsewhere: *ibid* s 77(6). For the meaning of 'land' see note 4 *infra*.

3 For these purposes, 'vehicle' includes (1) any vehicle, whether or not it is in a fit state for use on roads, and includes any body, with or without wheels, appearing to have formed part of such a vehicle, and any load carried by, and anything attached to, such a vehicle; and (2) a caravan as defined in the Caravan Sites and Control of Development Act 1960 s 29(1) (see PARA 1033 *ante*): Criminal Justice and Public Order Act 1994 s 77(6).

4 For these purposes, 'land' means land in the open air: *ibid* s 77(6).

5 For these purposes, 'occupier' means the person entitled to possession of the land by virtue of an estate or interest held by him: *ibid* s 77(6).

6 Ibid s 77(1). Before giving a direction the authority should make adequate inquiries as to the effect of the eviction on the schooling of any child on the site, and on the health and welfare of any people who may be vulnerable by reason of age, infirmity, sickness or pregnancy: *R v Wolverhampton Metropolitan Borough Council, ex p Dunne and Rafferty* (1996) 29 HLR 745, DC. See also *R (on the application of Piggott) v Bedfordshire County Council* (2002) Times, 29 January (fact that applicant trespassing on site not decisive of application for pitch allocation). Unless there is a compelling reason for it not to do so, a local authority may issue a removal direction to a trespasser on an authorised caravan site: *R (on the application of Ward) v Hillingdon London Borough Council* [2001] LGR 457, [2001] All ER (D) 176 (Feb).

7 Criminal Justice and Public Order Act 1994 s 77(4). See *R v Lincolnshire County Council, ex p Atkinson* (1995) 160 JP Jo 580, DC (challenge to lawfulness of removal directions).

8 Criminal Justice and Public Order Act 1994 s 77(2). See further s 79; and PARA 1057 post.

9 Ibid s 77(3). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

10 Ibid s 77(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(5) REMOVAL OF UNAUTHORISED CAMPERS/1056. Orders for removal of persons and their vehicles unlawfully on land.

1056. Orders for removal of persons and their vehicles unlawfully on land.

On a complaint made by a local authority¹, a magistrates' court may, if satisfied that persons and vehicles² in which they are residing³ are present on land⁴ within that authority's area in contravention of a direction given under the provisions set out in the previous paragraph⁵, make an order requiring the removal of any vehicle or other property which is so present on the land and any person residing in it⁶. Such an order may authorise the local authority to take such steps as are reasonably necessary to ensure that the order is complied with and, in particular, may authorise the authority, by its officers and servants, to enter upon the land specified in the order and to take, in relation to any vehicle or property to be removed in pursuance of the order, such steps for securing entry and rendering it suitable for removal as may be so specified⁷.

The local authority must not enter upon any occupied land unless it has given to the owner and occupier⁸ at least 24 hours' notice of its intention to do so, or unless after reasonable inquiries it is unable to ascertain their names and addresses⁹.

A person who wilfully obstructs any person in the exercise of any power conferred on him by such an order commits an offence and is liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰.

1 For the meaning of 'local authority' see PARA 1055 note 1 ante (definition applied by the Criminal Justice and Public Order Act 1994 s 78(7)). Where a complaint is made under s 78 (see the text and notes 2-10 infra), a summons issued by the court requiring the person or persons to whom it is directed to appear before the court to answer to the complaint may be directed (1) to the occupant of a particular vehicle on the land in question; or (2) to all occupants of vehicles on the land in question, without naming him or them: s 78(5). The Magistrates' Courts Act 1980 s 55(2) (warrant for arrest of defendant failing to appear: see MAGISTRATES vol 29(2) (Reissue) PARA 693) does not apply to proceedings on a complaint made under these provisions: Criminal Justice and Public Order Act 1994 s 78(6).

2 For the meaning of 'vehicle' see PARA 1055 note 3 ante (definition applied by ibid s 78(7)).

3 As to the meaning of 'residing' for these purposes see PARA 1055 note 2 ante (definition applied by ibid s 78(7)).

- 4 For the meaning of 'land' see PARA 1055 note 4 ante (definition applied by *ibid* s 78(7)).
- 5 *Ibid* s 77: see PARA 1055 ante.
- 6 *Ibid* s 78(1). Provided a valid direction has been given, the magistrates do not have the general discretion to refuse such an order or to question the reasonableness of the authority's actions: *Shropshire County Council v Wynne* (1997) 96 LGR 689, DC. See also *R v Wolverhampton Metropolitan Borough Council, ex p Dunne and Rafferty* (1996) 29 HLR 745, DC.
- 7 Criminal Justice and Public Order Act 1994 s 78(2).
- 8 For the meaning of 'occupier' see PARA 1055 note 5 ante (definition applied by *ibid* s 78(7)).
- 9 *Ibid* s 78(3).
- 10 *Ibid* s 78(4). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/13. LICENSING AND CONTROL OF CARAVAN SITES/(5) REMOVAL OF UNAUTHORISED CAMPERS/1057. Service of relevant documents.

1057. Service of relevant documents.

Where it is impracticable to serve a relevant document¹ on a person named in it, the document is to be treated as duly served on him if a copy of it is fixed in a prominent place to the vehicle² concerned; and where a relevant document is directed to the unnamed occupants of vehicles, it is to be treated as duly served on those occupants if a copy of it is fixed in a prominent place to every vehicle on the land³ in question at the time when service is thus effected⁴.

A local authority⁵ must take such steps as may be reasonably practicable to secure that a copy of any relevant document is displayed on the land in question, otherwise than by being fixed to a vehicle, in a manner designed to ensure that it is likely to be seen by any person camping on the land⁶.

Notice of any relevant document must be given by the local authority to the owner of the land in question and to any occupier⁷ of that land unless, after reasonable inquiries, the authority is unable to ascertain the name and address of the owner or occupier; and the owner of any such land and any occupier of such land is entitled to appear and to be heard in the proceedings⁸.

- 1 The Criminal Justice and Public Order Act 1994 s 79 applies in relation to the service of notice of a direction under s 77 (see PARA 1055 ante) and of a summons under s 78 (see PARA 1056 ante), referred to in s 79 as a 'relevant document': s 79(1).
- 2 For the meaning of 'vehicle' see PARA 1055 note 3 ante (definition applied by *ibid* s 79(5)).
- 3 For the meaning of 'land' see PARA 1055 note 4 ante (definition applied by *ibid* s 79(5)).
- 4 *Ibid* s 79(2).
- 5 For the meaning of 'local authority' see PARA 1055 note 1 ante (definition applied by *ibid* s 79(5)).
- 6 *Ibid* s 79(3).
- 7 For the meaning of 'occupier' see PARA 1055 note 5 ante (definition applied by *ibid* s 79(5)).
- 8 *Ibid* s 79(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/14. HISTORIC BUILDINGS AND THEIR CONTENTS

14. HISTORIC BUILDINGS AND THEIR CONTENTS

UPDATE

1058-1071 Historic buildings and their contents

Material relating to this part has been revised and published under the title NATIONAL CULTURAL HERITAGE vol 77(2010).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(i) Introduction/1072. Application of general provisions of planning legislation.

15. LISTED BUILDINGS AND CONSERVATION AREAS

(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL

(i) Introduction

1072. Application of general provisions of planning legislation.

Subject to certain exceptions¹, the provisions of the Town and Country Planning Act 1990 relating to:

- 3972 (1) local inquiries²;
- 3973 (2) orders as to costs of the parties where no inquiry is held³;
- 3974 (3) orders as to costs where an inquiry or a hearing does not take place⁴;
- 3975 (4) the procedure on certain appeals and applications⁵;
- 3976 (5) compliance with requirements relating to applications⁶;
- 3977 (6) the service of notices⁷;
- 3978 (7) the power to require information as to interests in land⁸;
- 3979 (8) offences by corporations⁹,

and, as from a day to be appointed¹⁰, the provisions of that Act relating to:

- 3980 (a) service of notices on the Crown¹¹; and
- 3981 (b) information as to interests in Crown land¹²,

apply for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 as they apply for the purposes of the Town and Country Planning Act 1990¹³. The provision mentioned in head (8) above, however, does not apply to certain offences¹⁴ of causing damage to listed buildings¹⁵; and certain of the provisions¹⁶ mentioned in head (6) above do not apply to:

- 3982 (i) service of a building preservation notice¹⁷;
- 3983 (ii) service of a copy of a listed building enforcement notice¹⁸ by a planning authority;
- 3984 (iii) giving of notice¹⁹ of the exercise of powers to withdraw a listed building enforcement notice or to waive or relax any requirement of such a notice²⁰; or
- 3985 (iv) service of a listed building enforcement notice issued by the Secretary of State or, in relation to Wales, by the National Assembly for Wales²¹.

1 le subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 89(1A) (as added), s 89(2): see the text and notes 14-21 infra.

2 le the Town and Country Planning Act 1990 s 320: see PARA 651 ante.

3 le ibid s 322: see PARA 655 ante.

4 le ibid s 322A (as added): see PARA 656 ante.

5 le ibid s 323 (as amended): see PARA 627 ante.

6 le ibid s 327A (as added): see PARA 518 ante.

7 le ibid s 329 (as amended): see PARA 54 ante. Where (1) an electronic communication is used for the purpose of serving or giving a notice or other document on or to any person for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990; and (2) the communication is received by that person outside that person's business hours, it is to be taken to have been received on the next working day; and for these purposes, 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: s 91(5A) (s 91(5A) and the definitions of 'address' and 'electronic communication' in s 91(1) added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 9(1)-(3) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, SI 2004/3156, art 9(1)-(3)). For these purposes, 'address', in relation to electronic communications, means any number or address used for the purpose of such communications; and 'electronic communication' has the same meaning as in the Electronic Communications Act 2000 (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1) (definitions as so added).

Where an electronic communication is used by a person for the purpose of fulfilling any requirement in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended) (see PARA 1112 et seq post) to give or send any form, plan, notice or other document to any other person ('the recipient'), the requirement is to be taken to be fulfilled where the form, plan, notice or other document transmitted by means of the electronic communication is: (a) capable of being accessed by the recipient; (b) legible in all material respects; and (c) sufficiently permanent to be used for subsequent reference: reg 2(3), (4) (reg 2(1) renumbered, and reg 2(2)-(7) added, in relation to England by SI 2003/656 and in relation to Wales by SI 2004/3156). For these purposes, 'electronic communication' has the meaning given in the Electronic Communications Act 2000 s 15(1) (as amended) (see CIVIL PROCEDURE vol 11 (2009) PARA 947; TELECOMMUNICATIONS AND BROADCASTING vol 45(1) (2005 Reissue) PARA 616): Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 2(1) (as so renumbered). In the 1990 Regulations, in relation to the use of electronic communications for any purpose of those Regulations which is capable of being effected electronically, the expression 'address' includes any number or address used for the purposes of such communications, except that where those regulations impose an obligation on any person to provide a name and address to any other person, the obligation is not fulfilled unless the person on whom it is imposed provides a postal address; and references to forms, plans, notices and other documents, or to copies of such documents, include references to such documents or copies of them in electronic form: reg 2(2) (as so added). In reg 2(4) (as so added) (see heads (a)-(c) supra), 'legible in all material respects' means that the information contained in the statement, notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form: reg 2(5) (as so added). Where the electronic communication is received by the recipient outside the recipient's business hours, it is to be taken to have been received on the next working day; and for this purpose and the purposes of reg 8A(3) (as added) (see PARA 1127 note 6 post), 'working day' means a day which is not a Saturday, Sunday, bank holiday or other public holiday: reg 2(6) (as so added). A requirement in the 1990 Regulations that any document should be in writing is fulfilled where that document meets the criteria in reg 2(4) (as so added); and 'written' and cognate expressions are to be construed accordingly: reg 2(7) (as so added).

Where a person uses electronic communications for any of the following purposes: (i) making an application under reg 3, for listed building consent or conservation area consent (see PARAS 1112, 1127, 1176 post); (ii) making an application under reg 4 for the variation or discharge of conditions attached to a listed building consent or conservation area consent (see PARAS 1131, 1176 post); (iii) giving notice of appeal to the Secretary

of State or, in relation to Wales, to the National Assembly for Wales under reg 8 (as amended) (see PARAS 1188, 1190 post); (iv) making a claim under reg 9 for compensation, or serving a listed building purchase notice under reg 9 (see PARAS 1136-1139, 1179 post), and except where a contrary intention appears, the person making the application or claim or giving or serving the notice is to be taken to have agreed (A) to the use of electronic communications for all purposes relating to his application, appeal, claim or notice (as the case may be) which are capable of being effected using such communications; (B) that his address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, his application, claim or notice; (C) that his deemed agreement under this provision is to subsist until he gives notice in writing that he wishes to revoke the agreement (and such revocation takes effect on a date specified by him but not less than seven days after the date on which the notice is given): reg 8A(6), (7) (added in relation to England by SI 2003/656 and in relation to Wales by SI 2004/3156).

8 Ie the Town and Country Planning Act 1990 s 330 (as amended): see PARA 53 ante. In the application of s 330 (as amended) by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 89 (as amended), references to a local authority include the Commission: s 89(3) (added by the Planning and Compensation Act 1991 s 29(2)). For these purposes, except in so far as the context otherwise requires, 'local authority' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 3 note 3 ante) (Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2)); and 'the Commission' means the Historic Buildings and Monuments Commission for England ('English Heritage') (ss 1(1), 91(1)). As to English Heritage see PARA 1058 ante.

9 Ie the Town and Country Planning Act 1990 s 331: see PARA 55 ante.

10 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

11 Ie the Town and Country Planning Act 1990 s 329A(1), (2) (as prospectively added): see PARA 54 ante.

12 Ie *ibid* s 330A(1)-(4) (as prospectively added): see PARA 53 ante.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 89(1) (amended by the Planning and Compensation Act 1991 s 30(2); by the Planning and Compulsory Purchase Act 2004 s 42(9) (partly as from a day to be appointed (see note 10 *supra* and PARA 4 ante); prospectively amended by s 79(4), Sch 3 para 19(1)-(3), as from such a day; and by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 8(1), (2); the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 8(1), (2)).

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 89(1) (as so amended) had effect with the omission of the words from 'section 322' to 'held' until 2 January 1992: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 11; Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

14 Ie offences under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 59 (as amended): see PARA 1168 post.

15 Ibid s 89(2).

16 Ie the Town and Country Planning Act 1990 s 329(1)(cc) (as added) (service to an address for service using electronic communications): see PARA 54 ante.

17 For the meaning of 'building preservation notice' see PARA 1098 post.

18 For the meaning of 'listed building enforcement notice' see PARA 1146 post.

19 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended): see PARAS 1146-1147 post.

20 Ie the powers conferred by *ibid* s 38(5) (as substituted): see PARA 1147 post.

21 Ibid s 89(2A) (added in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 8(1), (3) and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 8(1), (3)). As to the power of the Secretary of State or the Assembly to issue a listed building enforcement notice see PARA 1152 post; as to the Secretary of State see PARA 19 ante; as to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the

National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1072 Application of general provisions of planning legislation

TEXT AND NOTE 10--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(i) Introduction/1073. Meaning of 'local planning authority'.

1073. Meaning of 'local planning authority'.

In the Planning (Listed Buildings and Conservation Areas) Act 1990 'local planning authority' is to be construed in accordance with the provisions relating to local planning authorities in the Town and Country Planning Act 1990¹ and with the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990² which make further provision as to the exercise of functions³ thereunder⁴. Those provisions as to the exercise of functions are modified in relation to Wales⁵.

For certain statutory purposes⁶, the Broads Authority⁷ is the sole district planning authority in respect of the Broads⁸.

1 Ie the Town and Country Planning Act 1990 Pt I (ss 1-9) (as amended): see PARA 28 et seq ante.

2 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81, Sch 4 (as amended): see notes 4-6 infra; and PARAS 1087, 1096 notes 9, 14, 1098 note 7, 1111 note 22, 1107 note 6, 1169 note 4 post.

3 For these purposes, except in so far as the context otherwise requires, 'functions' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 1 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

4 Ibid ss 81, 91(1). The Town and Country Planning Act 1990 s 1(3) (as amended) (see PARA 28 ante) has effect subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 paras 2, 4, 5 (as amended) (see note 6 infra; and PARA 1096 notes 9, 14 post); and the Town and Country Planning Act 1990 s 1 (as amended) and s 2 (as amended) (see PARA 30 ante) have effect subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 3 (as substituted and amended) (see PARA 1111 the text and notes 22-23 post): Sch 4 para 1(1) (Sch 4 para 1(1) renumbered, and Sch 4 para 1(2) added, by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(10)).

5 The Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 (as amended) applies in relation to Wales as if (1) Sch 4 paras 2-5 (as amended) were omitted; and (2) in Sch 4 para 7 (see PARA 1098 note 7 post), each reference to a district planning authority, or which is to be construed as such a reference, were a reference to the local planning authority: Sch 4 para 1(2) (as added: see note 4 supra).

6 le for the purposes of *ibid* s 3 (as amended) (see PARA 1098 post), s 4 (see PARA 1099 post), ss 7-26 (as amended) (see PARA 1109 et seq post), s 38 (as amended) (see PARA 1146 post), s 42 (as amended) (see PARA 1148 post), s 56 (see PARA 1165 post), s 66(1) (see PARA 1106 post), s 67 (as amended) (see PARA 1107 post), ss 69-75 (as amended) (see PARA 1169 et seq post), s 82 (as amended) (see PARA 1077 post), s 84 (prospectively repealed) (see PARA 1121 post) and s 88(2)(c), (d) (as amended) (see PARA 1083 post) and the provisions of s 81, Sch 4 (as amended) so far as they relate to those provisions: Sch 4 para 5.

7 As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 5. In relation to a building or land within the Broads (1) the references to the district planning authority in s 2(1)(b)(iii) (as amended) (see PARA 1094 post) and in Sch 4 para 4(1)(c) (see PARA 1096 note 14 post), so far as Sch 4 para 4(1)(c) relates to Sch 1 para 2(3), (4) (see PARA 1096 post), includes that Authority; and (2) for the purposes of s 6 (see PARA 1095 post), s 44A (as added) (see PARA 1151 post), s 88(2)(a), (b) (as amended) (see PARA 1083 post) and s 88A (as added) (see PARA 1085 post), 'local planning authority' includes that Authority: Sch 4 para 5 (amended by the Planning and Compensation Act 1991 Sch 3 para 29). For these purposes, except in so far as the context otherwise requires, 'building' and 'the Broads' have the same meanings as in the Town and Country Planning Act 1990 (see PARAS 2 note 10, 3 note 3 respectively ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2). Despite the application of the definition of 'building' in the Town and Country Planning Act 1990 s 336(1) ('building' includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building) by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2), the context of the Planning (Listed Buildings and Conservation Areas) Act 1990 does not require the term 'listed building' to include part of that building: see *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481, [1997] 1 WLR 168, HL. As to the implications of the judgment in that case see further PARA 1109 note 2 post. For the meaning of 'listed building' see PARA 1091 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1073 Meaning of 'local planning authority'

NOTE 4--Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 2 further amended: Housing and Regeneration Act 2008 Sch 8 para 53.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(i) Introduction/1074. Regulations and orders.

1074. Regulations and orders.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may make regulations under the Planning (Listed Buildings and Conservation Areas) Act 1990:

- 3986 (1) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of that Act to be served, made or issued by any local authority³ or National Park authority⁴;
- 3987 (2) for any purpose for which regulations are authorised or required to be made under that Act⁵.

Any power so conferred to make regulations is exercisable by statutory instrument⁶; and any statutory instrument containing regulations so made is subject, if made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament⁷.

Any power conferred by that Act to make an order⁸ includes power to vary or revoke any such order by a subsequent order⁹. Regulations and orders may make different provision for different purposes¹⁰.

As from a day to be appointed¹¹, in making building regulations under the Building Act 1984¹², the Secretary of State must have regard, in particular, to the desirability of preserving the character of protected buildings¹³ that are of special historical or architectural interest¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 93 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'local authority' see PARA 1072 note 8 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 93(1)(a) (amended by the Environment Act 1995 s 78, Sch 10 para 33(1), (4)). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 93(1)(b).

The powers to make regulations under s 10(3)(b) (as substituted) (see PARA 1111 post), s 67(1) (as substituted) (see PARAS 1107, 1169 post) and 73(1) (as substituted) (see PARA 1169 post) must be taken to be powers mentioned in the Local Government Act 2003 s 100(2) (powers exercisable in relation to descriptions of certain local authorities which fall into particular categories for the purposes of s 99: see **LOCAL GOVERNMENT** vol 69 (2009) PARA 789); Planning (Listed Buildings and Conservation Areas) Act 1990 s 93(6B) (s 93(6A), (6B) added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 26).

6 Ibid s 93(2).

7 Ibid s 93(3). As to parliamentary procedure with regard to subordinate legislation made by the Assembly see PARA 20 ante; and **CONSTITUTIONAL LAW AND HUMAN RIGHTS**.

8 The power to make orders under ibid s 8(5) (see PARA 1109 post), s 60 (see PARA 1101 post), s 75(7) (see PARA 1174 post) and s 92 (as amended) (application to the Isles of Scilly: see PARA 2 ante) is exercisable by statutory instrument: s 93(4). Any statutory instrument which contains an order under s 60 or s 75(7) is subject, if made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament (s 93(5); and see note 7 supra); and any order under s 60 or s 75(7) may contain such supplementary and incidental provisions as may appear to the Secretary of State or the Assembly to be appropriate (s 93(6)).

9 Ibid s 93(7), which is expressed to be without prejudice to the Interpretation Act 1978 s 14 (implied power to amend).

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 93(6A) (as added: see note 5 supra).

11 Ie as from a day to be appointed under the Sustainable and Secure Buildings Act 2004 s 11(3). At the date at which this title states the law, no such day had been appointed.

12 Ie under the Building Act 1984 s 1 (as amended). As to building regulations see **BUILDING** vol 4(2) (2002 Reissue) PARA 306 et seq.

13 For these purposes, 'protected buildings' means (1) listed buildings within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 (see s 1(5); and PARA 1091 post); and (2) buildings situated in areas designated as conservation areas under s 69 (see PARA 1169 post); Building Act 1984 s 1A(2) (s 1A added by the Sustainable and Secure Buildings Act 2004 s 2, as from a day to be appointed: see note 11 supra).

14 Building Act 1984 s 1A(1) (as added: see note 13 supra).

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1074 Regulations and orders

TEXT AND NOTE 11--Day now appointed: SI 2006/224.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(ii) Application of Legislation to the Crown/1075. Exercise of powers in relation to Crown land; the position before amendment by the 2004 Act.

(ii) Application of Legislation to the Crown**1075. Exercise of powers in relation to Crown land; the position before amendment by the 2004 Act.**

At the date at which this title states the law, the following provisions apply. Notwithstanding any interest of the Crown¹ in Crown land², but subject to the following provisions:

- 3988 (1) a building³ which for the time being is Crown land may be included in a list compiled or approved⁴ by the Secretary of State⁵ or by the National Assembly for Wales⁶;
- 3989 (2) any specified statutory restrictions imposed or statutory powers conferred⁷ apply and are exercisable in relation to Crown land to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown⁸;
- 3990 (3) any power to acquire land compulsorily⁹ may be exercised in relation to any interest in the land which is for the time being held otherwise than by or on behalf of the Crown¹⁰.

Except with the consent of the appropriate authority¹¹:

- 3991 (a) no listed building enforcement notice¹² may be issued or served in relation to land which is for the time being Crown land;
- 3992 (b) no interest in land which for the time being is Crown land may be acquired¹³ compulsorily¹⁴.

Furthermore, no listed building enforcement notice or conservation area enforcement notice may be issued in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed¹⁵.

No listed building purchase notice or conservation area purchase notice¹⁶ may be served in relation to any interest in Crown land unless:

- 3993 (i) an offer has been previously made by the owner¹⁷ of that interest to dispose¹⁸ of it to the appropriate authority on terms that the price payable for it shall be equal to the compensation which would be payable in respect of it if it were acquired in pursuance of such a notice, or, in default of agreement, shall be determined in a similar manner to that in which that compensation would be determined; and
- 3994 (ii) that offer has been refused by the appropriate authority¹⁹.

As from a day to be appointed, however²⁰, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004²¹. The new provision made by that Act is discussed below²².

1 For these purposes, 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department: Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(5). Except in so far as the context otherwise requires, 'government department' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 3 note 5 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2). The interest of the Corporate Officer of the House of Lords, of the Corporate Officer of the House of Commons, or of those two Corporate Officers acting jointly, in any land is to be regarded as a Crown interest for these purposes: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, arts 1(2), 2(1)(a), (3).

The Planning (Listed Buildings and Conservation Areas) Act 1990 applies to land in which an interest is held by or on behalf of a visiting force or headquarters and which is used for the purposes of that force or headquarters to the extent that it applies to Crown land: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 11(1). In its application to such land, the Planning (Listed Buildings and Conservation Areas) Act 1990 has effect as if any reference in that Act to: (1) 'Crown land' included a reference to such land; (2) 'the Crown' included a reference to the visiting force or headquarters; and (3) 'the appropriate authority' was a reference to the Ministry of Defence: art 11(2).

2 For these purposes, 'Crown land' means land in which there is a Crown interest or a Duchy interest; and 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall: Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(5). For the meaning of 'land' see PARA 1077 note 1 ante. For the purposes of the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, a licence is not to be regarded as an interest in land: art 1(3).

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 post.

5 As to the Secretary of State see PARA 19 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(1)(a). As to the transfer of functions under s 83, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

7 Ie any restrictions imposed or powers conferred by the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 1-26 (as amended) (see PARA 1092 et seq post), ss 32-46 (as amended) (see PARA 1139 et seq post), ss 54-56 (as amended) (see PARAS 1163-1165 post), s 59 (as amended) (see PARA 1168 post), s 60 (see PARA 1101 post), s 61 (see PARA 1105 post), s 66(1) (see PARA 1106 post), s 67 (as substituted) (see PARA 1107 post), s 68 (see PARA 1108 post), s 73 (as substituted) (see PARA 1169 post) or s 76 (see PARA 1181 post) or Sch 1 (see PARA 1096 post), Sch 2 (as amended) (see PARA 1100 post) or Sch 3 (as amended) (see PARA 1199 et seq post).

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(1)(b). A person who is entitled to occupy Crown land by virtue of a licence in writing is treated as having an interest in land for the purposes of s 83(1)(b) so far as applicable to ss 1-26 (as amended), ss 38-46 (as amended), ss 54-56 (as amended), ss 59-61 (as amended), s 66(1), s 67 (as amended), s 68, s 73 (as amended) and s 76 and Sch 1, Sch 2 (as amended) or Sch 3 (as amended): s 83(6). If a Corporate Officer or the Corporate Officers is or are entitled to occupy Crown land by virtue of a licence in writing, that licence is to be regarded as a Crown interest, rather than a private interest,

for these purposes: Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(2), (3)(a).

The Planning (Listed Buildings and Conservation Areas) Act 1990 83(1)(b) and s 83(3), (4) (see the text and notes 15-19 *infra*) are applied in relation to conservation areas by s 74(3), (4); and have effect in so far as so applying subject to the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3 (see PARA 1174 note 5 *post*). The remaining provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83 do not so apply: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

9 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARAS 1154, 1157 *post*.

10 Ibid s 83(1)(c).

11 For these purposes, 'the appropriate authority', in relation to any land: (1) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (3) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (4) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (5) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department: *ibid* s 83(7). If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: s 83(8). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 *et seq*; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280. In relation to land which is Crown land, by virtue only of the Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(1)(a) (see note 1 *supra*), 'the appropriate authority' for these purposes is the Corporate Officer or, as the case may be, the Corporate Officers in whom is vested the interest in the land: art 2(1), (2)(a). To the extent that a Corporate Officer or the Corporate Officers has or have responsibility for the management of any land in which he has or they have no interest but which forms part of the Palace of Westminster, the Corporate Officer or Corporate Officers are to be regarded as having the status of a government department for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(7)(b) (see head (2) *supra*): Parliamentary Corporate Bodies (Crown Immunities etc) Order 1992, SI 1992/1732, art 2(4)(b). Any development carried out by or on behalf of a Corporate Officer or the Corporate Officers is to be regarded as development carried out by or on behalf of the Crown; and for these purposes references to 'development' include references to works affecting a listed building and the demolition of a building in a conservation area: art 2(1)(b), (3)(b).

12 Ie no notice under *ibid* s 38 (as amended): see PARA 1146 *post*.

13 See note 9 *supra*.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(2).

15 Ibid s 83(3). As to conservation area enforcement notices see PARA 1180 *post*. See also note 8 *supra*.

16 For these purposes, 'listed building purchase notice' has the meaning given in *ibid* s 32(1) (as amended) (see PARA 1139 *post*): s 91(1). As to conservation area purchase notices see PARA 1179 *post*.

17 For these purposes, except in so far as the context otherwise requires, 'owner' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 17 note 1 *ante*) but this definition does not affect the meaning of 'owner' in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 11 (see PARA 1113 note 3 *post*): s 91(1).

18 For these purposes, except in so far as the context otherwise requires, 'disposal' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 38 note 6 *ante*): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

19 Ibid s 83(4). See also note 8 *supra*.

20 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

21 See *ibid* ss 79(4), 120, Sch 3 para 18(1), Sch 9. At the date at which this title states the law, those repeals were not in force.

22 See PARA 1076 *post*.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1075 Exercise of powers in relation to Crown land; the position before amendment by the 2004 Act

TEXT AND NOTES 20, 21--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(ii) Application of Legislation to the Crown/1076. Crown land etc; the new position after the ending of general Crown immunity.

1076. Crown land etc; the new position after the ending of general Crown immunity.

As from a day to be appointed¹, and subject to specified exceptions², the Planning (Listed Buildings and Conservation Areas) Act 1990 binds the Crown³. Particular provision is made with regard to:

- 3995 (1) applications for consent to the execution of urgent works relating to Crown land⁴;
- 3996 (2) enforcement in relation to the Crown⁵;
- 3997 (3) references to an interest in land⁶;
- 3998 (4) listed building purchase notices⁷;
- 3999 (5) applications by the Crown for listed building consent or conservation area consent⁸;
- 4000 (6) expressions relating to the Crown⁹;
- 4001 (7) rights of entry on Crown land¹⁰.

For the purposes of that Act, Crown land is land in which there is a Crown interest¹¹ or a Duchy interest¹². If any question arises as to what authority is the appropriate authority¹³ in relation to any land it must be referred to the Treasury, whose decision is final¹⁴. For the purposes of an application for listed building consent made by or on behalf of the Crown¹⁵ in respect of land which does not belong to the Crown or in respect of which it has no interest, a reference to the appropriate authority must be construed as a reference to the person who makes the application¹⁶.

Transitional provision is made by Part 2 of Schedule 4 to the Planning and Compulsory Purchase Act 2004¹⁷.

¹ ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 2 infra.

2 The excepted provisions are: (1) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9 (as amended) (offences: see PARA 1110 post); (2) s 11(6) (offences relating to certificates: see PARA 1113 post); (3) s 21(7) (further offences relating to certificates: see PARA 1187 post); (4) s 42(1), (5), (6) (as amended) (certain powers of entry: see PARA 1148 post); (5) s 43 (as substituted) (offence where listed building enforcement notice not complied with: see PARA 1149 post); (6) s 44A (as added) (injunctions: see PARA 1151 post); (7) s 54 (urgent preservation works: see PARA 1163 post); (8) s 55 (as amended) (recovery of expenses of works under s 54: see PARA 1164 post); (9) s 59 (as amended) (damage to listed buildings: see PARA 1168 post); and s 88A (as substituted) (warrants to enter land: see PARA 1085 post): s 82A(2) (s 82A added by the Planning and Compulsory Purchase Act 2004 s 79(2), partly as from a day to be appointed under s 121; at the date at which this title states the law, s 79(2) was in force for limited purposes only: see PARA 13 note 8 ante).

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 82A(2)(a) (as so added) (see head (1) supra) does not have effect to prohibit the doing of anything by or on behalf of the Crown which falls within the circumstances described in s 9(3)(a)-(d) (see PARA 1110 post) and the doing of that thing does not contravene s 7 (restriction on works: see PARA 1109 post): s 82A(3) (as so added).

3 Ibid s 82A(1) (as added: see note 2 supra).

4 See ibid s 82B (as prospectively added); and PARA 1123 post.

5 See ibid s 82D (as prospectively added); and PARA 1153 post.

6 See ibid s 82E (as prospectively added); and PARA 1153 note 14 post.

7 See ibid s 32A (as prospectively added); and PARA 1140 post.

8 See ibid s 82F (as prospectively added); and PARA 1122 post.

9 See ibid s 82C (as prospectively added); and the text and notes 11-16 infra.

10 See ibid s 88C (as prospectively added); and PARA 1084 post.

11 For these purposes, a 'Crown interest' is any of the following: (1) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates; (2) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department; (3) such other interest as the Secretary of State (or, in relation to Wales, the National Assembly for Wales) specifies by order: ibid s 82C(1), (3) (s 82C added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 7, partly as from a day to be appointed under s 121; at the date at which this title states the law, s 79(4), Sch 3 para 7 were in force for limited purposes only: see PARA 13 note 8 ante). The reference to Her Majesty's private estates must be construed in accordance with the Crown Private Estates Act 1862 s 1 (see CROWN PROPERTY vol 12(1) (Reissue) PARA 358): Planning (Listed Buildings and Conservation Areas) Act 1990 s 82C(10) (as so added). An order made for the purposes of head (3) supra must be made by statutory instrument; but no such order may be made by the Secretary of State unless a draft of it has been laid before and approved by resolution of each House of Parliament: s 82C(11), (12) (as so added). As to the Secretary of State and the Assembly see PARAS 19-20 ante.

12 Ibid s 82C(1), (2) (as added: see note 11 supra). A Duchy interest is (1) an interest belonging to Her Majesty in right of the Duchy of Lancaster; or (2) an interest belonging to the Duchy of Cornwall: s 82C(1), (4) (as so added). A private interest is an interest which is neither a Crown interest nor a Duchy interest: s 82C(1), (5) (as so added).

13 For these purposes, 'the appropriate authority' in relation to any land: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners; (2) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (3) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State; (4) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (5) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (6) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department; (7) in relation to Westminster Hall and the Chapel of St Mary Undercroft, means the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly; (8) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, means the Lord Great Chamberlain: ibid s 82C(6) (as added: see note 11 supra). As to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

14 Ibid s 82C(7) (as added: see note 11 supra).

15 For these purposes, the Crown includes (1) the Duchy of Lancaster; (2) the Duchy of Cornwall; (3) a person who is an appropriate authority by virtue of *ibid* s 82C(6)(g) and (h) (as added) (see note 13 heads (7)-(8) *supra*): s 82C(9) (as added: see note 11 *supra*).

16 *Ibid* s 82C(8) (as added: see note 11 *supra*).

17 See the Planning and Compulsory Purchase Act 2004 s 89, Sch 4 Pt 2 (paras 7-12); and PARA 1124 *post*.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1076 Crown land etc; the new position after the ending of general Crown immunity

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

NOTE 3--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 82A: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 5(1), (2)(b).

TEXT AND NOTES 11, 13--See the Planning (Application to the Houses of Parliament) Order 2006, SI 2006/1469; and PARA 14.

NOTE 11--The National Assembly for Wales Commission is to be treated as a government department for the purposes of the 1990 Act s 82C: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 5(1), (3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iii) Other Special Cases/1077. Land and works of local planning authorities.

(iii) Other Special Cases

1077. Land and works of local planning authorities.

In relation to land¹ of a local planning authority², certain specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990³ have effect subject to such exceptions and modifications as may be prescribed⁴; and other specified provisions of that Act⁵ have effect for the purpose of applications by local planning authorities relating to the execution of works for the demolition, alteration or extension of listed buildings⁶, subject to such exceptions and modifications as may be prescribed⁷.

Regulations made under the above provisions may in particular provide:

4002 (1) for the making of applications for listed building consent⁸ to the Secretary of State⁹ or, in relation to Wales, to the National Assembly for Wales¹⁰; and

4003 (2) for the issue or service by him or by the Assembly of specified¹¹ notices¹².

1 For these purposes, except in so far as the context otherwise requires, 'land' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 10 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

2 For the meaning of 'local planning authority' see PARA 1073 ante.

3 In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(1), (2), (4) (see PARA 1092 post), s 2 (as amended) (see PARA 1094 post) and s 39(6) (see PARA 1193 post).

4 Ibid s 82(1) (amended by the Planning and Compensation 1991 s 25, Sch 3 para 24(a)). The Planning (Listed Buildings and Conservation Areas) Act 1990 s 82 (as amended) is applied in relation to conservation areas by s 74(3), (4); and modified, so far as so applying, by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3: see note 7 infra.

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 82(1) (as so amended) had effect with the addition of '41(8)' after '39(6)' until 2 January 1992: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3); Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

For these purpose, except in relation to matters expressly required or authorised by the Planning (Listed Buildings and Conservation Areas) Act 1990 to be prescribed in some other way, 'prescribed' means prescribed by regulations thereunder: s 91(1). References in the planning Acts to any of the provisions mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82 (as amended) include, except where the context otherwise requires, references to those provisions as modified under s 82 (as amended): s 91(4). For the meaning of 'the planning Acts' see PARA 2 ante.

5 In ibid s 1(3), (5), (6), (see PARAS 1092, 1096 post), ss 3-5 (as amended) (see PARAS 1098-1100 post), ss 7-29 (as amended) (see PARA 1109 et seq post), ss 32-50 (as amended), except s 39(6) (see PARA 1139 et seq post), s 60(1)-(4) (see PARA 1101 post), as it applies as respects the provisions mentioned in this note, ss 62-65 (as amended) (see PARAS 1088-1090, 1195 post), s 67(2)(b), (6), (7) (now repealed), s 73(1) (as substituted) (see PARA 1169 post), Sch 1 (see PARA 1096 post), Sch 2 (as amended) (see PARA 1100 post), Sch 4 para 2 (as amended) (as it applies to Sch 1) and Sch 4 para 4(1) (as amended) (see PARA 1096 notes 9, 14 post), as it applies as respects the provisions mentioned in this note: s 82(3) (amended by the Planning and Compensation 1991 s 25, Sch 3 para 24(b)).

6 'Listed building' has the meaning given in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5) (see PARA 1091 post): s 91(1).

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82(2), (3) (as amended: see note 5 supra). In exercise of the power so conferred the Secretary of State made the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13 (as amended): see PARA 1078 post.

In their application to buildings in conservation areas the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82(2), (3) (as so amended) and s 82(4) (see the text and notes 8-12 infra) have effect as they have effect in relation to listed buildings: (1) subject to the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(a) (see PARA 1174 note 5 post); (2) with the omission in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82(2) of the words 'alteration or extension'; and in s 82(2)-(4) (as amended) the exceptions and modifications mentioned in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13 (as amended) (see PARA 1078 post) and also as mentioned in reg 12, Sch 3 col 2 (see PARA 1174 note 5 post) have effect in relation to the appropriate provision mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82(3) (as amended) (see note 5 supra): Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 3.

8 For these purposes, 'listed building consent' has the meaning given in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(7) (see PARA 1109 post): s 91(1).

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and

conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

11 The notices under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(3) (as amended) (see PARA 1094 post) and the provisions mentioned in note 5 supra.

12 Ibid s 82(4). See also note 7 supra. As to the making of regulations see PARA 1074 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iii) Other Special Cases/1078. Applications by local planning authorities.

1078. Applications by local planning authorities.

In relation to applications by local planning authorities¹ relating to the execution of works for the demolition, alteration or extension of listed buildings² or for the demolition of unlisted buildings in conservation areas³, the specified statutory provisions⁴ have effect subject to the following exceptions and modifications⁵.

Where a local planning authority requires listed building consent⁶ for the demolition, alteration or extension of a listed building in its area or conservation area consent⁷ for the demolition of a building within a conservation area in its area, the authority must make application to the Secretary of State⁸ or, in relation to Wales, to the National Assembly for Wales⁹ for that consent¹⁰; but any such application by the council of a county in England¹¹ to the Secretary of State, together with the accompanying documents¹², must be made to the council of the district¹³ which must forthwith send it on to the Secretary of State¹⁴.

Any such application must be in the form of an application to the local planning authority and is deemed to have been referred¹⁵ to the Secretary of State or to the Assembly¹⁶. Such an application must be accompanied by a copy of all representations duly made in relation to it¹⁷.

Where a local planning authority has so made an application for consent, it must, before sending the application to the Secretary of State or, as the case may be, to the Assembly:

4004 (1) publish in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are the subject of the application and naming a place within the locality where a copy of the application, and of all the plans and other documents which it is intended to submit to the Secretary of State or the Assembly with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and

4005 (2) for not less than seven days display on or near such building a notice containing the same particulars as are required to be contained in the notice to be published in accordance with head (1) above¹⁸.

In relation to a listed building, or a building in a conservation area, belonging to a local planning authority, the Secretary of State or, as the case may be, the Welsh Assembly, may serve any notice authorised to be served by a local planning authority in relation to a listed building or a building in a conservation area¹⁹.

- 1 For the meaning of 'local planning authority' see PARA 1073 ante.
- 2 For the meaning of 'listed building' see PARA 1091 post.
- 3 For the meaning of 'conservation area' see PARA 1169 post.
- 4 I.e. the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 specified in s 82(3) (as amended): see PARA 1077 note 5 ante.
- 5 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(1).
- 6 For the meaning of 'listed building consent' see PARA 1109 post.
- 7 For the meaning of 'conservation area consent' see PARA 1174 post.
- 8 As to the Secretary of State see PARA 19 ante.
- 9 As to the transfer of functions relating to listed buildings and conservation areas, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 10 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(2).
- 11 As to county councils see PARA 28 ante.
- 12 I.e. any accompanying documents required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13 (as amended): see reg 13(6); and the text and note 17 infra.
- 13 As to district councils (of which there are none in Wales) see PARA 28 ante.
- 14 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(7) (amended by SI 1996/525).
- 15 I.e. under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended): see PARA 1115 post.
- 16 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(3). The provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) then apply to the determination of the application by the Secretary of State or the Assembly: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(3).
- 17 Ibid reg 13(6).
- 18 Ibid reg 13(4). Regulation 13(4) does not, however, apply to any application by a local planning authority relating to works affecting only the interior of a building which, when last notified to the authority by the Secretary of State or the Assembly as a building of special architectural or historic interest, was classified as a Grade II (unstarred) listed building: reg 13(5). As to grading of listed buildings see PARA 1092 post.
- 19 Ibid reg 13(8).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iii) Other Special Cases/1079. Ecclesiastical property.

1079. Ecclesiastical property.

Where, under any provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990, a notice or copy of a notice is required to be served on an owner¹ of land² and the land is ecclesiastical property³, a similar notice or copy of a notice must⁴ be served on the Church Commissioners⁵.

Where the fee simple of any ecclesiastical property is in abeyance:

4006 (1) if the property is situated in England, the fee simple is treated⁶ as being vested in the Church Commissioners;

4007 (2) in any case, the fee simple is treated, for the purposes of a compulsory acquisition of the property⁷, as being vested in the Church Commissioners, and any notice to treat⁸ must be served, or is deemed to have been served, accordingly⁹.

Any compensation payable¹⁰ in respect of land which is ecclesiastical property:

4008 (a) must, in the case of land which is not diocesan glebe land, be paid to the Church Commissioners; and

4009 (b) must, in the case of diocesan glebe land, be paid to the Diocesan Board of Finance¹¹ in which the land is vested,

and must, in either case, be applied by them for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising or disposing of the proceeds of such a sale¹².

1 For the meaning of 'owner' see PARA 1075 note 17 ante.

2 For the meaning of 'land' see PARA 1077 note 1 ante.

3 For these purposes, 'ecclesiastical property' means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction or being diocesan glebe land; and 'diocesan glebe land' has the same meaning as in the Endowments and Glebe Measure 1976: Planning (Listed Buildings and Conservation Areas) Act 1990 s 86(4) (s 86(3), (4) amended by the Planning and Compensation Act 1991 s 70(b), Sch 15 para 31). 'Glebe land' means land vested in the incumbent of a benefice (when the benefice is full) as part of the endowments of the benefice other than parsonage land; and 'diocesan glebe land' means glebe land acquired by a Diocesan Board of Finance under any provisions of the 1976 Measure and any other land acquired by such a Board, being land which by virtue of, or of any enactment amended by, a provision of that Measure is to be held as part of the diocesan glebe land of the diocese: see the Endowments and Glebe Measure 1976 s 45(1).

4 le without prejudice to the provisions of the Acquisition of Land Act 1981 with respect to notices served under that Act: see generally COMPULSORY ACQUISITION OF LAND.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 86(1). As to the service of notices see PARA 1072 ante at head (6) in the text; and as to the Church Commissioners see ECCLESIASTICAL LAW.

6 le for the purposes of *ibid* s 11 (see PARA 1113 post), s 86(2) other than s 86(2)(b) (see head (2) in the text), and s 62 (as amended) (see PARA 1088 post), s 63 (as amended) (see PARA 1090 post) and s 83(1) (prospectively repealed) (see PARA 1075 ante), and any other provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 so far as they apply, or have effect for the purposes of, any of those provisions: s 86(2)(a).

7 le under *ibid* s 47 (as amended): see PARAS 1154, 1157 post. For these purposes, except in so far as the context otherwise requires, 'compulsory acquisition' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 930 note 4 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

8 Words in the Planning (Listed Buildings and Conservation Areas) Act 1990 importing a reference to service of a notice to treat are to be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served: s 91(5). For the meaning of 'enactment' see PARA 1121 note 6 post.

9 *Ibid* s 86(2).

10 le under *ibid* s 29: see PARA 1137 post.

11 For these purposes, 'Diocesan Board of Finance' has the same meaning as in the Endowments and Glebe Measure 1976 (see ECCLESIASTICAL LAW): Planning (Listed Buildings and Conservation Areas) Act 1990 s 86(4) (as amended: see note 3 *supra*).

12 *Ibid* s 86(3) (as amended: see note 3 *supra*).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1079 Ecclesiastical property

TEXT AND NOTES--Planning (Listed Buildings and Conservation Areas) Act 1990 s 86 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 27.

NOTE 3--Definition of 'diocesan glebe land' in 1976 Measure s 45(1) amended: 2006 Measure Sch 3 para 6(a).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iii) Other Special Cases/1080. Settled land.

1080. Settled land.

Works specified by the Secretary of State¹ or, in relation to Wales, by the National Assembly for Wales² as being required for properly maintaining a listed building³ which is settled land⁴ are included in the classes of works⁵ which may be paid for out of capital money, subject to the powers of the trustees of the settlement or the court to require that it be replaced out of instalments of income⁶. Subject to certain exceptions, however, no settlement created on or after 1 January 1997 is a strict settlement within the meaning of the Settled Land Act 1925 and no such settlement is deemed to be made on or after that date⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 87, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'listed building' see PARA 1091 post.

4 Ie within the meaning of the Settled Land Act 1925: see s 2; and SETTLEMENTS vol 42 (Reissue) PARA 680.

5 Ie the classes of works specified in ibid s 83, Sch 3 Pt II: see SETTLEMENTS vol 42 (Reissue) PARA 817.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 87.

7 See the Trusts of Land and Appointment of Trustees Act 1996 s 2; and REAL PROPERTY vol 39(2) (Reissue) PARA 65; SETTLEMENTS vol 42 (Reissue) PARA 676.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iii) Other Special Cases/1081. Statutory undertakers.

1081. Statutory undertakers.

For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990, 'statutory undertakers' generally has the same meaning as in the Town and Country Planning Act 1990¹. However, for the purposes of certain provisions relating to listed building purchase notices and conservation area purchase notices², the expression 'statutory undertakers' is deemed to include references to an electronic communications code operator and to a former public telecommunications operator ('PTO')³; and for those purposes, for the purposes of the statutory exception for rights and apparatus of statutory undertakers⁴ and for the purposes of the provision allowing statutory undertakers to contribute to expenses incurred by a local planning authority⁵, that expression is deemed to include:

- 4010 (1) a universal service provider⁶ in connection with the provision of a universal postal service⁷;
- 4011 (2) the Civil Aviation Authority⁸;
- 4012 (3) a person who holds a licence authorising the provision of air traffic services⁹, to the extent that the person is carrying out activities authorised by the licence;
- 4013 (4) a gas transporter¹⁰;
- 4014 (5) an electricity supplier¹¹;
- 4015 (6) the Environment Agency¹²; and
- 4016 (7) every water or sewerage undertaker¹³.

1 Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(3). For the meaning of 'statutory undertakers' for the purposes of the Town and Country Planning Act 1990 see PARA 1009 ante.

2 Ie for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 33-36 (as amended): see PARAS 1141-1144, 1179 post. As to the application of ss 33-36 to conservation areas see s 74(3), (4); the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 post.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(3)(a).

4 Ie for the purposes of ibid s 51(2)(a): see PARA 1160 post.

5 Ie for the purposes of ibid s 90(2) (as amended): see PARA 1082 post.

6 For these purposes, 'universal service provider' has the same meaning as in the Postal Services Act 2000 (see POST OFFICE): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(3B) (s 91(3A), (3B) added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 84(1), (3)).

7 For these purposes, references to the provision of a universal postal service are to be construed in accordance with the Postal Services Act 2000 (see POST OFFICE): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(3B) (as added: see note 6 supra). The undertaking of a universal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990; and references in the 1990 Act to his undertaking are to be construed accordingly: s 91(3A) (as added).

8 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

9 Ie a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

10 Ie a public gas supplier: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805. References to a public gas supplier have effect as if they were references to a public gas transporter, by virtue of the Gas Act 1995 s 16(1), Sch 4 para 2(2)(j); and a reference to a public gas transporter now has effect as a reference to a gas transporter: see the Utilities Act 2000 s 76(7).

11 Ie a holder of a licence under the Electricity Act 1989 s 6 (as substituted): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1065. References in any enactment to holders of licences under 6(2) (as substituted) now have effect as if they were references to electricity suppliers: Utilities Act 2000 s 31(3).

12 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(3) (amended by the Planning and Compensation Act 1991 ss 31, 84, Sch 6 para 48, Sch 19 Pt II; the Transport Act 2000 s 37, Sch 5 para 8; the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1; and by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, Sch 1 para 84(1), (3)). As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(iv) Financial Provisions/1082. Financial provisions; in general.

(iv) Financial Provisions

1082. Financial provisions; in general.

Where (1) compensation is payable by a local authority (including a National Park authority)¹ under the Planning (Listed Buildings and Conservation Areas) Act 1990 in consequence of any decision or order given or made² thereunder; and (2) the decision or order in consequence of which it is payable was given or made wholly or partly in the interest of a service which is provided by a government department³ and the cost of which is defrayed out of money provided by Parliament, the minister⁴ responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine⁵.

Any local authority and any statutory undertakers⁶ may contribute towards any expenses incurred by a local planning authority⁷ in or in connection with the performance of any of its statutory⁸ functions⁹.

Where any expenses are incurred by a local authority in the payment of compensation¹⁰, the Secretary of State¹¹ or, in relation to Wales, the National Assembly for Wales¹² may, if it appears to him or to the Assembly to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him or to the Assembly to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation¹³.

The council of a county¹⁴ may direct that any expenses incurred¹⁵ by it shall be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions¹⁶.

There must be paid out of money provided by Parliament:

- 4017 (a) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under certain provisions relating to compensation¹⁷;
- 4018 (b) any expenses incurred by any government department, including the Secretary of State, in the acquisition of land¹⁸ or in the payment of compensation under other specified provisions¹⁹;
- 4019 (c) any administrative expenses incurred by the Secretary of State for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990²⁰.

Any sums received by the Secretary of State under that Act must be paid into the Consolidated Fund²¹.

1 For the meaning of 'local authority' see PARA 1072 note 8 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(1)-(4), references to a local authority are deemed to include references to a National Park authority: Environment Act 1995 s 70, Sch 9 para 13(6).

2 Ie any decision or order given or made under the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch I (ss 1-6) (as amended) (see PARA 1092 et seq post), Pt I Ch II (ss 7-26) (as amended) (see PARA 1109 et seq post) or Pt I Ch IV (ss 38-46) (as amended) (see PARA 1146 et seq post) or ss 32-37 (as amended) (see PARA 1139 et seq post), s 60 (see PARA 1101 post) or Sch 3 (as amended) (see PARA 1199 et seq post): s 90(1)(a).

3 For the meaning of 'government department' see PARA 1075 note 1 ante.

4 For these purposes, except in so far as the context otherwise requires, 'minister' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 3 note 5 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

5 Ibid s 90(1).

6 For the meaning of 'statutory undertakers' see PARA 1081 ante.

7 For the meaning of 'local planning authority' see PARA 1073 ante.

8 Ie its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Chs I-V (ss 1-59) (as amended) (see PARA 1092 et seq post) (other than ss 28-31) (as amended) (see PARA 1136 et seq post), s 53 (see PARA 1162 post), s 54 (see PARA 1163 post), s 55 (as amended) (see PARA 1164 post), s 57 (as amended) (see PARA 1166 post) and s 58 (see PARA 1167 post); also its functions under s 66 (as amended) (see PARA 1106 post), s 68 (see PARA 1108 post) and s 1(6), Sch 1 (see PARA 1096 post). For the meaning of 'functions' see PARA 1073 note 3 ante.

9 Ibid s 90(2) (amended by the Planning and Compensation Act 1991 s 31, Sch 6 para 47(1)). For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(2) (as so amended) and s 90(3) (see the text and notes 10-13 infra), contributions made by a local planning authority towards the expenditure of a joint advisory committee are deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee: s 90(4).

Section 90(2)-(4) (as amended) is applied in relation to conservation areas by s 74(3), (4); and has effect in so far as so applying subject to the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3 (see PARA 1174 note 5 post). The remaining provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 90 (as amended) do not so apply: see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

10 Ie compensation payable in consequence of anything done under the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Ch I (as amended), Pt I Ch II (as amended) or Pt I Ch IV (as amended) (see PARA 1146 et seq post) or ss 32-37 (as amended) (see PARA 1139 et seq post), s 56 (see PARA 1165 post), s 59 (as amended) (see PARA 1168 post), s 60 (see PARA 1101 post), s 66(1) (see PARA 1106 post), s 67 (as amended) (see PARA 1107 post), s 68 (see PARA 1108 post) or s 73 (as amended) (see PARA 1169 post): s 90(3).

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(3), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(3). See also note 9 supra.

14 As to county councils see PARA 28 ante.

15 Ie expenses incurred under the provisions specified in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(6) (amended by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 26, Sch 19 Pt 1): Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(5). The specified provisions are:

- 345 (1) s 1(1)-(5) (see PARAS 1091-1092 post), s 2(1)-(3) (as amended) (see PARA 1094 post), s 51 (as amended) (see PARA 1160 post), s 52 (as amended) (see PARA 1161 post), s 64 (see PARA 1089 post), s 65 (as amended) (see PARA 1195 post), s 66(2) (see PARA 1106 post), s 82(1), (4)(b) (as amended) (see PARA 1077 ante), s 83 (prospectively repealed) (see PARA 1075 ante), s 86 (as

amended) (except s 86(2)(a)) (see PARA 1079 ante), s 87 (see PARA 1080 ante), s 88 (as amended) (except s 88(3) (as amended)) (see PARA 1083 post), and s 90(1)-(4) (as amended) and any other provisions of the planning Acts in so far as they apply, or have effect for the purposes of any of those provisions; and

- 346 (2) s 1(6), s 3 (as amended) (see PARA 1098 post), s 4 (see PARA 1101 post), s 61 (see PARA 1105 post), s 66(1) (see PARA 1106 post), s 67(2)(b), (6), (7) (now repealed), s 73(1) (as substituted) (see PARA 1169 post) (so far as it applied to s 67(2)(b), (6), (7) (now repealed)), s 82(2), (3), (4)(a) (as amended) (see PARA 1077 ante) and Sch 1 (see PARA 1096 post), Sch 2 (as amended) (see PARA 1100 post) and Sch 3 (as amended) (see PARA 1199 et seq post).

For the meaning of 'the planning Acts' see PARA 2 ante.

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(6)(a) (see head (1) supra) had effect with the addition of '41(8)' after '2(1) to (3)' until 2 January 1992: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 10; Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(5), (6) (as amended: see note 15 supra). As to the special expenses of county councils see LOCAL GOVERNMENT vol 29(1) (Reissue) PARA 550.

17 The compensation under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28 (see PARA 1136 post) or s 29 (see PARA 1137 post).

18 The acquisition under *ibid* ss 47-52 (as amended): see PARA 1154 et seq post.

19 The compensation under *ibid* s 51(4) (see PARA 1160 post) or s 88(7) (now repealed) or under s 90(1) (see the text and notes 1-5 supra).

20 *Ibid* s 90(7) (amended by the Planning and Compensation Act 1991 Sch 6 para 47(2)).

21 Planning (Listed Buildings and Conservation Areas) Act 1990 s 90(8).

As to payments made by, and sums received by, the Assembly see the Government of Wales Act 1998 ss 80-89; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(v) Rights of Entry/1083. Right of entry without warrant; in general.

(v) Rights of Entry

1083. Right of entry without warrant; in general.

Any person duly authorised in writing by the Secretary of State¹ or, in relation to Wales, by the National Assembly for Wales² may at any reasonable time enter any land³ for the purpose of surveying⁴ any building⁵ on it or any other land in connection with a proposal to include the building in, or exclude it from, a listed compiled or approved⁶ by the Secretary of State or, as the case may be, by the Assembly⁷.

Any person duly authorised in writing by the Secretary of State or the Assembly, by a local planning authority⁸ or, where the authorisation relates to a building situated in Greater London⁹, by the Historic Buildings and Monuments Commission for England ('English Heritage')¹⁰ may at any reasonable time enter any land for any of the following purposes:

- 4020 (1) surveying it or any other land in connection with any proposal by the authority or the Secretary of State or the Assembly to make, issue or serve any order or notice under any of the specified statutory provisions¹¹;
- 4021 (2) ascertaining whether any such order or notice has been complied with in relation to the land or any other land;
- 4022 (3) ascertaining whether an offence has been, or is being, committed¹² with respect to any building on the land or any other land;
- 4023 (4) ascertaining whether any building on the land or any other land is being maintained in a proper state of repair¹³.

Any person duly authorised in writing by the Secretary of State or the Assembly, a local authority¹⁴ or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes:

- 4024 (a) ascertaining whether an offence has been, or is being, committed¹⁵ in relation to the land or any other land;
- 4025 (b) ascertaining whether any of the functions relating to urgent works to preserve unoccupied listed buildings¹⁶ should or may be exercised in connection with the land; or
- 4026 (c) exercising any of those functions in connection with the land or any other land¹⁷.

Any person who is an officer of the Valuation Office¹⁸ or is duly authorised in writing by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable by the authority under certain statutory provisions¹⁹ in respect of any land²⁰.

Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority having power to acquire land²¹ may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect of any such acquisition²².

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'land' see PARA 1077 note 1 ante.

4 For these purposes, any power to survey land is to be construed, subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(8) (as substituted) (see PARA 1086 post), as including power to search and bore for the purpose of ascertaining the nature of the subsoil: s 88(6) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 25).

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 post.

7 Ibid s 88(1) (amended by the Planning and Compensation Act 1991 Sch 3 para 9(1)(a)).

8 For the meaning of 'local planning authority' see PARA 1073 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88(2)(a), (b) (as amended) (see heads (1)-(2) in the text), in relation to a building or land within the Broads, 'local planning authority' includes the Broads Authority (see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante); and in s 88(2)(c), (d) (as amended) (see heads (3)-(4) in the text), the Broads Authority is the sole district planning authority in respect of the Broads (see Sch 4 para 5 (as amended); and PARA 1073 ante).

9 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

10 As to English Heritage see PARA 1058 ante.

11 The specified statutory provisions are the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 1-26 (as amended) (see PARA 1092 et seq post), s 38 (as amended) (see PARA 1146 post), s 40 (see PARA 1192 post), s 46 (as amended) (see PARA 1152 post), s 54 (see PARA 1163 post), s 55 (as amended) (see PARA 1164 post), s 60 (see PARA 1101 post), s 68 (see PARA 1108 post), s 75 (see PARA 1174 post) or s 76 (see PARA 1181 post) or under any order or regulations made under any of those provisions, or any notice under s 48 (see PARA 1156 post): s 88(2)(a).

12 Ie under ibid s 9 (as amended) (see PARA 1110 post), s 11 (see PARA 1113 post) or s 43 (as substituted) (see PARA 1149 post): s 88(2)(c) (as amended: see note 13 infra).

13 Ibid s 88(2) (amended by the Planning and Compensation Act 1991 Sch 3 para 9(1)(b)-(e)).

14 For the meaning of 'local authority' see PARA 1072 note 8 ante. In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88(3) (as amended) (see the text and notes 25-17 infra) 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). In relation to the powers conferred on a National Park authority by virtue of the Environment Act 1995 s 70, Sch 9 para 13 (see PARA 1082 note 1 ante, PARAS 1154, 1161 et seq post), s 88 (as amended) has effect as if references therein to a local authority included references to a National Park authority: Sch 9 para 13(5).

15 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 59 (as amended): see PARA 1168 post.

16 Ie the functions conferred by ibid s 54: see PARA 1163 post. For the meaning of 'functions' see PARA 1073 note 3 ante.

17 Ibid s 88(3) (amended by the Planning and Compensation Act 1991 Sch 3 para 9(1)(f), (g)). See also note 14 supra.

18 For these purposes, except in so far as the context otherwise requires, 'Valuation Office' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 57 note 20 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

19 Ie under ibid s 28 (see PARA 1136 post) or s 29 (see PARA 1137 post).

20 Ibid s 88(4) (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 para 46, Sch 19 Pt II).

21 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 47-52 (as amended): see PARA 1154 et seq post.

22 Ibid s 88(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(v) Rights of Entry/1084. Rights of entry in relation to Crown land.

1084. Rights of entry in relation to Crown land.

As from a day to be appointed¹, the following provisions have effect. The rights of entry set out in the previous paragraph² apply to Crown land³ subject to the following modifications⁴. A person must not enter Crown land unless he has the relevant permission⁵; and relevant permission is the permission of:

- 4027 (1) a person appearing to the person seeking entry to the land to be entitled to give it; or
- 4028 (2) the appropriate authority⁶.

The supplementary provisions regarding rights of entry which are set out below⁷ do not apply to anything done by virtue of this right of entry onto Crown land⁸.

1 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended): see PARA 1083 ante.

3 For the meaning of 'Crown land' for these purposes see PARA 1076 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 88C(1) (s 88C added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 14, as from a day to be appointed: see note 1 supra).

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 88C(2) (as added: see note 4 supra).

6 Ibid s 88C(3) (as added: see note 4 supra). For the meaning of 'appropriate authority' for these purposes see PARA 1076 note 13 ante (definition applied by s 88C(6) (as so added)).

7 Ie ibid s 88B (as substituted): see PARA 1086 post.

8 Ibid s 88C(5) (as added: see note 4 supra). Accordingly, in s 88(6) (as amended) (see PARA 1083 note 4 ante) the words 'Subject to section 88B(8)' must be ignored: s 88C(4) (as so added).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1084 Rights of entry in relation to Crown land

TEXT AND NOTE 1--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(v) Rights of Entry/1085. Right of entry under warrant.

1085. Right of entry under warrant.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

- 4029 (1) that there are reasonable grounds for entering any land for any of the statutory purposes¹; and
- 4030 (2) that admission to the land has been refused² or a refusal is reasonably apprehended, or the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by the appropriate authority³ to enter the land⁴.

A warrant authorises entry on one occasion only and that entry must be:

- 4031 (a) within one month from the date of the issue of the warrant; and
- 4032 (b) at a reasonable hour, unless the case is one of urgency⁵.

1 le for any of the purposes mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended): see PARA 1083 ante. For the meaning of 'land' see PARA 1077 note 1 ante.

2 For these purposes, admission is regarded as having been refused if no reply is received to a request for admission within a reasonable period: *ibid* s 88A(3) (s 88A substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 9(2)).

3 For these purposes, 'the appropriate authority' means the person who may authorise entry on the land under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended) for the purposes in question: s 88A(2) (as substituted: see note 2 *supra*).

4 *Ibid* s 88A(1) (as substituted: see note 2 *supra*).

5 *Ibid* s 88A(4) (as substituted: see note 2 *supra*).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(v) Rights of Entry/1086. Additional rights and duties.

1086. Additional rights and duties.

A person authorised¹ to enter any land² may not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier³; and no person may carry out any works in exercise of a statutory power⁴ unless notice of his intention to do so was included in that notice⁵.

A person authorised to enter land in pursuance of a right of entry conferred under the relevant statutory provisions⁶:

- 4033 (1) must, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
- 4034 (2) may take with him such other persons as may be necessary; and
- 4035 (3) on leaving the land must, if the owner⁷ or occupier is not then present, leave it as effectively secured against trespassers as he found it⁸.

Any person who wilfully obstructs a person acting in the exercise of such a right of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

If any person who enters any land, in exercise of such a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum¹⁰; but this provision does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land¹¹.

If any damage is caused to land or chattels in the exercise of such a right of entry or a power conferred¹² in connection with such a right, compensation may be recovered by any person suffering the damage from the authority which gave the written authority for the entry or, as the case may be, from the Secretary of State¹³ or, in relation to Wales, from the National Assembly for Wales¹⁴.

1 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended): see PARA 1083 ante.

2 For the meaning of 'land' see PARA 1077 note 1 ante.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(1) (s 88B substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 9(2)).

4 Ie in exercise of a power conferred under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended).

5 Ibid s 88B(8) (as substituted: see note 3 supra). The authority of the appropriate minister is required for the carrying out of works in exercise of a power conferred under s 88 (as amended) if (1) the land in question is held by statutory undertakers; and (2) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking: s 88B(9) (as so added). The Town and Country Planning Act 1990 s 265(1), (3) (as amended) (meaning of 'appropriate minister': see PARA 1012 ante) applies for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B

(as so substituted) as it applies for the purposes of the Town and Country Planning Act 1990 s 325(9) (see PARA 57 ante); Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(10) (as so substituted). For the meaning of 'statutory undertakers' see PARA 1081 ante.

6 le a right of entry conferred under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88 (as amended) (see PARA 1083 ante) or s 88A (as added) (see PARA 1085 ante).

7 For the meaning of 'owner' see PARA 1075 note 17 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(2) (as substituted: see note 3 supra).

9 Ibid s 88B(3) (as substituted: see note 3 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1072 ante at head (8) in the text.

10 Ibid s 88B(4), (6) (as substituted: see note 3 supra). For the meaning of 'the statutory maximum' see PARA 53 note 11 ante.

11 Ibid s 88B(5) (as substituted: see note 3 supra).

12 le a power conferred by virtue of ibid s 88(6) (as amended): see PARA 1083 ante.

13 As to the Secretary of State see PARA 20 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(7) (as substituted: see note 3 supra). As to the transfer of functions under s 88B(7) (as so substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

The Town and Country Planning Act 1990 s 118 (see PARA 931 ante) applies in relation to compensation under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B (as so substituted) as it applies in relation to compensation under the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended) (see PARA 914 et seq ante); Planning (Listed Buildings and Conservation Areas) Act 1990 s 88B(7) (as so substituted).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(vi) Validity of Instruments, Decisions and Proceedings/1087. Validity of consents etc.

(vi) Validity of Instruments, Decisions and Proceedings

1087. Validity of consents etc.

The validity of any consent or determination granted or made or purported to be granted or made by a local planning authority¹ in respect of an application for listed building consent² or conservation area consent³ may not be called into question in any legal proceedings, or in any proceedings under the Planning (Listed Buildings and Conservation Areas) Act 1990 which are

not legal proceedings, on the ground that the consent or determination should have been granted or made by some other local planning authority⁴.

- 1 For the meaning of 'local planning authority' see PARA 1073 ante.
- 2 For the meaning of 'listed building consent' see PARA 1109 post.
- 3 For the meaning of 'conservation area consent' see PARA 1174 post.
- 4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 81, Sch 4 para 6.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(vi) Validity of Instruments, Decisions and Proceedings/1088. Validity of certain orders and decisions.

1088. Validity of certain orders and decisions.

The validity of any order for the revocation or modification of listed building consent¹ or conservation area consent² by a local planning authority³ or by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵, whether before or after it has been confirmed, may not, except as provided by statute⁶, be questioned in any legal proceedings whatsoever⁷.

Nor, except as so provided, may any decision by the Secretary of State or by the Assembly:

- 4036 (1) on an application referred⁸ to him or to the Assembly or on an appeal⁹;
- 4037 (2) to confirm or not to confirm a listed building purchase notice or conservation area purchase notice¹⁰ including:
 - 298 60. (i) any decision not to confirm such a notice in respect of part of the land¹¹ to which it relates; and
 61. (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part;
 - 299 4038 (3) to grant listed building consent or conservation area consent on the determination of an appeal against a listed building enforcement notice or conservation area enforcement notice¹² or to discharge a condition or limitation on such an appeal¹³;
 - 4039 (4) any decision on an application for listed building consent for urgent works relating to Crown land¹⁴,

be questioned in any legal proceedings whatsoever¹⁵.

Nothing in the above provisions, however, affects the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State or, as the case may be, by the Assembly to take any such decision as is mentioned in heads (1) to (3) above¹⁶.

1 For the meaning of 'listed building consent' see PARA 1109 post.

2 For the meaning of 'conservation area consent' see PARA 1168 post.

3 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended): see PARAS 1132, 1178 post.

4 Ie under ibid s 26 (as amended): see PARAS 1135, 1178 post. As to the Secretary of State see PARA 19 ante.

5 Ie a decision under ibid s 26 (as amended). As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Ie except as provided by to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended): see PARA 1090 post.

7 Ibid s 62(1)(a) (s 62 applied to conservation area consent by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); and modified so far as so applying by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3 (see PARA 1174 note 5 post).

8 Ie under ibid s 12 (as amended): see PARA 1115 post.

9 Ie under ibid s 20 (as amended): see PARA 1186 post.

10 For the meaning of 'listed building purchase notice' see PARA 1139 post; and for the meaning of 'conservation area purchase notice' see PARA 1179 post.

11 For the meaning of 'land' see PARA 1077 note 1 ante.

12 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(6)(a): see PARAS 1194, 1197 post.

13 Ie under ibid s 41(6)(b): see PARAS 1194, 1197 post.

14 Ie under ibid s 82B (as added): see PARA 1123 post.

15 Ibid s 62(1)(b), (2) (as applied in relation to conservation areas (see note 7 supra); s 61(2) amended by the Planning and Compulsory Purchase Act 2004 s 83(2), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only (see PARA 4 ante)).

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 62(3) (as applied in relation to conservation areas: see note 7 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1088 Validity of certain orders and decisions

NOTE 15--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(vi) Validity of Instruments, Decisions and Proceedings/1089. Validity of enforcement notices.

1089. Validity of enforcement notices.

The validity of a listed building enforcement notice¹ or a conservation area enforcement notice² may not, except by way of an appeal³, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought⁴.

1 For the meaning of 'listed building enforcement notice' see PARA 1146 post.

2 For the meaning of 'conservation area enforcement notice' see PARA 1180 post.

3 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARAS 1191, 1193, 1197 post. For an unsuccessful appeal by way of application for leave to apply for judicial review see *R v Dacorum Borough Council, ex p Cannon* [1996] 2 PLR 45.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 64 (applied to conservation area enforcement notices by s 74(3), (4); and modified so far as so applying by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3 (see PARA 1174 note 5 post)). See also *Square Meals Frozen Foods Ltd v Dunstable Borough Council* [1974] 1 All ER 441, [1974] 1 WLR 59, CA.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(1) LISTED BUILDINGS AND CONSERVATION AREAS; IN GENERAL/(vi) Validity of Instruments, Decisions and Proceedings/1090. Proceedings for questioning validity of other orders, decisions etc.

1090. Proceedings for questioning validity of other orders, decisions etc.

If any person is aggrieved¹ by any specified order or decision², or by a specified correction notice³, and wishes to question its validity on the grounds:

4040 (1) that it is not within the statutory powers⁴; or

4041 (2) that any of the relevant requirements⁵ have not been complied with in relation to it,

he may make an application to the High Court⁶.

If the authority directly concerned with any such order or decision⁷ wishes to question its validity on any of those grounds, the authority may⁸ make an application to the High Court⁹.

Any such application must be made within six weeks from the date on which the order is confirmed¹⁰ or the date on which the order takes effect¹¹ or, as the case may be, the date on which the action is taken¹².

On any such application the High Court:

4042 (a) may by interim order suspend the operation of the order or decision, the validity of which is questioned by the application, until the final determination of the proceedings; and

4043 (b) if satisfied:

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62. (i) that the order or decision is not within the statutory powers¹³; or

63. (ii) that the interests of the applicant have been substantially prejudiced¹⁴ by a failure to comply with any of the relevant requirements in relation to it,

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may quash that order or decision¹⁵.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 Ie any such order or decision as is mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 62(1): see PARA 1088 ante.

3 Ibid s 63 (as amended) (see the text and notes 4-15 infra) applies to a correction notice issued under the Planning and Compulsory Purchase Act 2004 s 57 (see PARA 56 ante) as if it were a decision of the Secretary of State or the National Assembly for Wales to which the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended) applies, if the decision document in respect of which the correction notice is given records a decision mentioned in any of the Planning and Compulsory Purchase Act 2004 s 59(4)(d)-(f) (ie (1) a decision mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 62(2) (as amended) (see PARA 1088 ante); (2) a decision on an appeal under s 39 (as amended) (see PARAS 1191, 1193, 1197 post); (3) a decision relating to conservation area consent within the meaning of s 74(1) (see PARA 1174 post)); Planning and Compulsory Purchase Act 2004 s 58(5).

4 Ie the powers of the Planning (Listed Buildings and Conservation Areas) Act 1990.

5 For these purposes, 'the relevant requirements', in relation to any order or decision, means any requirement of the Planning (Listed Buildings and Conservation Areas) Act 1990 or of the Tribunals and Inquiries Act 1992 (see generally ADMINISTRATIVE LAW) or of any order, regulations or rules made under either of those Acts which are applicable to that order or decision: Planning (Listed Buildings and Conservation Areas) Act 1990 s 63(6) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 31).

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 63(1). On a challenge under s 63 (as amended) to the adequacy of the reasons given for a planning decision, the burden of proof is on the applicant to show that he has been substantially prejudiced by the deficiency in the reasons, by showing a failure to disclose how an issue of law has been resolved or a disputed issue of fact decided, or by demonstrating some other lack of reasoning which raises substantial doubts over the decision-making process: *Save Britain's Heritage v Secretary of State for the Environment* [1991] 2 All ER 10; sub nom *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL.

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended) to decisions relating to conservation areas see s 74(3), (4); and as to its modification so far as so applying see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 post. See also note 3 supra.

7 For these purposes, the authority directly concerned with an order or decision is (1) in relation to any such decision as is mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 62(2)(b) (see PARA 1088 ante): (a) the council on which the listed building purchase notice or conservation area purchase notice was served; and (b) in a case where the Secretary of State or, as the case may be, the National Assembly for Wales has modified the notice wholly or in part by substituting another local authority or statutory undertakers for that council, also that authority or those statutory undertakers; and (2) otherwise, the authority which (a) made the order or decision to which the proceedings in question relate; or (b) referred the matter to the Secretary of State or to the Assembly; or (c) if the order was made by him or by the Assembly, is the authority named in it: s 63(7) (s 63 applied in relation to conservation areas: see note 6 supra). As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

References in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63(7)(a) (see head (1) supra) to a council and to a local authority are to be construed as including a National Park authority in certain circumstances: see s 32(4A) (as added); and PARA 1139 note 15 post. For the meaning of 'listed building purchase notice' see PARA 1139 post; for the meaning of 'conservation area purchase notice' see PARA 1179 post; for the meaning of 'local authority' see PARA 1072 note 7 ante; and for the meaning of 'statutory undertakers' see PARA 1081 ante.

8 le without prejudice to *ibid* s 63(1): see the text and notes 1-6 supra.

9 *Ibid* s 63(2).

10 For these purposes, references to the confirmation of an order include the confirmation of an order subject to modifications: *ibid* s 63(5).

11 le in the case of an order under *ibid* s 23 (as amended) (see PARA 1132 post) which takes effect under s 25 (see PARA 1134 post) without confirmation.

12 *Ibid* s 63(3).

13 See note 5 supra.

14 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 63(4).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1091. Meaning of 'listed building'.

(2) LISTED BUILDINGS

(i) Listing of Special Buildings

1091. Meaning of 'listed building'.

For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990, 'listed building' means a building¹ which is for the time being included in a list compiled or approved² by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴. Any object or structure⁵ fixed to the building⁶ and any object or structure within the curtilage⁷ of the building which, although not fixed to the building, forms part of the land and has done so since before 1 July 1948⁸, is to be treated as part of the building⁹.

Certain buildings formerly subject to building preservation orders¹⁰ are deemed to be listed buildings¹¹.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 post.

3 The Secretary of State here concerned is the Secretary of State for Culture, Media and Sport: see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 14, Sch 4 (substituted in relation to England by SI 2005/1085). As to the Secretary of State see PARA 19 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 ss 1(5), 91(1). As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 'Object or structure' within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5) means a structure which is ancillary and subordinate to the principal listed building: see *Debenhams plc v Westminster City Council* [1987] AC 396, [1987] 1 All ER 51, HL. See also *Watson-Smyth v Secretary of State for the Environment and South Oxfordshire District Council* (1991) 64 P & CR 156 ('structure' is intended to convey a limitation to such structures as are ancillary to the listed building itself, either fixed to the listed building or within its curtilage).

6 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5)(a); and *Richardson Developments Ltd v Birmingham County Council* [1999] JPL 1001, [1999] All ER (D) 34 ('any object or structure fixed to the building' includes extensions to listed buildings which exist at the date of the listing and those which are added afterwards, and an extension may be treated as part of the listed building if it is fixed to the building and is ancillary to it). The fact that an object is free-standing is not conclusive evidence that it is not a 'fixture' for these purposes: see *Kennedy v Secretary of State for Wales* [1996] EGCS 17 (carillon clock resting on floor by own 'colossal' weight; held that its removal required listed building consent).

7 For the meaning of 'curtilage' see *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions (No 2)* [2001] QB 59, 80 P & CR 516, CA (the curtilage of a substantial listed building is likely to extend to what are or have been, in the terms of ownership and function, ancillary buildings). See also *Morris v Wrexham County Borough Council* [2001] EWHC Admin 697, [2001] All ER (D) 02 (Oct), [2002] PLCR 171 (in determining whether one building is within the curtilage of another, the test is whether the two buildings are sufficiently close and accessible to one another and whether, in terms of function, one is ancillary to the other; in applying that test, the primary focus is the state of affairs existing at the time of listing); *Lowe v First Secretary of State* [2003] 2 P & CR 331, [2003] All ER (D) 64 (Feb) (curtilage may include stables, outbuildings and gardens, walled or not, provided that they are part of a single inclosure, but does not include all parkland, including the driveway, of an estate; ownership of the land is not determinative of the question (a decision on the meaning of 'curtilage' for the purposes of the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3, Sch 2 Pt 1 Class A (see PARA 265 ante)). See also PARA 223 note 13 ante.

8 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5)(b). 1 July 1948 was the date on which most provisions of the Town and Country Planning Act 1947 (repealed) came into force.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5).

10 le under the Town and Country Planning Act 1962 Pt III (ss 12-44) (repealed).

11 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(6), Sch 1; and PARA 1096 post.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1091 Meaning of 'listed building'

NOTE 3--SI 1990/1519 Sch 4 substituted, in relation to England: SI 2009/2711. SI 2005/1085 revoked: SI 2009/2711.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1092. Listing of buildings of special architectural or historic interest.

1092. Listing of buildings of special architectural or historic interest.

With a view to the guidance of local planning authorities¹ in the performance of their statutory functions² in relation to buildings³ of special architectural or historic interest⁴, the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ must compile lists of such buildings⁷ or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England ('English Heritage')⁸ or by other persons or bodies of persons⁹, and may amend any list so compiled or approved¹⁰. The Secretary of State may not, however, approve any list compiled by the Commission if the list contains any building situated outside England¹¹.

In considering whether to include a building in a list so compiled or approved, the Secretary of State or the Assembly may take into account not only the building itself but also:

- 4044 (1) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part¹²; and
- 4045 (2) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure¹³ fixed to the building or forming part of the land¹⁴ and comprised within the curtilage¹⁵ of the building¹⁶.

Before compiling, approving (with or without modifications) or amending any such list in relation to buildings which are situated in England, the Secretary of State must consult¹⁷ with the Commission; and the Secretary of State or the Assembly must, before compiling, so approving or amending any such list, consult with such other persons or bodies of persons as appear to him or to the Assembly appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest¹⁸.

Historic buildings listed under these procedures are placed in one of three grades, Grade I, Grade II (starred) and Grade II (unstarred) to give an indication of their relative importance; some churches in older lists are, however, still graded under the previous system as Grades A,

B and C (which in the context of planning and listed building consent applications are all to be treated in the same way as Grade I and Grade II (starred) buildings)¹⁹. In practice, buildings are added to the statutory lists in two main ways:

- 4046 (a) as a result of systematic resurvey or review of particular areas or building types; or
- 4047 (b) following proposals from local authorities, amenity societies or other bodies or individuals that particular buildings should be added to the list (a process known as 'spot listing')²⁰.

1 For the meaning of 'local planning authority' see PARA 1073 ante.

2 The functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 or the Town and Country Planning Act 1990. For the meaning of 'functions' see PARA 1073 note 3 ante.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 In considering whether a building is of special architectural or historic interest, the building does not have to be viewed in isolation: *Earl of Iveagh v Minister of Housing and Local Government* [1964] 1 QB 395, [1963] 3 All ER 817, CA (building formed part of a terrace and the interest of the whole terrace was properly taken into account). A phrase such as 'original buildings of 1909-15 only' does not refer to the period of construction of the original buildings, but to the period of the processes of planning, conception, design and, to an extent, the realisation of the designer's work; accordingly, a building may consistently with that text be entered under the heading 'Description' as a listed building, notwithstanding that it was built after 1915: *Edinburgh City Council v Secretary of State for Scotland* [1998] 1 All ER 174, [1997] 1 WLR 1447, HL (a decision under the equivalent Scottish legislation).

5 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

6 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

7 'Listed building' means a building which is for the time being included in a list so compiled or approved: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5); and PARA 1091 ante.

8 As to English Heritage see PARA 1058 ante.

9 The Historic Buildings Council for Wales advises Cadw on the compilation of lists: see PARA 1059 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(1). As to rights of entry see PARAS 1083-1086 ante; and as to criteria for listing see PARA 1093 post.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(2).

12 Ibid s 1(3)(a).

13 As to the meaning of 'object or structure' see PARA 1091 notes 5-6 ante.

14 For the meaning of 'land' see PARA 1077 note 1 ante.

15 As to the meaning of 'curtilage' see PARA 1091 note 7 ante.

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(3)(b).

17 For the meaning of 'consult' para 2 note 1 ante.

18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(4).

19 *PPG 15--Planning and the Historic Environment* para 6.6. As to the status of this guidance see PARA 9 ante.

20 See *PPG 15--Planning and the Historic Environment* para 6.7.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1093. Selection criteria for listing.

1093. Selection criteria for listing.

At the date at which this title states the law, the following are the main criteria against which English Heritage¹ assesses a building in England in order to decide whether or not to recommend to the Secretary of State² that it should be included in the statutory lists³:

- 4048 (1) architectural interest: the lists are meant to include all buildings which are of importance to the nation for the interest of their architectural design, decoration and craftsmanship; also important examples of particular building types and techniques, for example buildings displaying technological innovation or virtuosity, and significant plan forms;
- 4049 (2) historic interest: this includes buildings which illustrate important aspects of the nation's social, economic, cultural or military history;
- 4050 (3) close historical associations with nationally important people or events;
- 4051 (4) group value, especially where buildings comprise an important architectural or historic unity or a fine example of planning, for example squares, terraces or model villages.

Not all these criteria will be relevant to every case, but a particular building may qualify for listing under more than one of them⁴.

Age and rarity are relevant considerations, particularly where buildings are proposed for listing on the strength of their historic interest. The older a building is, and the fewer the surviving examples of its kind, the more likely it is to have historic importance. Thus, all buildings built before 1700 which survive in anything like their original condition are listed; and most buildings of about 1700 to 1840 are listed, though some selection is necessary. After about 1840, because of the greatly increased number of buildings erected and the much larger numbers that have survived, greater selection is necessary to identify the best examples of particular building types, and only buildings of definite quality and character are listed. For the same reasons, only selected buildings from the period after 1914 are normally listed. Buildings which are less than 30 years old are normally listed only if they are of outstanding quality and under threat. Buildings which are less than ten years old are not listed⁵.

The approach adopted for twentieth century listing is to identify key exemplars for each of a range of building types such as industrial, educational and residential, and to treat these exemplars as broadly defining a standard against which to judge proposals for further additions to the list⁶.

Where a building qualifies for listing primarily on the strength of its intrinsic architectural quality or its group value, the fact that there are other buildings of similar quality elsewhere is not likely to be a major consideration. But the listing of buildings primarily for historical reasons is to a greater extent a comparative exercise, and needs to be selective where a substantial number of buildings of a similar type and quality survive. In such cases the aim will be to list the best examples of the type which are of special historic interest⁷.

The external appearance of a building (both its intrinsic architectural merit and any group value) is a key consideration in judging listing proposals, but the special interest of a building will not always be reflected in obvious visual quality. Buildings which are important for reasons of technological innovation, or as illustrating particular aspects of social or economic history, may well have little external visual quality⁸.

Well-documented historical associations of national importance will increase the case for the inclusion of a building in the statutory list. They may justify a higher grading than would otherwise be appropriate, and may occasionally be the deciding factor; however there should normally be some quality or interest in the physical fabric of the building itself to justify the statutory protection afforded by listing⁹.

The emphasis in the above criteria is on national significance, though this cannot be defined precisely. For instance, the best examples of local vernacular building types will normally be listed; but many buildings which are valued for their contribution to the local scene, or for local historical associations, will not merit listing. Such buildings will often be protected by conservation area designation¹⁰. It is also open to planning authorities to draw up lists of locally important buildings, and to formulate policies for their protection, through normal development control procedures¹¹; such policies must, however, make clear that such buildings do not enjoy the full protection of statutory listing¹².

1 As to English Heritage see PARA 1058 ante.

2 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

3 As to the compiling of lists see PARA 1092 ante. Any member of the public may apply to English Heritage for a building to be listed: for details of the current procedure see *Listing has Changed* (English Heritage press release, 8 April 2005) accessible at the date at which this title states the law at www.english-heritage.org.uk. As to the status of the criteria set out below see PARA 9 ante.

4 *PPG 15--Planning and the Historic Environment* para 6.10.

5 *PPG 15--Planning and the Historic Environment* para 6.11.

6 *PPG 15--Planning and the Historic Environment* para 6.12.

7 *PPG 15--Planning and the Historic Environment* para 6.13.

8 *PPG 15--Planning and the Historic Environment* para 6.14.

9 *PPG 15--Planning and the Historic Environment* para 6.15. Either the building should be of some architectural merit in itself, or it should be well preserved in a form which directly illustrates and confirms its historical associations, eg because of the survival of internal features. Where otherwise unremarkable buildings have historical associations, the Secretary of State's view is that they are normally best commemorated by other means, eg by a plaque, and that listing will be appropriate only in exceptional cases: para 6.15.

10 As to conservation areas see PARA 1169 et seq post.

11 As to local development policies see PARA 89 et seq ante.

12 *PPG 15--Planning and the Historic Environment* para 6.16.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1094. Publication of lists.

1094. Publication of lists.

As soon as possible after any list of buildings¹ of special architectural or historic interest has been compiled or approved² or any amendments of such a list have been made, a copy of so much of the list as relates to any district, Welsh county, county borough or London borough³ or, as the case may be, of so much of the amendments as so relates, certified by or on behalf of the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵ to be a true copy, must be deposited:

- 4052 (1) in the case of a London borough, with the council of the borough and with the chief officer of the Historic Buildings and Monuments Commission for England ('English Heritage')⁶;
- 4053 (2) in the case of a district:
- 302 64. (a) with the district council⁷;
- 65. (b) with the county planning authority⁸ whose area or any part of whose area includes the district, or any part of it; and
- 66. (c) where the district council is not the district planning authority⁹, with that authority¹⁰; and
- 303 4054 (3) in the case of a Welsh county or county borough:
- 304 67. (a) with the county council or, as the case may be, the county borough council; and
- 68. (b) with the local planning authority, if different from that council¹¹.
- 305

As soon as possible after the inclusion of any building in such a list, whether it is included when the list is compiled, approved or amended, or as soon as possible after any such list has been amended by the exclusion of any building from it¹²:

- 4055 (i) the Secretary of State or, as the case may be, the Assembly, must inform the council of the district, Welsh county, county borough or London borough in whose area the building is situated of the inclusion or exclusion; and
- 4056 (ii) the council must serve a notice in the prescribed form¹³ on every owner¹⁴ and occupier of the building, stating that the building has been included in or excluded from the list¹⁵.

The Secretary of State or the Assembly must keep available for public inspection, free of charge, at reasonable hours and at a convenient place, copies of all lists and amendments of lists so compiled, approved or made by him or by the Assembly¹⁶; and every authority with which copies of any list or amendments are so deposited must similarly keep available copies of so much of any such list or amendment as relates to buildings within its area¹⁷.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

3 For these purposes, except in so far as the context otherwise requires, 'London borough' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 28 note 7 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

4 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

5 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 2 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(1)(a) (s 2(1), (3) amended by the Local Government (Wales) Act 1994 ss 20(4)(b), 66(8), Sch 6 para 25(1), Sch 18). As to English Heritage see PARA 1058 ante.

7 As to district councils (of which there are none in Wales) see PARA 28 ante.

8 As to county planning authorities see PARA 28 ante.

9 As to district planning authorities (of which there are none in Wales) see PARA 28 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(1)(b) (as amended: see note 6 supra). In s 2(1)(b)(iii) (as so amended) (see head (2)(c) in the text), in relation to a building or land within the Broads, the reference to the district planning authority includes the Broads Authority: see s 81, Sch 4 para 5 (as amended): and PARA 1073 ante. For the meaning of 'land' see PARA 1077 note 1 ante.

11 Ibid s 2(1)(2)(c) (as added: see note 6 supra).

Any copy deposited under s 2(1) (as amended) is a local land charge; and the council with which a copy is deposited is treated for the purposes of the Local Land Charges Act 1975 (see generally LAND CHARGES) as the originating authority as respects the charge constituted by the deposit: Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(2).

As to rights of entry see PARAS 1083-1086 ante.

12 As to requests for delisting see PARA 1097 post.

13 For the prescribed forms of notice see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 14, Sch 4 (substituted in relation to England by SI 2005/1085); and for the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 4, Sch 3.

14 For the meaning of 'owner' see PARA 1075 note 17 ante.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 2(3). As to the service of notices see PARA 1072 ante at head (6) in the text.

16 Ibid s 2(4).

17 Ibid s 2(5). For these purposes, the Commission is to be taken to be an authority whose area is Greater London: s 2(6). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1094 Publication of lists

NOTE 13--SI 1990/1519 Sch 4 substituted, in relation to England: SI 2009/2711. SI 2005/1085 revoked: SI 2009/2711.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1095. Issue of certificate that building not intended to be listed.

1095. Issue of certificate that building not intended to be listed.

Where (1) application has been made for planning permission¹ for any development² involving the alteration, extension or demolition of a building³; or (2) any such planning permission has been granted, the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ may, on the application of any person⁶, issue a certificate stating that he or, as the case may be, the Assembly, does not intend to list⁷ the building⁸.

The issue of such a certificate in respect of a building:

- 4057 (a) precludes the Secretary of State or the Assembly for a period of five years from the date of issue from exercising in relation to that building any of his or the Assembly's statutory powers⁹ to list buildings of special architectural or historic interest; and
- 4058 (b) precludes the local planning authority for that period from serving a building preservation notice¹⁰ in relation to it¹¹.

Such a certificate is known as a 'certificate of immunity' ('COI').

1 For these purposes, except in so far as the context otherwise requires, 'planning permission' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 43 note 6 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

2 For these purposes, except in so far as the context otherwise requires, 'development' has the same meaning as in the Town and Country Planning Act 1990 (see s 55 (as amended); and PARA 217 et seq ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2). For the purposes of the Town and Country Planning Act 1990 s 55 (as amended), the carrying out for the maintenance, improvement or other alteration of any building of works which do not materially affect the external appearance of the building do not involve development: see s 55(2)(a)(ii); and PARA 223 ante. As to the factors to be taken into account see eg *Burroughs Day v Bristol City Council* [1996] 1 EGLR 167, [1996] 19 EG 126.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

5 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 6, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 19 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Notice of an application under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 6(1) must be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Secretary of State or the Assembly: s 6(3). For these purposes, 'local planning authority', in relation to a building in Greater London, includes the Historic Buildings and Monuments Commission for England ('English Heritage') (Planning (Listed Buildings and Conservation Areas) Act 1990 s 6(4)); and, in relation to a building or land within the Broads, includes the Broads Authority (see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante). For the normal meaning of 'local planning authority' see PARA 1073 ante; and for the meaning of 'land' see PARA 1077 note 1 ante. As to English Heritage see PARA 1058 ante.

For guidance on applying for such a certificate see *PPG 15--Planning and the Historic Environment*. There is no application form and no charge: see PARA 6.31. As to the status of this guidance see PARA 9 ante.

7 As to listing see PARA 1092 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 6(1). As to rights of entry see PARAS 1083-1086 ante.

Because a certificate of immunity is valid for five years, a building is normally completely reassessed when an application for a certificate is made: see *PPG 15--Planning and the Historic Environment* para 6.29. Even if a certificate of immunity is granted, a building in a conservation area will still normally need consent for demolition: para 6.30. As to conservation area consent see PARA 1174 et seq post.

9 The powers conferred by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

10 For these purposes, 'building preservation notice' has the meaning given by *ibid* s 3(1) (as amended) (see PARA 1098 post): s 91(1).

11 *Ibid* s 6(2) (as modified: see note 6 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1096. Buildings formerly subject to building preservation orders.

1096. Buildings formerly subject to building preservation orders.

Every building¹ which immediately before 1 January 1969 was subject to a building preservation order² but was not then included in a list compiled or approved³ by the Secretary of State⁴ is deemed to be a listed building⁵.

The Secretary of State or, in relation to Wales, the National Assembly for Wales⁶ may, however, at any time direct, in the case of any building, that the above provisions⁷ shall no longer apply

to it⁸; and the local planning authority⁹ in whose area a building in respect of which such a direction is given is situated must, on being notified of the direction, give notice of it to the owner¹⁰ and occupier of the building¹¹.

Before giving such a direction in relation to a building:

4059 (1) situated in England, the Secretary of State must consult¹² with the Historic Buildings and Monuments Commission for England ('English Heritage')¹³ which must in turn consult with the local planning authority¹⁴ and the owner and occupier of the building¹⁵;

4060 (2) situated in Wales¹⁶, the Assembly must consult with the local planning authority and the owner and occupier of the building¹⁷.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 le under the Town and Country Planning Act 1962 Pt III (ss 12-44) (repealed).

3 le under ibid s 32 (repealed).

4 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(6), Sch 1 para 1. For the meaning of 'listed building' see PARA 1091 ante.

In the case of a building to which Sch 1 para 1 applies: (1) a notice of appeal under s 20 (as amended) (see PARA 1186 post) may include a claim that the Secretary of State or, as the case may be, the National Assembly for Wales, should give a direction under Sch 1 para 2 (see the text and notes 8-11 infra) with respect to the building and on such an appeal the Secretary of State or the Assembly may give such a direction; and (2) such a direction may also be given on an appeal under s 39 (as amended) (see PARAS 1191, 1193 post): Sch 1 para 3. See also note 6 infra.

6 As to the transfer of functions under ibid Sch 1, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

7 le the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 1 para 1: see the text and notes 1-5 supra.

8 Ibid Sch 1 para 2(1).

9 For the meaning of 'local planning authority' see PARA 1073 ante. In England, subject to the Town and Country Planning Act 1990 s 4A (as added and amended (see PARA 32 ante), s 6 (see PARA 34 ante), s 7 (see PARA 35 ante), s 8 (see PARA 36 ante) and s 8A (as added) (see PARA 37 ante) (which make provision as to the exercise of planning functions in National Parks, enterprise zones, urban development areas and housing action areas) and to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81, Sch 4 paras 3-7 (as amended) (exercise of functions by different authorities: see PARAS 1073, 1087 ante; note 14 infra; and PARAS 1098 note 7, 1111 note 22, 1107 note 6, 1169 note 4 post), outside Greater London the functions of a local planning authority under Sch 1 para 2(2) must be exercised by the district planning authority, as must such functions under ss 7-26 (as amended) (see PARA 1109 et seq post), s 38 (as amended) (see PARAS 1146-1147 post), s 42 (as amended) (see PARA 1148 post) and Sch 2 (as amended) (see PARA 1100 post): Sch 4 paras 1(2), 2 (Sch 4 para 1(2) added by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(10); the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 paras 2, 4 amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 31; and by the Environment Act 1995 ss 78, 120(3), Sch 10 para 33, Sch 24). For the meaning of 'functions' see PARA 1073 note 3 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

10 For the meaning of 'owner' see PARA 1075 note 17 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 1 para 2(2).

12 For the meaning of 'consult' para 2 note 1 ante.

13 As to English Heritage see PARA 1058 ante.

14 In England, subject to the Town and Country Planning Act 1990 s 6 (see PARA 34 ante), s 7 (see PARA 35 ante), s 8 (see PARA 36 ante) and s 8A (as added) (see PARA 37 ante), the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 1 para 2(3), (4) are exercisable: (1) in Greater London or a metropolitan county or in any National Park for which a National Park authority is the local planning authority, by the local planning authority; (2) in any part of a National Park to which head (1) supra does not apply, by the county planning authority; and (3) elsewhere, by the district planning authority, as are such functions under s 67(2) and s 67(3) (now repealed), ss 69, 70 (see PARA 1169 post) and s 74 (see PARA 1174 post): Sch 4 paras 1(2), 4(1) (as respectively added and amended: see note 9 supra). In relation to a building or land within the Broads, the reference to the district planning authority in head (3) supra includes the Broads Authority: see Sch 4 para 5 (as amended); and PARA 1073 ante. For the meaning of 'land' see PARA 1077 note 1 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 1 para 2(3).

16 Ie not situated in England.

17 Ibid Sch 1 para 2(4). The Historic Buildings Council for Wales advises the Assembly (in practice, Cadw) on its functions with regard to listing: see PARA 1059 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1096 Buildings formerly subject to building preservation orders

NOTE 9--Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 2 further amended: Housing and Regeneration Act 2008 Sch 8 para 53.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(i) Listing of Special Buildings/1097. Requests to delist buildings.

1097. Requests to delist buildings.

At the date at which this title states the law, there is no formal appeal procedure against a decision to list a building under the Planning (Listed Buildings and Conservation Areas) Act 1990¹. However, applications for delisting may be made to English Heritage² in the same way as listing applications³.

Both listed building consent and enforcement appeal procedures give appellants the right to argue that a building is not of special interest and should be removed from the list; and this is the normal way in which the issue of delisting is to be addressed⁴.

1 As to listing see PARA 1092 ante.

2 As to English Heritage see PARA 1058 ante.

3 See *Listing has Changed* (English Heritage press release published on 8 April 2005) accessible at the date at which this title states the law at www.english-heritage.org.uk. See also the guidance given in *PPG 15--Planning and the Historic Environment*. As to the status of such guidance see PARA 9 ante.

4 See *PPG 15--Planning and the Historic Environment* para 6.27. As to appeals see PARA 1186 et seq post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(ii) Temporary Listing/1098. Building preservation notices.

(ii) Temporary Listing

1098. Building preservation notices.

If it appears to a local planning authority¹ in Wales, or to a local planning authority in England which is not a county planning authority², that a building³ in its area which is not a listed building⁴:

- 4061 (1) is of special architectural or historic interest; and
- 4062 (2) is in danger of demolition⁵ or of alteration in such a way as to affect its character as a building of such interest,

the authority may serve on the owner⁶ and occupier of the building a notice (a 'building preservation notice')⁷.

A building preservation notice served by a local planning authority must:

- 4063 (a) state that the building appears to the authority to be of special architectural or historic interest and that the authority has requested the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ to consider including it in a list compiled or approved¹⁰ by him or by the Assembly; and
- 4064 (b) explain the effect of the statutory provisions¹¹ relating to the duration and lapse of such notices¹².

A building preservation notice:

- 4065 (i) comes into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
- 4066 (ii) remains in force for six months from the date when it is served or, as the case may be, last served¹³.

A building preservation notice ceases, however, to be in force if the Secretary of State or the Assembly either includes the building in a list compiled or approved by him or by the Assembly¹⁴ or notifies the local planning authority in writing that he or the Assembly does not intend to do so¹⁵.

While a building preservation notice is in force with respect to a building, and subject to an exception with regard to offences¹⁶, the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Town and Country Planning Act 1990 have effect in relation to the building as if it were a listed building¹⁷.

If, following the service of a building preservation notice, the Secretary of State or the Assembly notifies the local planning authority that he or the Assembly does not propose to include the building in a list compiled or approved by him or by it, the authority must immediately give notice of that decision to the owner and occupier of the building¹⁸. Following such a notification by the Secretary of State or by the Assembly, no further building preservation notice in respect of the building may be served by the local planning authority within the period of 12 months beginning with the date of the notification¹⁹.

1 For the meaning of 'local planning authority' see PARA 1073 ante. For these purposes, the Historic Buildings and Monuments Commission for England ('English Heritage') has, as respects any London borough, concurrently with the council of that borough the functions of a local planning authority; and references to the local planning authority are to be construed accordingly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(8). For the meaning of 'London borough' see PARA 1094 note 3 ante; and for the meaning of 'functions' see PARA 1073 note 3 ante. As to English Heritage see PARA 1058 ante.

2 As to county planning authorities see PARA 28 ante.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 For the meaning of 'listed building' see PARA 1091 ante.

5 For the meaning of 'demolition' see PARA 1109 note 2 post.

6 For the meaning of 'owner' see PARA 1075 note 17 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(1) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(2)). In practice, service of such a notice is often a quicker and so more expedient short-term measure than asking for a building to be spot listed: *PPG 15--Planning and the Historic Environment* para 6.23. As to spot listing see PARA 1092 ante; and as to the status of this guidance see PARA 9 ante. As to temporary listing in urgent cases see PARA 1099 post; as to the service of notices see PARA 1072 ante at head (6) in the text (but note that electronic communications may not be used for service of the notice: see PARA 1072 note 7 ante); and as to rights of entry see PARAS 1083-1086 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3 (as so amended), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

The Secretary of State may from time to time direct a district planning authority in England, and the National Assembly for Wales may direct a the local planning authority in Wales, to submit to him or to the Assembly for his or its approval, within a period specified in the direction, the arrangements which the authority proposes to make to obtain specialist advice in connection with the authority's functions under s 3 (as amended), as they may in connection with the authority's functions under s 4 (see PARA 1099 post), s 8 (as amended) (see PARA 1109 post), ss 10-26 (as amended) (see PARA 1111 et seq post), s 38 (as amended) (see PARAS 1146-1147 post), s 42 (as amended) (see PARA 1148 post), s 66(1) (see PARA 1106 post), ss 69-72 (as amended) (see PARAS 1169-1171 post), ss 74, 75 (see PARA 1174 post): see s 81, Sch 4 paras 1(2)(b), 7(1). If the Secretary of State or the Assembly is not satisfied about any such arrangements, he may direct the district planning authority, or the Assembly may direct the local planning authority, and another local planning authority specified in the direction: (1) to enter into an agreement under the Local Government Act 1972 s 113 (as amended) (see LOCAL GOVERNMENT vol 69 (2009) PARA 380) for the placing at the disposal of the relevant authority, for the purpose of giving it any such specialist advice, of the services of officers employed by that other authority who are qualified to give such advice; or (2) to enter into arrangements, containing terms specified in the direction or terms on lines laid down by him or by the Assembly, for the discharge by that other authority of any of those functions: Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 7(2). Before so giving a direction, the Secretary of State must consult with the district planning authority (and the Assembly must

consult with the local planning authority) and the other authority concerned: Sch 4 para 7(3). For the meaning of 'consult' para 2 note 1 ante. See also notes 8-9 infra.

8 As to the Secretary of State see PARAS 19, 1091 note 3 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

11 Ie the effect of *ibid* s 3(3)-(5) (see the text and notes 13-17 infra) and s 5, Sch 2 (as amended) (see PARA 1100 post): s 3(2)(b).

12 *Ibid* s 3(2).

13 *Ibid* s 3(3).

14 *Ibid* s 3(4)(a).

15 *Ibid* s 3(4)(b).

16 Ie with the exception of *ibid* s 59 (as amended): see PARA 1168 post.

17 *Ibid* s 3(5).

18 *Ibid* s 3(6). Authorities become liable to pay compensation for any loss or damage resulting from the service of a notice which the Secretary of State does not uphold by listing. Neither the relevant government department nor English Heritage can indicate in advance whether the service of a notice in a particular case is likely to result in a listing, though obviously the same general principles of listing (see PARA 1093 ante) will apply in these cases as in others. It should not however be assumed that listing will automatically follow the inclusion of a building by English Heritage in a draft list, since that list may be corrected or amended before it is approved: see *PPG 15--Planning and the Historic Environment* para 6.25.

19 Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(7).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(ii) Temporary Listing/1099. Urgent cases.

1099. Urgent cases.

If it appears to the local planning authority¹ to be urgent that a building preservation notice² should come into force³, the authority may, instead of serving the notice on the owner⁴ and occupier of the building⁵, affix the notice conspicuously to some object on the building⁶. A

notice which is so affixed must explain that, by virtue of being so affixed, it is treated as being served⁷.

1 For the meaning of 'local planning authority' see PARA 1073 ante. For these purposes, the Historic Buildings and Monuments Commission for England ('English Heritage') has, as respects any London borough, concurrently with the council of that borough the functions of a local planning authority; and references to the local planning authority are to be construed accordingly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 4(4). For the meaning of 'London borough' see PARA 1094 note 3 ante; and for the meaning of 'functions' see PARA 1073 note 3 ante. As to English Heritage see PARA 1058 ante.

For the purposes of s 4, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

2 For the meaning of 'building preservation notice' see PARA 1098 ante.

3 As to when a building preservation notice normally comes into force see PARA 1098 ante.

4 For the meaning of 'owner' see PARA 1075 note 17 ante.

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 4(1). As to rights of entry see PARAS 1083-1086 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 4 see PARA 1098 note 7 ante. As to the Secretary of State see PARAS 19, 1091 note 3 ante; as to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

The affixing of a notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 4(1) is treated for all the purposes of s 3 (as amended) (see PARA 1098 ante), s 4, ss 10-26 (as amended) (see PARA 1111 et seq post) and s 5, Sch 2 (as amended) (see PARA 1100 post) as service of the notice: s 4(2).

7 Ibid s 4(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(ii) Temporary Listing/1100. Lapse of building preservation notice.

1100. Lapse of building preservation notice.

Where a building preservation notice¹ ceases to be in force by virtue of the expiry of the six-month period² or the service of a notification by the Secretary of State³ or, in relation to Wales,

by the National Assembly for Wales⁴ that it is not intended that the building in question will be listed⁵, the following provisions apply⁶:

- 4067 (1) any proceedings on or arising out of an application for listed building consent⁷ with respect to the building⁸ made while the notice was in force and any such consent granted while it was in force lapse⁹;
- 4068 (2) any listed building enforcement notice¹⁰ served by the local planning authority¹¹ while the building preservation notice was in force ceases to have effect¹² and any proceedings on it¹³ lapse¹⁴.

The fact that the notice has ceased to be in force does not, however, affect the liability of any person to be prosecuted and punished for an offence under the provisions relating to works in respect of listed buildings¹⁵ or non-compliance with listed building enforcement notices¹⁶ committed with respect to the building while the building preservation notice was in force¹⁷.

1 For the meaning of 'building preservation notice' see PARA 1098 ante.

2 I.e. the period mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(3)(b): see PARA 1098 ante at head (ii) in the text.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 5, Sch 2 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 I.e. a notification the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3(4)(b): see PARA 1098 ante.

6 Ibid s 5, Sch 2 para 1.

7 For the meaning of 'listed building consent' see PARA 1109 post.

8 For the meaning of 'building' see PARA 1073 note 8 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 2 para 3.

10 For the meaning of 'listed building enforcement notice' see PARA 1146 post.

11 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 2 (as amended) see s 81, Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the meaning of 'functions' see PARA 1073 note 3 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. For the meaning of 'local planning authority' generally see PARA 1073 ante.

12 Ibid Sch 2 para 4(1). Notwithstanding Sch 2 para 4(1), s 42(1), (2) (as amended) (see PARA 1148 post) continues to have effect as respects any expenses incurred by the local authority, owner or occupier as mentioned in s 42 (as amended) and with respect to any sums paid on account of such expenses: Sch 2 para 4(3). The reference to a local authority in Sch 2 para 4(3) includes a reference to any National Park authority which is the local planning authority for any area: Sch 2 para 4(4) (added by the Environment Act 1995 s 78, Sch 10 para 33(1), (5)). For the meaning of 'local authority' see PARA 1072 note 8 ante; and for the meaning of 'owner' see PARA 1075 note 17 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

13 I.e. any proceedings under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 38-40 (as amended): see PARA 1146 et seq post.

14 Ibid Sch 2 para 4(2).

15 I.e. an offence under ibid s 9 (as amended): see PARA 1110 post.

16 le an offence under *ibid* s 43 (as substituted): see PARA 1149 post.

17 *Ibid* Sch 2 para 2.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iii) Exceptions/A. ECCLESIASTICAL EXEMPTION/1101. Exemptions for ecclesiastical buildings and redundant churches; in general.

(iii) Exceptions

A. ECCLESIASTICAL EXEMPTION

1101. Exemptions for ecclesiastical buildings and redundant churches; in general.

Specified statutory provisions relating to listed buildings¹ do not apply to any ecclesiastical building² which is for the time being used for ecclesiastical purposes³. For these purposes, however, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office is treated as not being an ecclesiastical building⁴.

For the purposes of the statutory control of works in respect of listed buildings⁵, a building is taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question⁶.

The Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸ may by order provide for restricting or excluding the operation of the above provisions in such cases as may be specified in the order⁹; and any such order may:

4069 (1) make provision for buildings generally, for descriptions of building or for particular buildings¹⁰;

4070 (2) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building¹¹;

4071 (3) make such provision in relation to a part of a building, including in particular an object or structure falling to be treated as part of the building¹², as may be made in relation to a building and may make different provision for different parts of the same building¹³;

4072 (4) make different provision with respect to works of different descriptions or according to the extent of the works¹⁴;

4073 (5) make such consequential adaptations or modifications of the operation of any other provision of the Planning (Listed Buildings and Conservation Areas) Act

1990 or the Town and Country Planning Act 1990, or of any instrument made under either of those Acts, as appear to the Secretary of State or to the Assembly to be appropriate¹⁵.

This power has been exercised so as to restrict ecclesiastical exemption to certain categories of buildings¹⁶.

The statutory control of works in respect of listed buildings does not apply to the execution of works for the demolition, in pursuance of a pastoral scheme¹⁷ or redundancy scheme¹⁸, of a redundant building¹⁹ or a part of such a building²⁰.

Ecclesiastical buildings which are for the time being used for ecclesiastical purposes are also excluded from the statutory control of demolition in conservation areas²¹. This exemption, which has also been restricted by subordinate legislation, is discussed below²².

1 The Planning (Listed Buildings and Conservation Areas) Act 1990 s 3 (as amended) (see PARA 1098 ante), s 4 (see PARA 1099 ante), s 7 (see PARA 1109 post), s 8 (as amended) (see PARA 1109 post), s 9 (as amended) (see PARA 1110 post), s 47 (as amended) (see PARAS 1154, 1157 post), s 54 (see PARA 1163 post) and s 59 (as amended) (see PARA 1168 post): s 60(2). For the meaning of 'listed building' see PARA 1091 ante; and for the meaning of 'building' see PARA 1073 note 8 ante.

2 'Ecclesiastical building' is not defined for these purposes but cf the definition of 'ecclesiastical property' in *ibid* s 86(4) (see PARA 1079 note 3 ante). See also *A-G (ex rel Bedfordshire County Council) v Howard United Reformed Church Trustees, Bedford* [1976] AC 363, [1975] 2 All ER 337, HL (the expression 'ecclesiastical building' is not limited to buildings belonging to the Church of England; a Congregational church building which had been built as a church, had been used as a church for 200 years, and had never been used for secular purposes, was held to be an ecclesiastical building for these purposes).

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 60(1), (2). An ecclesiastical building cannot be being so used whilst it is being totally demolished, but it may be being so used if only part of it is being demolished: *A-G (ex rel Bedfordshire County Council) v Howard United Reformed Church Trustees, Bedford* [1976] AC 363, [1975] 2 All ER 337, HL; and see *Re St Luke's Cheetham* [1978] Fam 144, [1978] 1 All ER 1118, Consistory Court. As to rights of entry see PARAS 1083-1086 ante; and for the meaning of 'demolition' see PARA 1109 note 2 post.

For a discussion of the relationship between secular planning and listed building controls and the faculty jurisdiction see *Re Tonbridge School Chapel* [1993] 2 All ER 350n. Where a proposal which is the subject of a petition for a faculty involves the alteration of a listed church to such an extent as is likely to affect its character as a building of special architectural or historic interest, or concerns an article of particular historic, architectural, archaeological or artistic interest and involves the disposal of that article, the court has no discretion as to whether it directs that the appropriate notification, eg of English Heritage or the Council for the Care of Churches, takes place: see eg *Re St Lawrence, Stratford-sub-Castle* [2005] All ER (D) 207 (Mar), (2005) Times, 10 March, Salisbury Consistory Court. As to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 60(3). Cf s 75(5), cited in PARA 1174 post.

5 *Ibid* for the purposes of *ibid* ss 7-9 (as amended): see PARAS 1109-1110 post.

6 *Ibid* s 60(4); and see note 3 supra.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 60, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 60(5). In the exercise of this power, and prior to the transfer of functions in Wales to the Assembly (see note 8 supra), the Secretary of State made the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, which came into force on 1 October 1994: art 1(1). See PARAS 1102-1104 post. As to the making of orders generally see PARA 1074 ante.

- 10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 60(6)(a).
- 11 Ibid s 60(6)(b).
- 12 Ie by virtue of ibid s 1(5): see PARA 1091 ante.
- 13 Ibid s 60(6)(c).
- 14 Ibid s 60(6)(d).
- 15 Ibid s 60(6)(e).
- 16 See the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771; and PARAS 1102-1104 post.
- 17 Ie a pastoral scheme within the meaning of the Pastoral Measure 1983: see ECCLESIASTICAL LAW.
- 18 Ie a redundancy scheme within the meaning of the Pastoral Measure 1983: see ECCLESIASTICAL LAW.
- 19 Ie within the meaning of the Pastoral Measure 1983: see ECCLESIASTICAL LAW.
- 20 Planning (Listed Buildings and Conservation Areas) Act 1990 s 60(7).
- 21 See ibid s 75; and PARA 1174 post.
- 22 See PARA 1174 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iii) Exceptions/A. ECCLESIASTICAL EXEMPTION/1102. Buildings retaining ecclesiastical exemption; in general.

1102. Buildings retaining ecclesiastical exemption; in general.

Ecclesiastical exemption¹ is retained for:

- 4074 (1) buildings² within the faculty jurisdiction of the Church of England³;
- 4075 (2) buildings subject to the Care of Cathedrals Measure 1990⁴;
- 4076 (3) buildings of the Church in Wales vested⁵ in the Representative Body of the Church in Wales or any other representative body⁶;
- 4077 (4) buildings held in trust by the diocesan trustees of a diocese of the Roman Catholic Church⁷;
- 4078 (5) buildings owned by or held in trust for or for the purposes of the Methodist Church or any connexional or local organisation of the Methodist Church⁸;

- 4079 (6) buildings held in trust for a Church in membership with the Baptist Union of Great Britain or the Baptist Union of Wales by one of the specified trust corporations⁹, whether alone or jointly with another person or persons¹⁰; and
- 4080 (7) buildings situated within one of the specified Provinces¹¹ of the United Reformed Church held on the specified¹² trusts¹³.

Ecclesiastical exemption is now excluded in respect of all buildings other than those falling within the above provisions and the provisions relating to peculiars¹⁴ and other special cases¹⁵.

1 For these purposes, 'ecclesiastical exemption' means the exemption of buildings from the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3 (as amended) (see PARA 1098 ante), s 4 (see PARA 1099 ante), s 7 (see PARA 1109 post), s 8 (as amended) (see PARA 1109 post), s 9 (as amended) (see PARA 1110 post), s 47 (as amended) (see PARAS 1154, 1157 post), s 54 (see PARA 1163 post), s 59 (as amended) (see PARA 1168 post) and s 74 (control of demolition in conservation areas: see PARA 1174 post): Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 2(1).

2 For these purposes, 'building' means an ecclesiastical building which is for the time being used for ecclesiastical purposes: *ibid* art 2(1). As to when a building is so used see PARA 1101 note 3 ante.

3 *Ibid* art 4(a). As to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq; and for a discussion of the relationship between secular planning and listed building controls and the faculty jurisdiction see *Re Tonbridge School Chapel* [1993] 2 All ER 350n.

4 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, arts 2(1), 4(b). As to the Care of Cathedrals Measure 1990 see ECCLESIASTICAL LAW.

5 *Ie* under the Welsh Church Act 1914 s 13(2) (as amended). See also CREMATION AND BURIAL vol 10 (Reissue) PARA 1012 note 2.

6 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 4(c).

7 *Ibid* art 4(d).

8 *Ibid* art 4(e). 'The Methodist Church' means the Methodist Church as defined in the Methodist Church Act 1976 s 2(1): Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 2(1).

9 *Ie* the trust corporations set out in *ibid* Sch 1 (*ie* the Baptist Union Corporation Ltd, the Bristol and District Association of Baptist Churches (Inc), the Devon and Cornwall Baptist Corporation Ltd, the East Midland Baptist Association (Inc), the Lancashire and Cheshire Association of Baptist Churches (Inc), the London Baptist Property Board Ltd, the Welsh Baptist Union Corporation Ltd, the West Midland Baptist (Trust) Association (Inc), the Wilts and East Somerset Baptist Association (Inc) and the Yorkshire Baptist Association (Inc)): art 4(f).

10 *Ibid* art 4(f).

11 *Ie* the Provinces set out in *ibid* Sch 2 (*ie* Northern, North Western, Mersey, Yorkshire, East Midlands, West Midlands, Eastern, South Western, Wessex, Thames North, Southern, Wales): art 4(g).

12 *Ie* the trusts set out in the United Reformed Church Act 1972 Sch 2 Pt I or the United Reformed Church Act 1981 Sch 2 Pt I: Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 4(g).

13 *Ibid* art 4(g). In relation to England, there is a government code of practice for acceptable internal controls operated by exempt denominations and faiths: see *PPG 15--Planning and the Historic Environment* para 8.4. As to the status of such guidance see PARA 9 ante.

14 *Ie* falling within the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 6: see PARA 1104 post.

15 *Ibid* art 3(1). Nothing in the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, however, operates to require listed building consent or conservation area consent for works commenced, or for works in respect of which a contract had been made, before 1 October 1994: art 1(1), (2). As to the extent of ecclesiastical exemption for buildings falling within art 4 (see heads (1)-(6) in the text) see PARA 1103 post.

Places of worship for denominations, faiths and independent congregations not listed in the 1994 Order are fully subject to listed building and conservation area control from 1 October 1994: *PPG 15--Planning and the Historic Environment* para 8.10.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iii) Exceptions/A. ECCLESIASTICAL EXEMPTION/1103. Extent of ecclesiastical exemption.

1103. Extent of ecclesiastical exemption.

Subject to the following provisions¹, ecclesiastical exemption² for buildings³ falling within the provisions set out in the previous paragraph⁴ is restricted, except in the case of buildings subject to the Care of Cathedrals Measure 1990⁵, to:

- 4081 (1) any church building⁶;
- 4082 (2) any object or structure within a church building⁷;
- 4083 (3) any object or structure fixed to the exterior of a church building⁸; and
- 4084 (4) any object or structure within the curtilage of a church building which, although not fixed to that building, forms part of the land⁹.

In the case of buildings subject to the 1990 Measure, ecclesiastical exemption is restricted to:

- 4085 (a) any building, object or structure within the precinct of a cathedral church for the purposes of that Measure and inclosed within the red line shown on the plan relating to that cathedral church¹⁰ and deposited with the local planning authority¹¹;
- 4086 (b) any church building, within the precinct of a cathedral church for the purposes of that Measure, which does not fall within head (a) above, and any object or structure within that church building, but excluding:
 - 306 69. (i) any object or structure fixed to the exterior of that church building; and
 - 70. (ii) any object or structure within the curtilage of that church building which, although not fixed to that building, forms part of the land¹²; and
- 307 4087 (c) any monument¹³ which:
 - 308 71. (i) does not fall within head (a) above;
 - 72. (ii) is not itself a listed building (apart from any status as a listed building which it may have solely by being treated¹⁴ as part of a cathedral church or other church building);
 - 73. (iii) is within the precinct of a cathedral church for the purposes of the 1990 Measure; and

74. (iv) is situated in a churchyard, graveyard or other land which is or has been used for the purposes of burial¹⁵.
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Exemption from certain statutory provisions¹⁶ is restricted in respect of buildings, other than those within the faculty jurisdiction of the Church of England or subject to the 1990 Measure¹⁷:

- 4088 (A) to works carried out by or on behalf of a specified church or body¹⁸, or a constituent part of a specified church or body; or
4089 (B) where the buildings are on any premises forming part of a university, college, school, hospital or public or charitable institution, to works carried out by or on behalf of the governing body or the trustees of that institution¹⁹.

1 Ie subject to the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(3), (5): see notes 8, 16-19 infra.

2 For the meaning of 'ecclesiastical exemption' see PARA 1102 note 1 ante.

3 For the meaning of 'building' for these purposes see PARA 1102 note 2 ante.

4 Ie buildings falling within the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 4: see PARA 1102 ante.

5 As to the Care of Cathedrals Measure 1990 see ECCLESIASTICAL LAW.

6 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(1)(a). 'Church building' means a building whose primary use is as a place of worship: art 2(1).

7 Ibid art 5(1)(b).

8 Ibid art 5(1)(c). Subject to art 5(4), ecclesiastical exemption is not retained by virtue of art 5(1) in respect of: (1) any object or structure fixed to the exterior of a church building; or (2) any object or structure within the curtilage of a church building which, although not fixed to that building, forms part of the land, where that object or structure is itself a listed building (apart from any status as a listed building which it may have solely by being treated as part of the church building by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5)(a) or (b) (see PARA 1091 ante)); Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, arts 2(1), 5(3). In art 5(3), the reference to an object or structure fixed to the exterior of a church building or within the curtilage of a church building does not include any object or structure which falls to be treated for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 as part of that object or structure by virtue only of s 1(5)(a) or (b): Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(4). For the meaning of 'listed building' see PARA 1091 ante.

9 Ibid art 5(1)(d); and see note 8 supra.

10 Ie the plan entitled 'Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994', signed by an Assistant Secretary in the former Department of National Heritage (now the Department for Culture, Media and Sport), dated 21 June 1994: Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(2)(a).

11 Ibid art 5(2)(a). For the meaning of 'local planning authority' see PARA 1073 ante.

12 Ibid art 5(2)(b).

13 For these purposes, 'monument' includes a tomb, gravestone or other memorial and any kerb or setting forming part thereof: ibid art 2(1). In art 5(2)(c) (see head (c) in the text), the reference to a monument or to an object or structure fixed to the exterior of a church building or within the curtilage of a church building does not include any object or structure which falls to be treated for the purposes of the Act as part of that monument, object or structure by virtue only of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5)(a) or (b): Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(4).

14 Ie by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1(5)(a) or (b): see PARA 1091 ante.

15 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(2)(c).

16 The exemption from the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 7-9 (as amended), s 59 (as amended) and s 74: Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 5(5).

17 The exemption is restricted in respect of buildings falling within *ibid* art 4(c)-(g): see PARA 1102 ante at heads (3)-(7) in the text.

18 The church or body referred to in *ibid* art 4(c)-(g): see PARA 1102 ante at heads (3)-(7) in the text.

19 *Ibid* art 5(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iii) Exceptions/A. ECCLESIASTICAL EXEMPTION/1104. Peculiars and other special cases.

1104. Peculiars and other special cases.

Ecclesiastical exemption¹ is retained² for buildings³ to which the following provisions apply and which do not fall within the provisions regarding the retention of exemption⁴ which have already been discussed⁵. These provisions apply to:

4090 (1) buildings within a peculiar of the Church of England⁶;

4091 (2) any building used for worship according to the rites, doctrinal standards, principles or usages of the Church of England, the Church in Wales, the Roman Catholic Church, the Methodist Church⁷, the Baptist denomination or the United Reformed Church on any premises forming part of:

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75. (a) a university, college, school, hospital or Inn of Court; or

76. (b) a public or charitable institution, other than one referred to in head (a) above, if the premises in question do not consist solely of that building and its curtilage⁸;

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4092 (3) buildings owned by or held in trust for a religious community of the Church of England⁹;

4093 (4) buildings owned by or held in trust for a Roman Catholic Religious Institute or Society of Apostolic Life¹⁰;

4094 (5) buildings subject to a sharing agreement pursuant to the Sharing of Church Buildings Act 1969¹¹ made on behalf of one or more of the Churches referred to in head (2) above or any Church in membership with the Baptist Union of Great Britain or the Baptist Union of Wales¹²; and

4095 (6) buildings used for worship according to the rites, doctrinal standards, principles or usages of the Church of Scotland, the Free Church of Scotland or the Free Presbyterian Church¹³.

The extent of ecclesiastical exemption under these provisions is not subject to the restrictions¹⁴ set out in the previous paragraph¹⁵.

- 1 For the meaning of 'ecclesiastical exemption' see PARA 1102 note 1 ante.
- 2 As to the general exclusion of ecclesiastical exemption see PARA 1102 the text and notes 14-15 ante.
- 3 For the meaning of 'building' for these purposes see PARA 1102 note 2 ante.
- 4 The buildings which do not fall within the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 4: see PARA 1102 ante.
- 5 Ibid art 6(1).
- 6 Ibid art 6(2)(a). As to peculiars of the Church of England see ECCLESIASTICAL LAW.
- 7 For the meaning of 'the Methodist Church' see PARA 1102 note 8 ante.
- 8 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 6(2)(b).
- 9 Ibid art 6(2)(c).
- 10 Ibid art 6(2)(d).
- 11 As to the Sharing of Church Buildings Act 1969 see ECCLESIASTICAL LAW.
- 12 Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771, art 6(2)(e).
- 13 Ibid art 6(2)(f).
- 14 The restrictions set out in ibid art 5: see PARA 1103 ante.
- 15 Ibid art 5 restricts ecclesiastical exemption for buildings falling within ibid art 4 (see PARA 1102 ante): art 3(2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iii) Exceptions/B. ANCIENT MONUMENTS/1105. Ancient monuments etc.

B. ANCIENT MONUMENTS

1105. Ancient monuments etc.

Specified statutory provisions relating to listed buildings¹ do not apply to any building for the time being included in the schedule of monuments compiled and maintained² under the Ancient Monuments and Archaeological Areas Act 1979³. Scheduling under the 1979 Act introduces closer controls over such matters as repairs than does listing⁴.

Buildings scheduled as ancient monuments as well as listed are for the most part unoccupied buildings, such as medieval barns or dovecotes, some bridges, and some urban buildings and industrial monuments⁵.

1 The Planning (Listed Buildings and Conservation Areas) Act 1990 s 3 (as amended) (see PARA 1098 ante), s 4 (see PARA 1099 ante), s 7 (see PARA 1109 post), s 8 (as amended) (see PARA 1109 post), s 9 (as amended) (see PARA 1110 post), s 47 (as amended) (see PARAS 1154, 1157 post), s 54 (see PARA 1163 post) and s 59 (as amended) (see PARA 1168 post): s 61(2). For the meaning of 'listed building' see PARA 1091 ante; and for the meaning of 'building' see PARA 1073 note 8 ante.

2 The Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended): see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1002 et seq.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 61(1), (2).

4 See *PPG 15--Planning and the Historic Environment* para 6.34. As to the status of this guidance see PARA 9 ante.

5 See note 4 supra.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iv) Special Considerations affecting Planning Functions/1106. General duty.

(iv) Special Considerations affecting Planning Functions

1106. General duty.

In considering whether to grant planning permission¹ for development² which affects a listed building³ or its setting, the local planning authority⁴ or, as the case may be, the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ must have special regard to the desirability of preserving the building⁷ or its setting or any features of special architectural or historic interest which it possesses⁸.

In the exercise of its powers of appropriation, disposal⁹ and development, including redevelopment, under the Town and Country Planning Act 1990¹⁰ a local authority¹¹ must have regard¹² to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings¹³.

- 1 For the meaning of 'planning permission' see PARA 1095 note 1 ante.
- 2 For the meaning of 'development' see PARA 1095 note 2 ante.
- 3 For the meaning of 'listed building' see PARA 1091 ante.
- 4 For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(1), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' see PARA 1073 ante.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 66 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 7 For the meaning of 'building' see PARA 1073 note 8 ante.
- 8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(1). As to the application of this duty see eg *R (on the application of Ryan) v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 722, [2001] All ER (D) 36 (Sep). The duty was not overridden by the duty to act in accordance with a development plan under the Town and Country Planning Act 1990 s 54A (as added; repealed with savings) (see PARA 153 ante), but was to be considered equally: *Heatherington (UK) Ltd v Secretary of State for the Environment* (1994) 69 P & CR 374, [1995] JPL 228.
The Planning (Listed Buildings and Conservation Areas) Act 1990 66(1) does not apply to buildings in conservation areas: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3.
As to the Secretary of State's or the Assembly's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(1) see PARA 1098 note 7 ante.
- 9 For the meaning of 'disposal' see PARA 1075 note 18 ante.
- 10 In the powers conferred by the Town and Country Planning Act 1990 s 232 (see PARAS 945-946 ante), s 233 (see PARAS 948-949 ante) and s 235(1) (see PARA 952 ante).
- 11 For these purposes, the reference to a local authority includes a reference (1) to a joint planning board (Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(3) (amended by the Environment Act 1995 s 120, Sch 24)); and (2) to a National Park authority (Environment Act 1995 s 65(7), Sch 8 para 2(4)). For the meaning of 'local authority' see PARA 1072 note 8 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 12 In without prejudice to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72 (as amended) (general duty as respects conservation areas in exercise of planning functions: see PARA 1171 post): s 66(2).
- 13 Ibid s 66(2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

1106 General duty

NOTE 8--See also *Enertrag (UK) Ltd v Secretary of State for Communities and Local Government* [2009] EWHC 679 (Admin), [2009] JPL 1236, [2009] All ER (D) 86 (Apr).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iv) Special Considerations affecting Planning Functions/1107. Publicity for applications affecting setting of listed buildings.

1107. Publicity for applications affecting setting of listed buildings.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may prescribe requirements as to publicity for applications for planning permission⁴ in cases where the local planning authority⁵ thinks that the development⁶ of land⁷ would affect the setting of a listed building⁸.

Where an application for planning permission for any development of land is made to a local planning authority in England and the authority thinks that the development would affect the setting of a listed building or the character or appearance of a conservation area⁹, then subject to certain exceptions¹⁰ the local planning authority must:

- 4096 (1) publish in a local newspaper circulating in the locality in which the land is situated; and
- 4097 (2) for not less than seven days display on or near the land,

a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice under head (1) above¹¹. The local planning authority must send to the Historic Buildings and Monuments Commission for England ('English Heritage')¹² a copy of each such notice¹³. The application must not be determined by the local planning authority before both of the following periods have elapsed, namely:

- 4098 (a) the period of 21 days referred to above; and
- 4099 (b) the period of 21 days beginning with the date on which the notice required by head (2) above to be displayed was first displayed;

and in determining any application for planning permission to which these provisions apply, the local planning authority must take into account any representations relating to the application which are received by it before both of those periods have elapsed¹⁴.

Where, however, a local planning authority maintains a website for the purpose of advertisement of applications, the above requirements apply with the following modifications. The local planning authority must publish in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are the subject of the application and:

- 4100 (i) naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and

- 4101 (ii) stating the address of a website where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice, and the place on the website where such documents may be accessed, and how they may be accessed¹⁵.

For not less than seven days it must also display on or near that building a notice containing the same particulars as are required to be contained in the notice so required to be published¹⁶. The application must not be determined by the local planning authority before the period of 21 days referred to in heads (i) and (ii) above; and in determining any application for planning permission to which these provisions apply, the local planning authority must take into account any representations relating to the application which are received by it before that period has elapsed¹⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 67 (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'prescribe' see PARA 1077 note 4 ante.

4 For these purposes, references to planning permission do not include references to planning permission falling within the Town and Country Planning Act 1990 s 73A (as added) (permission for development already carried out: see PARA 525 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 67(8) (substituted by the Planning and Compensation Act 1991 s 32, Sch 7 para 59). For the meaning of 'planning permission' see PARA 1095 note 1 ante.

5 For the meaning of 'local planning authority' generally see PARA 1073 ante. For the purposes of s 67 (as substituted), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante.

6 For the meaning of 'development' see PARA 1095 note 2 ante.

7 For the meaning of 'land' see PARA 1077 note 1 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 67(1) (substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 23). For the meaning of 'listed building' see PARA 1091 ante.

9 For the meaning of 'conservation area' see PARA 1169 post.

10 Ie subject to the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5A(5), (6) (as added): see note 11 infra.

11 Ibid reg 5A(1), (2) (reg 5A added in relation to England by SI 2004/2210). At the date at which this title states the law, no corresponding provision had been made in relation to Wales. The Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5A(2) (as so added) does not apply to the council of the London Borough of Camden: reg 5A(5) (as so added). Where an application to which reg 5A (as added) applies is made to the council of the London Borough of Camden, that council must for not less than seven days display on or near the land a notice indicating the nature of the development in question and (1) naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and (2) where the authority maintains a website for the purpose of advertisement of applications, publish the notice on the website: reg 5A(6) (as so added).

12 As to English Heritage see PARA 1058 ante.

13 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5A(3) (as added: see note 11 supra). This applies to the council of the London Borough of Camden as if the reference to reg 5A(2) (as added) were a reference to reg 5A(6) (as added): see reg 5A(7) (as so added).

14 Ibid reg 5A(4) (as added: see note 11 supra).

15 See ibid reg 8A(4), (5A)(a) (respectively added by SI 2003/956 and SI 2004/3156; and by SI 2004/2210).

16 See the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 8A(5A)(b) (as added: see note 15 supra).

17 See ibid reg 8A(5A)(c) (as added: see note 15 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(iv) Special Considerations affecting Planning Functions/1108. Reference to English Heritage of planning applications involving listed buildings in Greater London.

1108. Reference to English Heritage of planning applications involving listed buildings in Greater London.

The Secretary of State¹ may² by regulations provide for any application for planning permission³ for any development⁴ in Greater London⁵ which would, in the opinion of the local planning authority⁶ to which the application is made, involve the demolition⁷, in whole or in part, or a material alteration, of a listed building⁸ to be referred to the Historic Buildings and Monuments Commission for England ('English Heritage')⁹ before it is dealt with by the local planning authority¹⁰.

Such regulations may provide:

- 4102 (1) for the Commission to give the referring authority directions as to the manner in which an application is to be dealt with; and
- 4103 (2) that an application which satisfies such conditions as may be specified in the regulations need not be referred to the Commission¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 Ie without prejudice to his powers by virtue of the Town and Country Planning Act 1990 s 74(1): see PARA 452 ante.

3 For the meaning of 'planning permission' see PARA 1095 note 1 ante.

4 For the meaning of 'development' see PARA 1095 note 2 ante.

5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

- 6 For the meaning of 'local planning authority' see PARA 1073 ante.
- 7 For the meaning of 'demolition' see PARA 1109 note 2 post.
- 8 For the meaning of 'listed building' see PARA 1091 ante.
- 9 As to English Heritage see PARA 1058 ante.
- 10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 68(1), (2). As to rights of entry see PARAS 1083-1086 ante.
- 11 Ibid s 68(3). As the date at which this title states the law, no such regulations had been made and no regulations had effect as if so made. As to the making of regulations generally see PARA 1074 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/A. CONTROL OF WORKS IN RESPECT OF LISTED BUILDINGS/1109. Restriction on works affecting listed buildings.

(v) Authorisation of Works affecting Listed Buildings

A. CONTROL OF WORKS IN RESPECT OF LISTED BUILDINGS

1109. Restriction on works affecting listed buildings.

No person may¹ execute or cause to be executed any works for the demolition² of a listed building³ or for its alteration⁴ or extension in any manner which would affect its character as a building⁵ of special architectural or historic interest, unless the works are authorised⁶.

Works for the alteration or extension of a listed building are authorised if:

- 4104 (1) written consent for their execution has been granted by the local planning authority⁷ or by either the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹; and
- 4105 (2) they are executed in accordance with the terms of the consent and of any conditions attached to it¹⁰.

Works for the demolition of a listed building are authorised if:

- 4106 (a) such consent has been granted for their execution;
- 4107 (b) notice of the proposal to execute the works has been given to the Historic Buildings and Monuments Commission for England ('English Heritage')¹¹ or to the Royal Commission on Ancient and Historical Monuments in Wales (Comisiwn Brenhinol Henebion Cymru)¹²;

- 4108 (c) after such notice has been given either:
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77. (i) for a period of at least one month following the grant of such consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the relevant Commission for the purposes of recording it; or
78. (ii) the Secretary of the relevant Commission, or another of its officers with authority to act on its behalf for these purposes, has stated in writing that it has completed its recording of the building or that it does not wish to record it; and
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- 4109 (d) the works are executed in accordance with the terms of the consent and of any conditions attached to it¹³.

Where works for the demolition of a listed building or for its alteration or extension are executed without such consent¹⁴ and written consent is granted by the local planning authority or the Secretary of State or, as the case may be, by the Assembly, for the retention of the works, the works are authorised from the grant of that consent¹⁵.

Written consent under the above provisions is referred to as 'listed building consent'¹⁶.

1 The subject to the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 8-94 (as amended): see PARA 1072 et seq ante, PARA 1110 et seq post.

2 Demolition on the one hand and alteration on the other are mutually exclusive concepts; removal of part only of a listed building is not 'demolition' as the latter requires the removal of the whole or substantially the whole of the building: see *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481, [1997] 1 WLR 168, HL. Whether works are works of demolition or of alteration is a question of fact in each case: *Shimizu (UK) Ltd v Westminster City Council* supra. As to the implications of this judgment, which affects the previously long-accepted practice of interpreting the term 'listed building' throughout the Planning (Listed Buildings and Conservation Areas) Act 1990 as including 'part of a listed building' see ODPM (ex DETR) Circular 01/2001, Culture, Media and Sport Circular 01/2001 *Arrangements for handling heritage applications--Notification and Directions by the Secretary of State* Appendix D. Major works which comprise or include acts of demolition falling short of the complete destruction of a listed building, eg façade retention schemes, may still constitute works for demolition depending on their extent. However, many works which were previously regarded as demolition because they involved the destruction of part of the fabric of the building will now fall into the category of alterations and will require consent only if they affect the building's character as a building of special architectural or historic interest. The demolition of a curtilage building is likely to fall within this category. Further, works for the demolition of an unlisted building in a conservation area must also involve the total or substantial destruction of the building concerned. This means that many works which involve the destruction of the fabric of part only of a building will not be works of demolition and will not require conservation area consent: see Appendix D. As to the status of this guidance see PARA 9 ante; and as to conservation area consent see PARA 1174 post.

3 For the meaning of 'listed building' see PARA 1091 ante.

4 Repainting is capable of being an alteration for these purposes; but the critical question is whether the repainting has affected the character of the building as a building of special architectural or historic interest: *Windsor and Maidenhead Royal Borough Council v Secretary of State for the Environment* (1987) 86 LGR 402, 56 P & CR 427; and see eg *Newport Borough Council* [2003] JPL267 (8 October 2002; DCS no 32807959) (use of synthetic rather than lime-based paint represented alteration to traditional character of Grade II listed cottage).

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 7. In its application to buildings in conservation areas s 7 has effect as it has effect in relation to listed buildings with the omission of the words 'or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest': see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1175 post. As to conservation areas see PARA 1169 et seq post. As to rights of entry see PARAS 1083-1086 ante.

The character of a listed building is not its character at the date of listing, but its character as a building of special architectural and historical interest. Notwithstanding that an object formed part of the character of a building at the time it was listed, the proposed reinstatement of an object which had been fixed to a building at

the time it was listed is capable of affecting the character of that building and thus of requiring authorisation: see *Imfravis Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 959 (Admin), [2002] All ER (D) 137 (Apr).

7 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 7, 8 (as amended) see s 81, Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the purposes of ss 7, 8 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. For the meaning of 'local planning authority' generally see PARA 1073 ante.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(1). As to the Secretary of State's or the Assembly's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 8 (as amended) see PARA 1098 note 7 ante.

In its application to buildings in conservation areas, s 8 (as amended) has effect as it has effect in relation to listed buildings (1) with the omission of s 8(1), (2)(b), (c), (4)-(7) (as amended); (3) with the omission in s 8(3)(a) (see the text to note 14 infra) of the words 'or for its alteration or extension': see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1175 post.

11 As to English Heritage see PARA 1058 ante.

12 The Royal Commission on Ancient and Historical Monuments in Wales maintains an internet site on the World Wide Web where details of its composition and work and of its strategic objectives may be found; among the latter is the creation and maintenance of a National Monuments Record for Wales. At the date at which this title states the law this information was accessible at www.rcahmw.org.uk (where the Commission's title in English is given as The Royal Commission on Ancient and Historical Monuments of Wales). The Commission is subject to reform by the National Assembly for Wales but may only gain functions, and only with its own consent: see the Government of Wales Act 1998 s 28, Sch 4 Pt IV. The Commission is sponsored by the Welsh Assembly Government.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(2), (4) (s 8(2) amended by the Authorisation of Works (Listed Buildings) (England) Order 2001, SI 2001/24, art 2). The Secretary of State or the Assembly may by order provide that the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(2) (as amended) is to have effect with the substitution for the references to the Royal Commission of references to such other body as may be so specified: s 8(5). Such an order (1) applies in the case of works executed or to be executed on or after such date as may be specified in the order; and (2) may apply in relation to either England or Wales, or both: s 8(6). As to the exercise of this power in relation to England see the Authorisation of Works (Listed Buildings) (England) Order 2001, SI 2001/24.

14 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(3)(a).

15 Ibid s 8(3).

16 Ibid s 8(7). Listed building consent may be granted for the relocation of a statue: see *Judge v First Secretary of State* [2005] EWHC 887 (Admin), [2005] All ER (D) 409 (Apr). As to the history of the legislation see *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481 at 488-490, [1997] 1 WLR 168 at 175-177, HL, per Lord Hope of Craighead.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1109 Restriction on works affecting listed buildings

NOTE 6--In determining whether the character of the building has been affected, it is generally appropriate to consider the full extent of any works: *East Riding of Yorkshire Council v Hobson* [2008] EWHC 1003 (Admin), [2009] PTSR 561, [2008] All ER (D) 265 (Apr).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/A. CONTROL OF WORKS IN RESPECT OF LISTED BUILDINGS/1110. Offences.

1110. Offences.

If a person contravenes the statutory provisions restricting works on listed buildings¹, he is guilty of an offence²; and, if a person executing or causing to be executed any works in relation to a listed building under a listed building consent³ fails to comply with any condition attached to the consent, he is guilty⁴ of an offence⁵.

A person who is guilty of such an offence is liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to imprisonment for a term not exceeding six months or a fine not exceeding £20,000, or to both⁶. In determining the amount of any fine to be imposed on a person convicted of such an offence, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence⁷.

In proceedings for any such offence it is, however, a defence to prove the following matters:

- 4110 (1) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;
- 4111 (2) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;
- 4112 (3) that the works carried out were limited to the minimum measures immediately necessary; and
- 4113 (4) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority⁸ as soon as reasonably practicable⁹.

It is also an offence to do or permit an act which causes or is likely to cause damage to a listed building¹⁰. That offence is discussed below¹¹.

1 le the Planning (Listed Buildings and Conservation Areas) Act 1990 s 7: see PARA 1109 ante. For the meaning of 'listed building' see PARA 1091 ante; and for the meaning of 'building' see PARA 1073 note 8 ante.

2 Ibid s 9(1). The offence is one of strict liability: *R v Wells Street Metropolitan Stipendiary Magistrate, ex p Westminster City Council* [1986] 3 All ER 4, [1986] 1 WLR 1046. It is not necessary, and may prejudice a fair trial, to adduce detailed evidence as to the state of mind and intentions or motive of the accused: see *R v Sandhu* [1997] JPL 853, CA. As to offences by corporations see PARA 1072 ante at head (7) in the text; and as to rights of entry see PARAS 1083-1086 ante.

As to the application of s 9 (as amended) to offences relating to buildings in conservation areas see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1175 post.

The power of a magistrates' court to stay proceedings for such an offence as an abuse of process must be exercised sparingly and only for very compelling reasons: see *R (on the application of Tunbridge Wells Borough Council) v Sevenoaks Magistrates' Court* [2001] EWHC Admin 897, [2001] All ER (D) 432 (Oct) (letter written on behalf of building and planning control manager of local planning authority warning that enforcement action might have to be considered if further works were carried out without the benefit of listed building consent could not sensibly be construed as a clear notice of the authority's intention not to prosecute).

3 For the meaning of 'listed building consent' see PARA 1109 ante.

4 le without prejudice to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1): see the text and notes 1-2 supra.

5 Ibid s 9(2). See also note 2 supra.

6 Ibid s 9(4) (substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 1(a)). See also note 2 supra.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(5) (amended by the Planning and Compensation Act 1991 s 84(6), Sch 3 para 1(b), Sch 19 Pt I). See also note 2 supra.

8 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9 (as amended) see s 81, Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the purposes of s 9 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' generally see PARA 1073 ante.

9 Ibid s 9(3). See also note 2 supra.

For guidance as to whether to take enforcement action or to prosecute, or both, see *PPG 15--Planning and the Historic Environment* para 3.47; and as to the status of such guidance see PARA 9 ante. As to the use of injunctions to restrain breaches of listed building control see PARA 1151 post; and as to enforcement generally see PARA 1146 et seq post.

10 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 59 (as amended); and PARA 1168 post.

11 See PARA 1168 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1111. Making of applications; in general.

B. LISTED BUILDING CONSENT

(A) APPLICATION FOR CONSENT; IN GENERAL

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1111. Making of applications; in general.

Subject to certain exceptions¹, an application for listed building consent² must be made to, and dealt with by, the local planning authority³. Provision may be made by regulations with respect to:

- 4114 (1) the form and manner in which such applications are to be made⁴;
- 4115 (2) particulars of such matters as are to be included in such applications⁵;
- 4116 (3) the documents or other materials as are to accompany such applications⁶;
- 4117 (4) requirements as to publicity in relation to such applications⁷;
- 4118 (5) the time within which they are to be dealt with by local planning authorities or, as the case may be, by the Secretary of State⁸ or, in relation to Wales, by the National Assembly⁹ for Wales¹⁰;
- 4119 (6) requirements as to consultation in relation to such applications¹¹;
- 4120 (7) prohibiting the determination of such applications during such period as is prescribed¹²;
- 4121 (8) requirements on the local planning authority to take account of responses from persons consulted¹³.

The regulations must require that an application for listed building consent of such description as is prescribed must be accompanied by such of the following as is prescribed:

- 4122 (a) a statement about the design principles and concepts that have been applied to the works;
- 4123 (b) a statement about how issues relating to access to the building¹⁴ have been dealt with¹⁵.

As respects a building situated in an area of a National Park outside a metropolitan county in England¹⁶, however, such an application must be made to the council of the district¹⁷ which must send it on, together with all accompanying documents¹⁸, to the body authorised to exercise the functions¹⁹ relating to such application²⁰. As respects a building situated in an area of a National Park within a metropolitan county, such an application must be made to the joint planning board²¹. Where an application for listed building consent relating to land in a National Park in England falls to be determined by a National Park authority, that authority must send a copy of the application, as soon as practicable and in any event not later than seven days after the authority has received it, to any authority which would otherwise²² be the district planning authority for the area in which the land to which the application relates is situated and must, before determining the application, consult any such authority²³.

Where listed building consent is required for the purposes of proposals included in an application for an order under the Transport and Works Act 1992²⁴ and either:

- 4124 (i) the application for listed building consent has been made not later than 10 weeks after the application for the order under the 1992 Act; or
- 4125 (ii) the Secretary of State or the Assembly considers it appropriate that this provision should apply and has given a direction to that effect,

the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulations made under it²⁵ have effect with specified²⁶ modifications²⁷.

¹ ie except as provided in the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 12-15 (as amended): see PARA 1115 et seq post.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(1). As to the application of s 10 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(a), Sch 3; and PARA 1174 note 5 post. As to rights of entry see PARAS 1083-1086 ante.

As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act s 10 (as amended) see s 81, Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the purposes of s 10 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante; and for the meaning of 'local planning authority' generally see PARA 1073 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 10 (as amended) see PARA 1098 note 7 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(3)(a) (s 10(3)(a)-(ab) substituted by the Planning and Compulsory Purchase Act 2004 s 42(7)).

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(3)(aa) (as substituted: see note 4 supra).

6 Ibid s 10(3)(ab) (as substituted: see note 4 supra).

7 Ibid s 10(3)(b) (substituted by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 20(a)).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(3)(c).

11 Ibid s 10(3)(d) (s 10(3)(d)-(f) added by the Planning and Compulsory Purchase Act 2004 Sch 6 para 20(b)).

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(3)(e) (as added: see note 11 supra).

13 Ibid s 10(3)(f) (as added: see note 11 supra).

In exercise of the power so conferred, and prior to the transfer of planning functions in Wales to the Assembly (see note 9 supra), the Secretary of State made the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended): see the text and notes 16-21 infra; and PARA 1112 et seq post.

14 For the meaning of 'building' see PARA 1073 note 8 ante.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(4) (s 10(4), (5) added by the Planning and Compulsory Purchase Act 2004 s 42(8)). The form and content of a statement mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(4) (as so added) is such as is prescribed: s 10(5) (as so added).

16 As to the metropolitan counties see PARA 28 ante.

17 As to district councils (of which there are none in Wales) see PARA 28 ante.

18 Ie all accompanying documents required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended).

19 Ie to the National Park authority, joint planning board or special planning board. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq; and as to joint and special planning boards see PARA 30 ante. For the meaning of 'functions' see PARA 1073 note 3 ante.

20 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 7(1) (amended by SI 1996/525).

21 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 7(2). As to the application of reg 7 (as amended) to conservation area consent see PARA 1176 post.

22 Ie but for the Town and Country Planning Act 1990 s 4A (as added and amended): see PARA 32 ante.

23 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 paras 1(2), 3 (Sch 4 para 1(2) added by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(10); the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 4 para 3 substituted by the Planning and Compensation Act 1991 s 32, Sch 7 para 61; and amended by the Environment Act 1995 ss 78, 120(3), Sch 10 para 33, Sch 24).

24 Ie an application under the Transport and Works Act 1992 s 6 (as amended) for an order under s 1 (orders as to construction, operation etc of railways, tramways etc) or under s 3 (orders as to construction, operation etc of inland waterways): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 307.

25 Ie the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended).

26 Ie with the modifications specified in the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1: see PARAS 1112 notes 4, 7, 13, 1114 notes 3, 6-8 post.

27 Ibid reg 3(1), (2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1111 Making of applications; in general

NOTES 6, 15--In England, any application to a local planning authority for listed building consent, except where SI 1990/1519 reg 3(1A) applies, must be accompanied by a design and access statement which must include (1) an explanation as to the principles and concepts in relation to the scale, layout and appearance aspects of the works; and (2) an explanation of how such principles and concepts take account of (a) the special architectural or historic importance of the building; (b) the particular physical features of the building that justify its designation as a listed building; and (c) the building's setting: reg 3A (added by SI 2006/1063, amended by SI 2009/2262).

In Wales, any application to a local planning authority for listed building consent must be accompanied by a statement explaining the design principles and concepts that have been applied to the works and how issues relating to access to the building have been dealt with: see SI 1990/1519 reg 3B (substituted by SI 2009/1026).

NOTE 11--In England, the design and access statement must state what, if any, consultation has been undertaken and what account has been taken of the outcome of any such consultation: SI 1990/1519 reg 3A (added by SI 2006/1063).

BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING
CONSENT/(A) Application for Consent; in general/1112. Procedure on application.

1112. Procedure on application.

An application for listed building consent¹ must contain:

- 4126 (1) sufficient particulars to identify the building² to which it relates, including a plan³;
- 4127 (2) such other plans and drawings as are necessary to describe the works which are the subject of the application⁴; and
- 4128 (3) such other particulars as may be required by the local planning authority⁵.

The application must be made on a form issued by the local planning authority and obtainable from that authority and must, subject to the particular provision made with regard to applications in National Parks⁶, be lodged with the local planning authority together with two further copies of the form, plans and drawings⁷.

On receipt of any such application with the certificate which must accompany the application⁸, the local planning authority must send to the applicant an acknowledgment of it in the prescribed terms⁹, or substantially in those terms¹⁰. Where, after the sending of such an acknowledgment, the local planning authority forms the opinion that the application is invalid by reason of failure to comply with the above requirements¹¹ or with any other statutory requirement, it must as soon as may be notify the applicant that his application is invalid¹².

Where an application is so made in respect of any building, the authority must:

- 4129 (a) publish in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are the subject of the application and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and
- 4130 (b) for not less than seven days display on or near such building a notice containing the same particulars as are required to be contained in the notice to be published in accordance with head (a) above¹³.

Heads (a) and (b) above do not apply to the council of the London Borough of Camden¹⁴ in respect of which particular provision is made¹⁵. Further, where a local planning authority maintains a website for the purpose of advertisement of applications, heads (a) and (b) above apply with the modifications that the authority must publish in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are the subject of the application and:

- 4131 (i) naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and
- 4132 (ii) stating the address of a website where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public during the period of 21 days beginning with the date of publication of the notice, and the place on the website where such documents may be accessed, and how they may be accessed¹⁶.

An application for listed building consent may not be determined by the local planning authority before both of the following periods have elapsed, namely:

- 4133 (A) the period of 21 days referred to in head (a) above; and
- 4134 (B) the period of 21 days beginning with the date on which the notice required by head (b) above was first displayed;

and, in determining the application, the authority must take into account any representations relating to the application which are received by it before both of those periods have elapsed¹⁷. In the case of an application falling within heads (i) and (ii) above, however, there is only one 21-day period as referred to in those heads¹⁸.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(2)(a) (s 10(2) amended by the Planning and Compulsory Purchase Act 2004 s 42(6), 120, Sch 9).

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(2)(b). Where the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3 applies (see PARA 1111 the text and notes 24-27 ante), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(2)(b) is substituted to read as follows: '(b) such other plans, drawings, sections, models, photographs and other materials as are necessary to describe the works which are the subject of the application and which may include: (i) detailed plans, drawings and sections; or (ii) extracts from plans and sections submitted, or to be submitted, with an application under the Transport and Works Act 1992 s 6; or (iii) (where no such plans, drawings or sections have been prepared at the date of the application) a clear written description of the works proposed to be carried out at or to the building, supported by such other materials as the applicant is reasonably able to provide; and': Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1 para 1.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 10(2)(c). As to the application of s 10 (as amended) to conservation area consent see PARAS 1174 note 5, 1176 post; and as to rights of entry see PARAS 1083-1086 ante.

As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10 (as amended) see PARA 1096 note 9 ante. For the purposes of s 10 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 10 (as amended) see PARA 1098 note 7 ante.

6 Ie subject to the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 7 (as amended): see PARA 1111 ante.

7 Ibid reg 3(1). Where an electronic communication is used for the purpose of making such an application, reg 3(1) applies as if for the words 'two further copies of the form,' there were substituted the words 'any related': reg 8A(1)(a), (2) (reg 8A added in relation to England by SI 2003/656; a corresponding amendment has been made in relation to Wales by SI 2004/3156). As to the use of electronic communications see PARA 1072 note 7 ante.

Where the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3 applies (see PARA 1111 the text and notes 24-27 ante), the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(1) is modified as follows: for the words 'plans and drawings' there are substituted the words 'and of such plans, drawings, sections, models, photographs and other materials as are submitted with it': reg 3(2), Sch 1 para 2(1), (2).

8 Ie the certificate under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6: see PARA 1114 post.

9 le the terms set out in *ibid* reg 3(2), Sch 1 Pt I (as amended). For the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 2(1), Sch 1 Pt I.

10 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(2). In the application of the Planning (Listed Buildings and Conservation Areas) Regulation 1990, SI 1990/1519 (as amended), to the making and determination of applications for listed building consent made by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 84(2) (prospectively repealed; see PARA 1121 post), the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(2) has effect with the substitution for the words 'a certificate under regulation 6' of the words 'the certificate or other document required by regulation 6 below': reg 15(1)(a). As to the application of regs 3, 15(1) to conservation area consent see PARA 1176 post.

11 le the requirements of *ibid* reg 3(1): see *supra*.

12 *Ibid* reg 3(3).

13 *Ibid* reg 5(1). Regulation 5(1)-(2) (as amended) does not apply to an application for listed building consent to carry out works affecting only the interior of a building which, when last notified to the authority by the Secretary of State or, in relation to Wales, by the National Assembly for Wales, as a building of special architectural or historic interest, was classified as a Grade II (unstarred) listed building: reg 5(3)(a). As to grading of listed buildings see PARA 1092 ante. As to the Secretary of State see PARA 19 ante; as to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

Where the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3 applies (see PARA 1111 the text and notes 24-27 ante), the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5(1) is substituted to read as follows: 'Subject to paragraph (3), where an application is made under regulation 3 or 4: (a) the applicant shall, not more than 14 days before nor later than the date of the application, publish in a local newspaper circulating in the area in which the building is situated a notice (i) indicating the nature of works which are, or are to be, the subject of the application; and (ii) naming all the places in the area (or as close as reasonably possible to that area) where a copy of the application, and of all plans, drawings, sections and other materials submitted with it, may be inspected free of charge at all reasonable hours during a period specified in the notice, being a period of not less than 42 days from the date of the application, and such notice may be combined with such notice of the concurrent application as the applicant is required, by rules made under section 6 of the Transport and Works Act 1992, to publish in a local newspaper; and (b) the local planning authority shall for not less than 7 days, during the period of 42 days prescribed by sub-paragraph (a) above, display on or near the said building a notice containing the same particulars as are required to be published in accordance with sub-paragraph (a)': Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1 para 2(1), (3). For these purposes, and for the purposes of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6 (see PARA 1114 post), 'concurrent application' means an application made under the Transport and Works Act 1992 s 6 (as amended) relating to proposals for the purposes of which the granting of listed building consent is required in respect of the building to which the application relates: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5(3A) (added by the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, Sch 1 para 2(1), (4)).

14 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5(1A) (reg 5(1A), (1B) added by SI 2004/2210).

15 See the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 5(1B) (as added: see note 14 *supra*). Where an application is made to the council of the London Borough of Camden in respect of any building, the authority must: (1) for not less than seven days display on or near the building, a notice indicating the nature of the works in question and (a) naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and (b) where the authority maintains a website for the purpose of advertisement of applications, publish the notice on the website: reg 5(1B) (as so added).

16 *Ibid* reg 8A(4), (5)(a) (as added: see note 7 *supra*).

17 *Ibid* reg 5(2). See also note 13 *supra*. As to the application of reg 5 (as amended) to conservation area consent see PARA 1176 post.

18 See *ibid* reg 8A(5)(b) (as added: see note 7 *supra*).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1112 Procedure on application

TEXT AND NOTES 1-12--SI 1990/1519 reg 3 substituted in relation to England by SI 2008/551, and amended in relation to England by SI 2009/2262.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1113. Certificates as to applicant's status etc; power to make regulations.

1113. Certificates as to applicant's status etc; power to make regulations.

Regulations may provide that an application for listed building consent¹ shall not be entertained unless it is accompanied by one of the following certificates in the prescribed² form and signed by or on behalf of the applicant:

- 4135 (1) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person, other than the applicant, was the owner³ of any of the building⁴ to which the application relates;
- 4136 (2) a certificate stating that the applicant has given the requisite notice of the application to all the persons, other than himself, who at the beginning of that period were owners of any of the building to which the application relates;
- 4137 (3) a certificate stating:
- 314 79. (a) that the applicant is unable to issue a certificate in accordance with heads (1) or (2) above;
80. (b) that he has given the requisite notice of the application to such one or more of the persons mentioned in head (2) above as are specified in the certificate; and
81. (c) that he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
- 315 4138 (4) a certificate stating:
- 316 82. (a) that the applicant is unable to issue a certificate in accordance with head (1) above; and

83. (b) that he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the persons mentioned in head (2) above but has been unable to do so⁵.
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Where such provision is made, any such certificate as is mentioned in head (2) or head (3) above must set out:

- 4139 (i) the names of the persons to whom the applicant has given the requisite notice of the application;
- 4140 (ii) the addresses at which notice was given to them; and
- 4141 (iii) the date of service of each such notice⁶.

Such regulations may also require that, where an application is accompanied by such a certificate as is mentioned in head (2), head (3) or head (4) above, the local planning authority⁷:

- 4142 (A) is not to determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or, if later, the date of publication of a notice as so mentioned;
- 4143 (B) is to take into account, in determining the application, any representations relating to it which are made to the authority before the end of that period by any person who satisfies the authority that he is an owner of any of the building to which the application relates; and
- 4144 (C) is to give notice of its decision to every person who has made representations which it was required to take into account in accordance with head (B) above⁸.

Such regulations may also make provision as to who, in the case of any building, is to be treated as the owner for the purpose of any provision so made⁹.

If any person issues a certificate which purports to comply with the requirements of regulations so made and contains a statement which he knows to be false or misleading in a material particular or if any person recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹⁰.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

3 For these purposes, 'owner' means a person who is for the time being the estate owner in respect of the fee simple or is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: Planning (Listed Buildings and Conservation Areas) Act 1990 s 11(7). For the normal meaning of 'owner' see PARA 1075 note 17 ante.

4 For the meaning of 'building' see PARA 1073 note 8 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 11(1). As to the application of s 11 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post. As to rights of entry see PARAS 1083-1086 ante.

Such regulations may require that any such certificate as is mentioned in s 11(1)(c) or (d) (see heads (3), (4) respectively in the text) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate, which must not be earlier than the beginning of the

period mentioned in s 11(1)(a) (see head (1) in the text) been published in a local newspaper circulating in the locality in which the building is situated: s 11(3). In exercise of the power so conferred, and prior to the transfer of planning functions in Wales to the National Assembly for Wales (see PARA 20 ante), the Secretary of State made the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6 (see PARA 1114 post) which came into force on 24 August 1990 (reg 1) and the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 3 which came into force on 27 June 1990 (reg 1(1)).

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 11(2). See also note 5 supra.

7 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 11 see and PARA 1096 note 9 ante. For the purposes of s 11, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' generally see PARA 1073 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 11 see PARA 1098 note 7 ante.

8 Ibid s 11(4). See also note 5 supra.

9 Ibid s 11(5). See also note 5 supra.

10 Ibid s 11(6). See also note 5 supra. For the meaning of 'the standard scale' para 53 note 10 ante. As to offences by corporations see PARA 1072 ante at head (7) in the text.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1114. Certificates as to applicant's status etc; contents.

1114. Certificates as to applicant's status etc; contents.

A local planning authority¹ may not entertain any application for listed building consent² unless the application is accompanied by one of the following certificates signed by or on behalf of the applicant:

4145 (1) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person, other than the applicant, was the owner³ of any of the building⁴ to which the application relates⁵;

4146 (2) where there is a concurrent application under the Transport and Works Act 1992⁶, a certificate stating that:

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84. (a) notice of the concurrent application has been given in accordance with rules made under the 1992 Act⁷ to all of the persons other than the applicant who

were, at the beginning of a period of 28 days ending with the date of the concurrent application, the owners of the building; and

85. (b) every such notice contains a statement that an application for listed building consent has been, or is to be, made in respect of the building⁸;

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- 4147 (3) a certificate stating that the applicant has given the requisite notice of the application to all persons, other than himself, who at the beginning of that period were owners of any of the building to which the application relates, and setting out the names of those persons, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice⁹;

- 4148 (4) a certificate stating that the applicant is unable to issue a certificate in accordance with either head (1) or head (3) above, that he has given the requisite notice of the application to such one or more of the persons mentioned in head (3) above as are specified in the certificate, setting out their names, the addresses at which notice of the application was given to them respectively, and the date of service of each such notice, that he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the remainder of those persons and that he has been unable to do so¹⁰;

- 4149 (5) a certificate stating that the applicant is unable to issue a certificate in accordance with head (1) above, that he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the persons mentioned in head (3) above but has been unable to do so¹¹.

Any such certificate as is mentioned in head (4) or head (5) above must also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate, which must not be earlier than the beginning of the period mentioned in head (1) above, been published in a local newspaper circulating in the locality in which the building is situated¹².

Where an application is accompanied by such a certificate as is mentioned in head (3), head (4) or head (5) above, the local planning authority:

- 4150 (i) may not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or, if later, the date of publication of a notice as so mentioned;
- 4151 (ii) must, in determining the application, take into account any representations relating to it which are made to the authority before the end of that period by any person who satisfies it that he is an owner of any of the building to which the application relates; and
- 4152 (iii) must give notice of its decision to every person who has made representations which it was required to take into account in accordance with head (ii) above¹³.

1 For the meaning of 'local planning authority' see PARA 1073 ante. See also PARA 1113 note 7 ante.

2 I.e. an application under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3 (as amended): see PARA 1112 ante.

3 For these purposes, 'owner' (except for the purposes of head (2) in the text) means a person who is for the time being the estate owner in respect of the fee simple or is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired: *ibid* reg 6(4). For the purposes of head (2) in the text, however, reg 6 is substituted to read: 'For the purposes of this regulation, "owner" means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the building (whether in possession or reversion) and includes also a person holding, or entitled to the rents and profits of the land under, a lease or agreement the unexpired term whereof exceeds three years'.

Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1 para 2(1), (4).

4 For the meaning of 'building' see PARA 1073 note 8 ante.

5 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(1)(a). Certificates issued for the purposes of reg 6 must be in the forms set out in reg 6(6), Sch 2 Pt I (reg 6(6)); and the requisite notices for these purposes must be in the forms set out in reg 6(7), Sch 2 Pt II (reg 6(7)). For the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 3(1), (2), Sch 2 Pts I, II.

6 Ie where the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3 applies: see PARA 1111 the text and notes 24-27 ante. For the meaning of 'concurrent application' see PARA 1112 note 13 ante.

7 Ie in accordance with rules made under the Transport and Works Act 1992 s 6 (as amended): see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 307 et seq.

8 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(1)(aa) (added for these purposes by the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1 para 2(1), (3)). For the appropriate form of certificate in such a case see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 2 Pt I Certificate AA (added by the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3(2), Sch 1 para 2(1), (7)).

9 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(1)(b). As to the forms of notice and certificate see note 5 supra.

10 Ibid reg 6(1)(c). As to the forms of notice and certificate see note 5 supra.

11 Ibid reg 6(1)(d). As to the forms of notice and certificate see note 5 supra.

The provisions of reg 6 apply, with any necessary modifications, where an application under reg 3 (as amended) is referred, or is deemed to have been referred, to the Secretary of State or to the National Assembly for Wales under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 post) or in relation to an appeal to the Secretary of State or the Assembly under s 20 (as amended) (see PARA 1186 post) or s 21 (see PARAS 1187-1188 post), as they apply in relation to an application which falls to be determined by the local planning authority: Planning (Listed Buildings and Conservation Areas) Regulations 1990 reg 6(5). The requisite notices for these purposes in relation to appeals must, however, be in the forms set out in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(8), Sch 2 Pt III: reg 6(8). As to the Secretary of State see PARA 19 ante; as to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

In the application of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended), to the making and determination of applications for listed building consent made by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 84(2) (prospectively repealed; see PARA 1121 post), the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6 has effect: (1) in reg 6(1) with the insertion after the words 'accompanied by' of the words 'the documents described in Paragraph (1A) below or' (reg 15(1)(b)); and (2) with the addition of the following after reg 6(1): '(1A) Where an application for listed building consent is made in respect of Crown land by the appropriate authority or by a person authorised by that authority in writing, and where there is no interest in the land which is for the time being held otherwise than by or on behalf of the Crown, the application shall be accompanied by: (a) a statement that there is for the time being no private interest in the land; and (b) where the application is made by a person authorised by the appropriate authority, a copy of the relevant authorisation' (reg 15(1)(c)). As to the application of regs 6, 15(1) to conservation area consent see PARA 1176 post.

12 Ibid reg 6(2).

13 Ibid reg 6(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1114 Certificates as to applicant's status etc; contents

NOTE 5--In relation to England, certificates issued for the purposes of SI 1990/1519 reg 6 must now be in the form published by the Secretary of State: reg 6(6) (amended by SI 2008/551) (England)). SI 1990/1519 Sch 2 Pt 1 revoked: SI 1990/1519 (England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1115. Reference of certain applications to the Secretary of State or to the Assembly.

1115. Reference of certain applications to the Secretary of State or to the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications for listed building consent³ to be referred to him, or to the Assembly, instead of being dealt with by the local planning authority⁴; and any such direction may relate either to a particular application or to applications in respect of such buildings⁵ as may be specified in the direction⁶. An application in respect of which such a direction has effect must be referred to the Secretary of State or, as the case may be, to the Assembly accordingly⁷.

An application for listed building consent must, without any direction by the Secretary of State or the Assembly, be referred to the Secretary of State or to the Assembly instead of being dealt with by the local planning authority in any case where the consent is required in consequence of proposals included in an application for an order⁸ under the Transport and Works Act 1992⁹.

Before determining an application so referred to him or to the Assembly, the Secretary of State or the Assembly must, if either the applicant or the authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or, as the case may be, by the Assembly¹⁰.

The decision of the Secretary of State or the Assembly on any application so referred to him or to it is final¹¹.

An application for listed building consent made by a local planning authority is deemed to have been referred to the Secretary of State or the Assembly under the above provisions¹².

The Secretary of State, in exercise of the above powers, has directed that an application for listed building consent made by English Heritage¹³ in respect of the carrying out of works to any building which is in its ownership, guardianship or otherwise under its control, or of which it is the prospective purchaser, is to be referred to him¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'listed building consent' see PARA 1109 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(1). As to the application of s 12 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(a), Sch 3; and PARAS 1174 note 5, 1176 post.

As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) see PARA 1096 note 9 ante. For the purposes of s 12 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' generally see PARA 1073 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 12 (as amended) see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(2). In relation to England, planning policy guidance indicates that the above power has only been exercised in a small number of cases per year in recent years: see *PPG 15--Planning and the Historic Environment* paras 3.20-3.21. As to the status of such guidance see PARA 9 ante. As to whether the calling-in of planning applications etc is compatible with the right to a fair hearing by an independent and impartial tribunal see *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929; and PARA 483 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(3).

8 See an order under the Transport and Works Act 1992 s 1 or s 3: see RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARAS 302, 307 et seq; WATER AND WATERWAYS vol 101 (2009) PARA 801.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(3A) (added by the Transport and Works Act 1992 s 17).

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(4) (as modified: see note 4 supra). As to the procedure in Wales where such an application is decided on the basis of written representations see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended); and PARAS 628-630 ante. At the date at which this title states the law, no equivalent procedure had been prescribed for these purposes in relation to England.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 12(5) (as modified: see note 4 supra). As to the right to question the validity of a decision so made see PARAS 1088, 1090 ante.

12 See the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13; and PARA 1078 ante.

13 As to English Heritage see PARA 1058 ante.

14 See ODPM (ex DETR) Circular 01/2001, Culture, Media and Sport Circular 01/2001: *Arrangements for handling heritage applications--Notification and Directions by the Secretary of State* paras 35-36.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1116. Duty to notify the Secretary of State or the Assembly of applications.

1116. Duty to notify the Secretary of State or the Assembly of applications.

The provisions set out below may be disapplied in certain cases by a direction given under the relevant statutory powers¹. In cases where they are not so disapplied, if a local planning authority², other than a London borough³ council, to which application is made for listed building consent⁴, or a London borough council to which such an application is made by the Historic Buildings and Monuments Commission for England ('English Heritage')⁵, intends to grant listed building consent, it must first notify the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ of the application, giving particulars of the works for which the consent is required⁸. The Secretary of State or, as the case may be, the Assembly may within the period of 28 days beginning with the date of such a notification:

- 4153 (1) direct the reference of the application to him or to the Assembly⁹; or
- 4154 (2) give notice to the authority that he or, as the case may be, the Assembly requires further time in which to consider whether to require such a reference¹⁰.

The local planning authority may not grant listed building consent until:

- 4155 (a) the 28-day period¹¹ has expired without the Secretary of State or the Assembly directing the reference of the application to him or to it or giving the authority notice under head (2) above; or
- 4156 (b) the Secretary of State or the Assembly has notified the authority that he or the Assembly does not intend to require the reference of the application¹².

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15; and PARAS 1118-1119 post.

2 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13 see PARA 1096 note 9 ante. For the purposes of s 13, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and 1073 ante. As to district planning authorities see PARA 28 ante; and for the meaning of 'local planning authority' generally see PARA 1073 ante.

3 For the meaning of 'London borough' see PARA 1094 note 3 ante.

4 For the meaning of 'listed building consent' see PARA 1109 ante.

5 As to English Heritage see PARA 1058 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 13(1). As to rights of entry see PARAS 1083-1086 ante. Section 13 does not apply to applications for conservation area consent: see the Planning (Listed

Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13 see PARA 1098 note 7 ante.

9 le under ibid s 12 (as amended); see PARA 1115 ante.

10 Ibid s 13(2). As to the service of notices see PARA 1072 ante at head (6) in the text.

11 le the period mentioned in ibid s 13(2): see the text and notes 9-10 supra.

12 Ibid s 13(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1117. Duty of London borough councils to notify English Heritage.

1117. Duty of London borough councils to notify English Heritage.

The provisions set out below may be disapplied in certain cases by a direction given under the relevant statutory powers¹. In cases where they are not so disapplied, where an application for listed building consent² is made to a local planning authority³ which is a London borough⁴ council:

4157 (1) unless the authority has determined to refuse the application, it must notify the Historic Buildings and Monuments Commission for England ('English Heritage')⁵ of the application, giving particulars of the works for which the consent is required; and

4158 (2) the authority may not grant the consent unless it is authorised or directed⁶ to do so⁷.

On receipt of such a notification, and subject to the statutory conditions⁸, the Commission may give the local planning authority directions as to the granting of the application or authorise it to determine the application as it thinks fit⁹. If the Commission intends to exercise either of these powers it must notify the Secretary of State of the application, giving particulars of the works for which the consent is required¹⁰.

Alternatively, the Commission may direct the authority to refuse the application¹¹. Where it does so, the authority may, within 28 days from the date of the direction, notify the Secretary of State of the application, giving particulars of the works for which the consent is required¹².

The Secretary of State may, within the period of 28 days beginning with the date of such a notification¹³, either direct the reference of the application to him¹⁴ or give notice to the authority which notified him or, as the case may be, to the Commission that he requires further time in which to consider whether to require such a reference¹⁵. Where, after receiving such notification, the Secretary of State directs the reference of the application to him, before determining the application, he must, if either the applicant or the authority or, as the case may be, the Commission so desires, give each of them an opportunity of appearing before, and being heard by, a person appointed by him¹⁶.

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15; and PARA 1118 post.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 For the meaning of 'local planning authority' generally see PARA 1073 ante.

4 For the meaning of 'London borough' see PARA 1094 note 3 ante.

5 As to English Heritage see PARA 1058 ante.

6 *Ie* under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14(2)(a): see the text and notes 8-9 *infra*.

7 *Ibid* s 14(1). Section 14(1) does not, however, apply where the application for listed building consent is made by the Commission: s 14(9).

As to the Secretary of State's power to direct a district planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 14 see PARA 1098 note 7 ante; as to the service of notices see PARA 1072 ante at head (6) in the text; and as to rights of entry see PARAS 1083-1086 ante. As to the Secretary of State see PARA 19 ante.

In relation to applications for conservation area consent, s 14 is substituted: see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

8 *Ie* subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 14(6): see note 9 *infra*.

9 *Ibid* s 14(2)(a). The Commission may not, however, so direct the local planning authority to grant the application or authorise the authority to determine the application as it thinks fit unless (1) the 28-day period mentioned in s 14(5) (see the text and notes 14-15 *infra*) has expired without the Secretary of State directing the reference of the application to him or giving the authority notice under s 14(5)(b); or (2) he has notified the authority that he does not intend to require the reference of the application: s 14(6).

10 *Ibid* s 14(3).

11 *Ibid* s 14(2)(b).

12 *Ibid* s 14(4). Where the local planning authority notifies the Secretary of State as mentioned in s 14(4), it may not refuse the application where (1) a period of 28 days beginning with the date of the notification has expired without the Secretary of State directing the reference of the application to him or giving the authority notice under s 14(5)(b); or (2) he has notified the authority that he does not intend to require the reference of the application: s 14(7).

13 *Ie* a notification under *ibid* s 14(3) or (4): see the text and notes 10-12 *supra*.

14 *Ibid* s 14(5)(a).

15 *Ibid* s 14(5)(b).

16 *Ibid* s 14(8).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1118. Directions by the Secretary of State disapplying notification requirements in relation to England.

1118. Directions by the Secretary of State disapplying notification requirements in relation to England.

The Secretary of State¹ may direct that, in relation to England, in such descriptions of applications for listed building consent² as he may specify, the statutory provisions requiring the notification of applications for such consent to him or, as the case may be, to the Historic Buildings and Monuments Commission for England ('English Heritage')³ shall not apply⁴. Before giving such a direction in respect of any description of application for consent to the demolition of a building⁵ in England, the Secretary of State must consult⁶ the Commission⁷.

Where such a direction is in force in respect of any description of application, local planning authorities⁸ may determine applications of that description in any manner they think fit, without notifying the Secretary of State or, as the case may be, the Commission⁹. Where such a direction is in force, however, the Secretary of State may direct a local planning authority that the statutory provisions requiring the notification of applications for such consent to him or, as the case may be, to the Commission¹⁰ shall nevertheless apply:

- 4159 (1) to a particular application for listed building consent; or
- 4160 (2) to such descriptions of application for listed building consent as are specified in the direction;

and such a direction has effect in relation to any such application which has not been disposed of by the authority by its granting or refusing consent¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 I.e. the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13 (see PARA 1116 ante) and s 14 (see PARA 1117 ante). As to English Heritage see PARA 1058 ante.

4 Ibid s 15(1). Directions under s 15(1) may be given to local planning authorities generally or to particular authorities or descriptions of authority: s 15(6). As to the exercise in England and outside Greater London of the functions of a local planning authority under s 15 see PARA 1096 note 9 ante. For the purposes of s 15, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

As to the application of s 15 in relation to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

As to the Secretary of State's power to direct a district planning authority in England to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15 see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

5 For the meaning of 'demolition' para 1109 note 2 ante; and for the meaning of 'building' see PARA 1073 note 8 ante.

6 For the meaning of 'consult' para 2 note 1 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(3). See also note 4 supra.

8 See note 4 supra.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(2).

10 *Ibid* s 13 or, as the case may be, s 14.

11 *Ibid* s 15(4). As to the exercise of these powers by the Secretary of State see ODPM (ex DETR) Circular 01/2001, Culture, Media and Sport Circular 01/2001 *Arrangements for handling heritage applications-- Notification and Directions by the Secretary of State* paras 26-30.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1119. Directions by the Assembly disapplying notification requirements in relation to Wales.

1119. Directions by the Assembly disapplying notification requirements in relation to Wales.

The National Assembly for Wales¹ has, in relation to Wales, the like power to direct that, in such descriptions of applications for listed building consent² as it may specify, the statutory provisions requiring the notification of applications for such consent to the Assembly³ are not to apply, as the Secretary of State has in England outside Greater London⁴.

1 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 19 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 *Ibid* the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13: see PARA 1116 ante.

4 See *ibid* s 15(1)-(4), (6) (set out in PARA 1118 ante in relation to the Secretary of State). and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. As to the exercise of this power see (1) *Welsh Office Circular 1/98* (which now has effect as if given by the Assembly); (2) *Cadw Guidance on Applying for a Listed Building Consent Delegation* (2002) PARAS 1-12.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(A) Application for Consent; in general/1120. Secretary of State's or Assembly's general power to direct notification by local planning authorities.

1120. Secretary of State's or Assembly's general power to direct notification by local planning authorities.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may³ give directions to local planning authorities⁴ requiring them, in such cases or classes of case as may be specified in the directions, to notify him or the Assembly and such other persons as may be so specified of any application made to the authorities for listed building consent⁵ and of the decisions taken by the authorities on those applications⁶.

1 As to the Secretary of State see PARA 19.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 19 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 Ie without prejudice to the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 10-14 (as amended): see PARAS 1111-1117 ante.

4 As to the exercise of a local planning authority's functions under ibid s 15(5) (see the text and notes 1-3 supra, 5-6 infra) see PARA 1118 note 4 ante; as to the application of s 15(5) in relation to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post; as to the Secretary of State's power to direct a district planning authority in England to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 15 see PARA 1118 note 4 ante; and as to rights of entry see PARAS 1083-1086 ante.

5 Ibid s 15(5)(a). For the meaning of 'listed building consent' see PARA 1109 ante. Directions under s 15(5) may be given to authorities generally or to particular authorities or descriptions of authority: s 15(6). As to the service of notices see PARA 1072 ante at head (6) in the text.

6 Ibid s 15(5)(b). See also note 4 supra. As to the exercise of this power in relation to England see ODPM (ex DETR) Circular 01/2001, Culture, Media and Sport Circular 01/2001 *Arrangements for handling heritage applications--Notification and Directions by the Secretary of State* paras 15-25 (as amended by ODPM Circular 09/2005 *Arrangements For Handling Heritage Applications--Notification To National Amenity Societies Direction 2005*), which provide that notice of applications for listed building consent and of the decisions taken by local planning authorities on those applications must be given to the Ancient Monuments Society, the Council for British Archaeology, the Georgian Group, the Society for the Protection of Ancient Buildings, the Victorian Society and the Twentieth Century Society.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(B) Applications with respect to Crown Land/(a) Provisions before amendment by the 2004 Act/1121. Application for consent in anticipation of disposal of Crown land.

(B) APPLICATIONS WITH RESPECT TO CROWN LAND

(a) Provisions before amendment by the 2004 Act

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1121. Application for consent in anticipation of disposal of Crown land.

At the date at which this title states the law, the following provisions have effect for the purpose of enabling Crown land¹, or an interest in Crown land, to be disposed² of with the benefit of listed building consent³ or conservation area consent⁴.

Notwithstanding the interest of the Crown in the land in question, an application for any such consent may be made:

- 4161 (1) by the appropriate authority⁵; or
- 4162 (2) by any person authorised by that authority in writing;

and all the statutory provisions⁶ relating to the making and determination of any such application apply accordingly⁷ as if the land were not Crown land⁸.

Any listed building consent or conservation area consent so granted⁹ applies only:

- 4163 (a) to works carried out after the land in question has ceased to be Crown land; and
- 4164 (b) so long as that land continues to be Crown land, to works carried out by virtue of a private interest in the land¹⁰.

The Secretary of State¹¹ or, in relation to Wales, the National Assembly for Wales¹², may by regulations:

- 4165 (i) modify or exclude any of the statutory provisions referred to above¹³ and any other statutory provisions in their application to consents granted or made by virtue of these provisions;

- 4166 (ii) make provision for requiring a local planning authority¹⁴ to be notified of any disposal of, or interest in, any Crown land in respect of which such an application has been made; and
- 4167 (iii) make such other provision in relation to the making and determination of such applications as he thinks necessary or expedient¹⁵.

The above provisions are not, however, to be construed as affecting any right to apply for any listed building consent or conservation area consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land¹⁶.

As from a day to be appointed, however¹⁷, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹⁸, subject to transitional arrangements¹⁹; and the Crown may apply for listed building consent or conservation area consent regardless of whether a disposal of the land in question is anticipated²⁰.

1 The Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(5) (prospectively repealed) (meaning of 'Crown land': see PARA 1075 note 2 ante) applies for these purposes as it applies for the purposes of s 83 (prospectively repealed): s 84(7). For the meaning of 'land' see PARA 1077 note 1 ante. As to land held by the Corporate Officers of the Houses of Parliament see PARA 1075 notes 1, 2, 8, 11 ante.

2 For these purposes, references to the disposal of an interest in Crown land include references to the grant of any interest in such land: *ibid* s 84(6). For the meaning of 'disposal' see PARA 1075 note 18 ante.

A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for these purposes as having an interest in land; and references to the disposal or grant of an interest in Crown land and to a private interest in such land are to be construed accordingly: s 84(8). 'Private interest' means an interest which is neither a Crown interest nor a Duchy interest: s 84(6). Section 83(5) (prospectively repealed) (meanings of 'Crown interest' and 'Duchy interest' (see PARA 1075 notes 1-2 ante)) applies for these purposes as it applies for the purposes of s 83 (prospectively repealed): s 84(7). If a Corporate Officer or the Corporate Officers is or are entitled to occupy Crown land by virtue of a licence in writing, that licence is to be regarded as a Crown interest, rather than a private interest, for these purposes: see PARA 1075 note 8 ante.

3 For the meaning of 'listed building consent' see PARA 1109 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 84(1). For the meaning of 'conservation area consent' see PARA 1174 post. For the purposes of s 84, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

5 *Ibid* s 83(7) (prospectively repealed) (meaning of 'the appropriate authority': see PARA 1075 note 11 ante) applies for these purposes as it applies for the purposes of s 83 (prospectively repealed): s 84(7).

6 For these purposes, 'statutory provisions' means provisions contained in or having effect under any enactment (*ibid* s 84(6)); and, except in so far as the context otherwise requires, 'enactment' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 11 ante) (Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2)).

7 *Ie* subject to *ibid* s 84(3), (4): see the text and notes 11-15 *infra*.

8 *Ibid* s 84(2). The appropriate authority must, as soon as may be, after disposing of, or disposing of an interest in, any Crown land in respect of which an application has been made by virtue of s 84(2), give notice in writing to the local planning authority of such disposal: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, regs 2, 15(2).

9 *Ie* by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 84.

10 *Ibid* s 84(3).

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 84, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation

areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

13 le any of the statutory provisions referred to in *ibid* s 84(2): see the text and notes 6-8 *supra*.

14 For the meaning of 'local planning authority' see PARA 1073 ante.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 84(4). In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly (see note 12 *supra*), the Secretary of State made the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 15: see note 8 *supra*; and PARAS 1112 note 10, 1114 note 11 ante.

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 84(5).

17 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

18 See *ibid* ss 79(4), 120, Sch 3 para 18(1), Sch 9. At the date at which this title states the law, those repeals were not in force.

19 The repeal of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 84 does not affect any requirement made in pursuance of regulations made under s 84(4)(b): Planning and Compulsory Purchase Act 2004 Sch 3 para 18(2).

20 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82F (as prospectively added); and PARA 1122 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1121 Application for consent in anticipation of disposal of Crown land

TEXT AND NOTES 17, 18--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(B) Applications with respect to Crown Land/(b) Provisions introduced by the 2004 Act/1122. Applications for consent by the Crown; in general.

(b) Provisions introduced by the 2004 Act

1122. Applications for consent by the Crown; in general.

Partly as from a day to be appointed¹, the following provisions apply to an application for listed building consent² or conservation area consent³ made by or on behalf of the Crown⁴. The Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ may by regulations⁷ modify or exclude any statutory provision⁸ relating to the making and determination of such applications⁹.

- 1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 4 infra.
- 2 For the meaning of 'listed building consent' see PARA 1109 ante.
- 3 For the meaning of 'conservation area consent' see PARA 1174 post.
- 4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82F(1) (s 82F added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 11, partly as from a day to be appointed: see note 1 supra). At the date at which this title states the law, s 79(4), Sch 3 para 11 were in force for limited purposes only: see PARA 13 note 8 ante.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82F (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 7 As to the making of regulations generally see PARA 1074 ante.
- 8 For these purposes, a statutory provision is a provision contained in or having effect under any enactment: Planning (Listed Buildings and Conservation Areas) Act 1990 s 82F(3) (as added: see note 4 supra). For the meaning of 'enactment' see PARA 1121 note 6 ante.
- 9 Ibid s 82F(2) (as added: see note 4 supra). At the date at which this title states the law, no such regulations had been made.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1122-1124 Provisions introduced by the 2004 Act

These provisions now in force for remaining purposes: SI 2006/1281.

1122 Applications for consent by the Crown; in general

NOTE 4--The National Assembly for Wales Commission is to be treated as a government department for the purposes of the 1990 Act s 82C: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 5(1), (2)(d).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(B) Applications with respect to Crown Land/(b) Provisions introduced by the 2004 Act/1123. Urgent works relating to Crown land; application for consent.

1123. Urgent works relating to Crown land; application for consent.

Partly as from a day to be appointed¹, the following provisions apply to any works proposed to be executed in connection with any building² which is on Crown land³ if the appropriate authority⁴ certifies:

- 4168 (1) that the works are of national importance; and
- 4169 (2) that it is necessary that the works are carried out as a matter of urgency⁵.

The appropriate authority may, instead of making an application for consent to the local planning authority⁶ in accordance with the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990⁷, make an application for consent to the Secretary of State⁸ or, in relation to Wales, to the National Assembly for Wales⁹ under the provisions set out below¹⁰. If the appropriate authority proposes to make the application to the Secretary of State or the Assembly it must publish in one or more newspapers circulating in the locality of the building a notice describing the proposed works and stating that the authority proposes to make the application to the Secretary of State or the Assembly¹¹. For the purposes of such an application the appropriate authority must provide to the Secretary of State or the Assembly a statement of the authority's grounds for making the application¹².

If the appropriate authority makes such an application, the Secretary of State or the Assembly may require the authority to provide him or it with such further information as he or the Assembly thinks necessary to enable him or it to determine the application¹³. As soon as practicable after he or it is provided with any document or other matter¹⁴, the Secretary of State or the Assembly must make a copy of the document or other matter available for inspection by the public in the locality of the proposed development¹⁵, except to the extent that the document or other matter is subject to a direction¹⁶ relating to national security¹⁷. The Secretary of State or the Assembly must, in accordance with such requirements as may be prescribed¹⁸, publish notice of the application and of the fact that such documents and other material are available for inspection¹⁹. He or it must consult:

- 4170 (a) the local planning authority for the area to which the proposed development relates; and
- 4171 (b) such other persons as may be prescribed,

about the application²⁰.

Before determining an application so referred to him or to the Assembly, the Secretary of State or the Assembly must, if either the applicant or the authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or, as the case may be, by the Assembly²¹.

The decision of the Secretary of State or the Assembly on any application so referred to him or to it is final²². Its validity may, however, be challenged on an application to the High Court²³ under the relevant statutory provisions²⁴.

1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 5 infra.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 For the meaning of 'Crown land' for these purposes see PARA 1076 note 12 ante.

4 For the meaning of 'the appropriate authority' for these purposes see PARA 1076 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82B(1) (s 82B(1)-(11) added by the Planning and Compulsory Purchase Act 2004 s 83(1), partly as from a day to be appointed (see note 1 supra); at the date at which this title states the law, s 83(1) was in force for limited purposes only: see PARA 13 note 8 ante).

6 For the meaning of 'local planning authority' see PARA 1073 ante.

7 As to applications for listed building consent by the Crown see PARA 1122 ante.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82B (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82B(2) (as added: see note 5 supra).

11 Ibid s 82B(3) (as added: see note 5 supra).

12 Ibid s 82B(4) (as added: see note 5 supra).

13 Ibid s 82B(5), (6) (as added: see note 5 supra).

14 Ie in pursuance of ibid s 82B(4) (as added) (see the text to note 12 supra) or s 82B(6) (as added) (see the text to note 13 supra).

15 Ibid s 82B(5), (7) (as added: see note 5 supra). For the meaning of 'development' see PARA 217 ante (definition applied by virtue of s 91(2)).

16 Ie a direction under ibid Sch 3 para 6(6): see PARA 1204 post.

17 Ibid s 82B(10).

18 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

19 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82B(5), (8) (as added: see note 5 supra).

20 Ibid s 82B(9) (as added: see note 5 supra).

21 Ibid s 12(4) (applied by s 82B(11) (as added: see note 5 supra)).

22 Ibid s 12(5) (applied by s 82B(11) (as added: see note 5 supra)).

23 Ie under ibid s 63 (as amended): see PARA 1090 ante.

24 See ibid s 62(2)(d) (as prospectively added); and PARA 1088 ante. As to the availability of judicial review see PARA 1209 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1122-1124 Provisions introduced by the 2004 Act

These provisions now in force for remaining purposes: SI 2006/1281.

1123 Urgent works relating to Crown land; application for consent

NOTE 10--Where an application under the 1990 Act s 82B(2) is made to the Secretary of State, or, in relation to Wales, to the National Assembly for Wales, in respect of any building, the Secretary of State or National Assembly must (1) publish in a local newspaper circulating in the locality in which the building is situated a notice indicating the nature of the works which are the subject of the application and (a) naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice; and (b) stating the address of the website where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public during the period of 21 days beginning with the date of publication of the notice, and the place on the website where such documents may be accessed, and how they may be accessed; and (2) for not less than seven days display on or near the said building a notice containing the same particulars as are required to be contained in the notice to be published in accordance with head (1): Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1283, reg 5B(1) (reg 5B added by SI 2006/1283 (England), SI 2006/1388 (Wales)). SI 1990/1519 reg 5B(1) does not apply to any application for listed building consent to carry out works affecting only the interior of a building which, when last notified to the authority by the Secretary of State or National Assembly as a building of special architectural or historic interest, was classified as a Grade II (unstarred) listed building: reg 5B(2) (reg 5B as so added).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(B) Applications with respect to Crown Land/(b) Provisions introduced by the 2004 Act/1124. Transitional provisions.

1124. Transitional provisions.

Schedule 4 to Planning and Compulsory Purchase Act 2004 makes transitional provision with regard to the application of planning legislation to the Crown. Part 2 of that Schedule¹ applies to works if:

- 4172 (1) they are works for which before the relevant date² no listed building consent³ is required; and
- 4173 (2) before the relevant date proposed works notice⁴ had been given to the local planning authority⁵.

If before the relevant date in pursuance of the arrangements made in relation to the development⁶ either the local planning authority or the Secretary of State⁷ has given notice to the developer that it or he, as the case may be, finds the proposed works acceptable, the notice must be treated as if it is listed building consent granted under the Planning (Listed Buildings and Conservation Areas) Act 1990⁸. If the notice is subject to conditions, the conditions have effect as if they are conditions attached to the consent⁹.

If before the relevant date the local planning authority has in pursuance of the arrangements kept a register of proposed works notices, the register must be treated as if it is part of the register kept by the authority¹⁰ in pursuance of that 1990 Act¹¹.

If either:

- 4174 (a) before the relevant date the local planning authority has notified the developer in pursuance of the arrangements that the authority does not find the works acceptable, and the matter has been referred to but not decided by the Secretary of State; or
- 4175 (b) before the relevant date the local planning authority has notified the developer in pursuance of the arrangements that it finds the works acceptable subject to conditions, and the matter has been referred to but not decided by the Secretary of State,

then the Secretary of State must deal with the proposal as if it is an appeal¹² by an applicant for listed building consent¹³.

If before the relevant date proposed works notice has been given, but the local planning authority has not given notice to the developer as mentioned above¹⁴, then the Planning (Listed Buildings and Conservation Areas) Act 1990 applies as if the proposal is an application for listed building consent duly made under that Act¹⁵.

At the date at which this title states the law, however, these transitional provisions were not in force¹⁶.

1 I.e. the Planning and Compulsory Purchase Act 2004 s 89, Sch 4 Pt 2 (paras 7-12): see the text and notes 2-15 *infra*.

2 For these purposes, the relevant date is the date of commencement of *ibid* s 79(1) (see PARA 13 *ante*): Sch 4 para 8(a). At the date at which this title states the law, s 79 was in force for limited purposes only (see PARA 13 note 8 *ante*) and s 89, Sch 4 were not in force.

3 For the meaning of 'listed building consent' see PARA 1109 *ante*.

4 For these purposes, 'proposed works notice' is notice of a proposal for works given by the person proposing to carry out the works ('the developer') in pursuance of arrangements made by the Secretary of State in relation to development by or on behalf of the Crown; and the developer is the Crown or a person acting on behalf of the Crown: Planning and Compulsory Purchase Act 2004 Sch 4 para 8(b), (c). For the meaning of 'development' see PARA 217 *ante* (definition applied by virtue of s 91(2)); and as to the Secretary of State see PARA 19 *ante*.

5 *Ibid* Sch 4 para 7. As to local planning authorities see PARAS 28 *et seq*, 1073 *ante*.

6 I.e. the arrangements mentioned in note 4 *supra*.

7 The function described in the text does not appear to be devolved to the National Assembly for Wales. As to the Assembly see PARA 20 *ante*.

8 Planning and Compulsory Purchase Act 2004 Sch 4 para 9(1), (2). As to the granting of listed building consent see PARA 1127 *et seq post*.

9 *Ibid* Sch 4 para 9(3). As to the granting of consent subject to conditions see PARA 1130 *post*.

10 At the date at which this title states the law, there is no statutory requirement to keep such a register under the Planning (Listed Buildings and Conservation Areas) Act 1990. The wording in the text mirrors that in the Planning and Compulsory Purchase Act 2004 Sch 4 para 4(1), (2) (transitional provision with regard to proposed development notices: see PARA 457 *ante*), which refers to the register kept as if in pursuance of the Town and Country Planning Act 1990 s 69 (as substituted: see PARA 466 *ante*).

11 Planning and Compulsory Purchase Act 2004 Sch 4 para 10(1), (2).

12 I.e. an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 *post*.

13 Planning and Compulsory Purchase Act 2004 Sch 4 para 11(1)-(3).

14 le as mentioned in ibid Sch 4 para 9 (see the text to notes 6-9 supra) or Sch 4 para 11 (see the text to notes 12-13 supra).

15 Ibid Sch 4 para 12(1), (2).

16 See note 2 supra.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1122-1124 Provisions introduced by the 2004 Act

These provisions now in force for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(C) Power to Decline to Determine Application/1125. Power to decline to determine subsequent application.

(C) POWER TO DECLINE TO DETERMINE APPLICATION

1125. Power to decline to determine subsequent application.

As from 24 August 2005 in relation to England¹, and as from a day to be appointed in relation to Wales², and in relation only to applications received by the authority after that day³, a local planning authority⁴ may decline to determine an application for listed building consent⁵ if (1) one or more of the conditions set out below is satisfied; and (2) the authority thinks there has been no significant change in any material considerations⁶ since the relevant event⁷. The statutory conditions are:

- 4176 (a) that in the period of two years ending with the date on which the application for listed building consent is received the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ has refused a similar application¹⁰ referred¹¹ to him or to the Assembly¹²;
- 4177 (b) that in that period the Secretary of State or, as the case may be, the Assembly has dismissed an appeal against the refusal of a similar application¹³, or an appeal against the failure to give notice of a decision or of a referral¹⁴ in respect of a similar application¹⁵;
- 4178 (c) that in that period the local planning authority has refused more than one similar application¹⁶ and there has been no appeal to the Secretary of State or to the Assembly against any such refusal¹⁷.

¹ See the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 2; and PARA 4 note 8 ante.

2 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed in relation to Wales.

3 See the Planning and Compulsory Purchase Act 2004 s 43(5).

4 For the meaning of 'local planning authority' see PARA 1073 ante.

5 le an application for a 'relevant consent': Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A(1) (s 81A added by the Planning and Compulsory Purchase Act 2004 s 43(3), partly as from a day to be appointed in relation to Wales: see note 2 supra). 'Relevant consent' means (1) listed building consent; and (2) conservation area consent: Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A(5) (as so added). For the meaning of 'listed building consent' see PARA 1109 ante; and for the meaning of 'conservation area consent' see PARA 1174 post.

6 As to the meaning of 'material considerations' see PARAS 484 note 4, 485 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A(1) (as added: see note 4 supra). The relevant event is: (1) for the purposes of s 81A(2) and (4) (as so added) (see heads (a), (c) in the text) the refusal of the similar application; and (2) for the purposes of s 81A(3) (as so added) (see head (b) in the text), the dismissal of the appeal: s 81A(6) (as so added).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 An application for relevant consent is similar to another application if (and only if) the local planning authority thinks that the building and works to which the applications relate are the same or substantially the same: Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A(7) (as added: see note 4 supra). For the meaning of 'building' see PARA 1073 note 8 ante.

11 le referred under *ibid* s 12 (as amended): see PARA 1115 ante.

12 *Ibid* s 81A(2) (as added: see note 4 supra).

13 *Ibid* s 81A(3)(a) (as added: see note 4 supra)).

14 le an appeal under *ibid* s 20(2) (as amended): see PARA 1186 post.

15 *Ibid* s 81A(3)(b) (as added: see note 4 supra).

16 *Ibid* s 81A(4)(a) (as added: see note 4 supra).

17 *Ibid* s 81A(4)(b) (as added: see note 4 supra)). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A (as so added) to applications for conservation area consent see s 81A(8) (as so added); and PARA 1177 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1125 Power to decline to determine subsequent application

TEXT AND NOTE 17--Planning (Listed Buildings and Conservation Areas) Act 1990 s 81A(4)
(b) amended: Planning Act 2008 Sch 7 paras 4, 5 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(C) Power to Decline to Determine Application/1126. Power to decline to determine overlapping application.

1126. Power to decline to determine overlapping application.

As from a day to be appointed¹, and in relation only to applications received by the authority after that day², a local planning authority³ may decline to determine an application for listed building consent⁴ which is made at a time when any of the following conditions applies in relation to a similar application⁵. Those conditions are:

- 4179 (1) that a similar application is under consideration by the local planning authority and the determination period⁶ for that application has not expired⁷;
- 4180 (2) that a similar application is under consideration by the Secretary of State⁸ or, in relation to Wales, by the National Assembly for Wales⁹ in pursuance of the provisions for referring an application to him or to the Assembly¹⁰ or on an appeal under certain statutory provisions¹¹ and the Secretary of State or the Assembly has not issued his or its decision¹²;
- 4181 (3) that a similar application:
 - 320 86. (a) has been granted by the local planning authority;
 - 87. (b) has been refused by the authority; or
 - 88. (c) has not been determined by the authority within the determination period,
 - 321 4182 and the time within which an appeal could be made to the Secretary of State or, as the case may be, to the Assembly¹³ has not expired¹⁴.

1 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

2 See the Planning and Compulsory Purchase Act 2004 s 43(5).

3 For the meaning of 'local planning authority' see PARA 1073 ante.

4 le an application for a 'relevant consent': Planning (Listed Buildings and Conservation Areas) Act 1990 s 81B(1) (s 81B added by the Planning and Compulsory Purchase Act 2004 s 43(3), as from a day to be appointed: see note 1 supra). 'Relevant consent' is: (1) listed building consent; or (2) conservation area consent: Planning (Listed Buildings and Conservation Areas) Act 1990 s 81B(5) (as so added). For the meaning of 'listed building consent' see PARA 1109 ante; and for the meaning of 'conservation area consent' see PARA 1174 post.

5 Ibid s 81B(1) (as added: see note 4 supra). An application for relevant consent is similar to another application if (and only if) the local planning authority thinks that the building and works to which the applications relate are the same or substantially the same: s 81B(6) (as so added). For the meaning of 'building' see PARA 1073 note 8 ante.

6 The determination period is: (1) the period prescribed for the determination of the application; or (2) such longer period as the applicant and the authority have agreed for the determination of the application: ibid s 81B(7) (as added: see note 4 supra).

7 Ibid s 81B(2) (as added: see note 4 supra).

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 81B (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 Ie in pursuance of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended): see PARA 1115 ante.

11 Ie under ibid s 20 (as amended): see PARA 1186 post.

12 Ibid s 81A(3) (as added: see note 4 supra).

13 Ie an appeal under ibid s 20 (as amended): see PARA 1186 post.

14 Ibid s 81B(4) (as added: see note 4 supra). As to the application of s 81B (as so added) to applications for conservation area consent see s 81B(8) (as so added); and PARA 1177 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1126 Power to decline to determine overlapping application

TEXT AND NOTES 1-5--Planning (Listed Buildings and Conservation Areas) Act 1990 s 81B(1) amended, s 81B(4A) added: Planning Act 2008 Sch 7 para 6 (in force in relation to England).

TEXT AND NOTE 1--Day appointed in relation to England is 6 April 2009: SI 2009/384.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(D) Decision on Application; in general/1127. Time for making decision.

(D) DECISION ON APPLICATION; IN GENERAL

1127. Time for making decision.

Where a valid application for listed building consent¹ has been received by a local planning authority², the time within which the authority must give notice to an applicant of its decision or of the reference of an application to the Secretary of State³ or, as the case may be, to the National Assembly for Wales⁴, is a period of eight weeks from the date when the form of application and the certificate which must accompany the application⁵ were lodged with the local planning authority or, except where the applicant has already given notice of appeal to

the Secretary of State or to the Assembly, such other period as may at any time be agreed upon in writing between the applicant and the local planning authority⁶.

1 Ie under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3 (as amended): see PARA 1112 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

2 For the meaning of 'local planning authority' see PARA 1073 ante. See also PARA 1128 note 1 post.

3 As to the Secretary of State see PARA 19 ante; and as to the reference of applications to him see PARA 1115 ante.

4 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante; and as to the reference of applications to the Assembly see PARA 1115 ante.

5 Ie the certificate under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6: see PARA 1114 ante.

6 Ibid reg 3(4). As to the application of reg 3 to conservation area consent see PARA 1176 post. Where an electronic communication is used for the purpose of making an application under reg 3, the reference in reg 3(4) to the date when the form and certificate were lodged with the local planning authority is to be construed as a reference to the date when the form and certificate are transmitted to the authority by means of the electronic communication; but where the communication is received outside the authority's business hours, it is to be taken to have been received on the authority's next working day: reg 8A(1)(a), (3) (added in relation to England by SI 2003/656; a corresponding amendment has been made in relation to Wales by SI 2004/3156). As to the use of electronic communications, and for the meaning of 'working day' for these purposes, see PARA 1072 note 7 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(D) Decision on Application; in general/1128. Grant or refusal of application.

1128. Grant or refusal of application.

The local planning authority¹ or, as the case may be, the Secretary of State² (or, in relation to Wales, the National Assembly for Wales³) may⁴ grant or refuse an application for listed building consent⁵ and, if it or he grants consent, may grant it subject to conditions⁶. In considering whether to grant listed building consent for any works, the local planning authority or the Secretary of State or the Assembly must have special regard to the desirability of preserving the building⁷ or its setting or any features of special architectural or historic interest which it possesses⁸.

Every such notice of decision or reference to the Secretary of State or to the Assembly must be in writing⁹. Where the local planning authority decides to grant listed building consent subject to conditions or to refuse it, the notice must state the reasons for the decision (in England, the full reasons)¹⁰ and must be accompanied by a notification in the prescribed terms¹¹, or substantially in those terms¹². In England, where the authority decides to grant listed building consent without conditions, the notice must state a summary of the reasons for the decision¹³.

Unless it otherwise provides, any listed building consent enures for the benefit of the building and of all persons for the time being interested in it¹⁴.

1 For the meaning of 'local planning authority' see PARA 1073 ante. As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 16 (see the text and notes 2-11 infra) see PARA 1096 note 9 ante. For the purposes of s 16, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended) and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 16, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 The subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 1-68 (as amended): see PARA 1092 et seq ante, PARA 1129 et seq post.

5 For the meaning of 'listed building consent' see PARA 1109 ante.

6 Ibid s 16(1). As to the conditions which may be so imposed see PARA 1130 post; as to appeals see PARA 1186 et seq post; and as to rights of entry see PARAS 1083-1086 ante. As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 16 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post. Listed building consent may be given for the relocation of a statue: see *Judge v First Secretary of State* [2005] EWHC 887 (Admin), [2005] All ER (D) 409 (Apr).

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 16 see PARA 1098 note 7 ante.

7 For the meaning of 'building' see PARA 1073 note 8 ante. Preservation of the building or its setting is the paramount consideration: *Bristol Meeting Room Trust Trustees v Secretary of State for the Environment* [1991] JPL 152; and see *PPG 15--Planning and the Historic Environment* para 3.3 (general presumption in favour of the preservation of listed buildings, except where a convincing case can be made out for alteration or demolition); *Planning Policy Wales* (National Assembly for Wales, 2002) PARA 6.4.6. However, even if departmental policy has laid down a general rule admitting of no exceptions to the effect that a listed building can never be demolished to make way for other development if it is still capable of economic use, it is nevertheless open to the Secretary of State to make an exception to that general rule where special circumstances justify such an exception: *Save Britain's Heritage v Secretary of State for the Environment* [1991] 2 All ER 10; sub nom *Save Britain's Heritage v Number 1 Poultry Ltd* [1991] 1 WLR 153, HL.

As to the general criteria to be applied see *PPG 15--Planning and the Historic Environment* para 3; and as to the status of such guidance see PARA 9 ante. See also *R (on the application of Sullivan) v Warwick District Council* [2003] EWHC 606 (Admin), [2003] All ER (D) 236 (May), (2003) Times, 12 June (the use of the words 'where works of alteration involve the demolition of a significant part of the listed building' in *PPG 15--Planning and the Historic Environment* para 3.15A indicates a duty to have regard to the quality of the part of the building to be demolished and its effect on the character of the building, which is to be distinguished from the volume and proportion of the part of the building to be demolished). The preservation of façades alone, and the gutting and reconstruction of interiors, is not normally an acceptable approach to the re-use of listed buildings: it can destroy much of a building's special interest and create problems for the long-term stability of the structure: *PPG 15--Planning and the Historic Environment* para 3.15. Cf the observations of Lord Hope of Craighead in *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481 at 498, [1997] 1 WLR 168 at 185, HL ('it is now commonplace, especially in towns and cities, where the exterior of a building contributes to the architectural or historic interest of a group of buildings such as buildings in a terrace, for the façade to be left standing while

clearing the remainder of the site for redevelopment. ... It seems to me to be plain that the original proposal [in that case] was for the demolition of the listed building for all practical purposes, so that a scheme of redevelopment could be carried out. It went far beyond what could reasonably be described as its alteration, as the works were so extensive and so much was to be pulled down and taken away, although the façade and the chimney breasts and chimney stacks were to be retained. The question is ultimately one of fact ...').

The demolition of any Grade I or Grade II (starred) building should be wholly exceptional and there are many outstanding buildings for which it is in practice almost inconceivable that consent for demolition would ever be granted: see *PPG 15--Planning and the Historic Environment* para 3.17.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 16(2). Section 16(2) does not apply in relation to conservation area consent: see *PARAS 1174* note 5, 1176 post.

9 See the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(5) (substituted in relation to England by SI 2003/2048; applying in relation to Wales as originally enacted).

10 See note 9 *supra*.

11 See the terms set out in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(5), Sch 1 Pt II (as amended). For the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 2(2), Sch 1 Pt II.

12 See note 9 *supra*.

13 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(5)(b) (as substituted: see note 9 *supra*).

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 16(3). Where appropriate a condition limiting the benefit of the consent to a specified person or specified persons may be imposed: see *PPG 15--Planning and the Historic Environment* Annex B para B9. As to the status of this guidance see *PARA 9* ante; and as to the power to impose conditions see *PARA 1130* post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA 196A*.

1128 Grant or refusal of application

TEXT AND NOTES 9-13--SI 1990/1519 reg 3 substituted: SI 2008/551 (England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(D) Decision on Application; in general/1129. Duration of listed building consent.

1129. Duration of listed building consent.

Every listed building consent¹ must be granted subject to the condition that the works to which it relates must be begun not later than the expiration of:

- 4183 (1) the specified number of years² beginning with the date on which the consent is granted³; or
- 4184 (2) such other period whether longer or shorter, beginning with that date, as the authority granting the consent may direct, being a period which the authority considers appropriate having regard to any material considerations⁴.

If, however, listed building consent is granted without such a condition⁵, the consent is deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of the specified number of years⁶ beginning with the date of the grant⁷.

Subject to transitional provisions⁸, and partly as from a day to be appointed in relation to Wales⁹, if any proceedings are begun to challenge the validity of a grant of listed building consent or of a deemed grant of listed building consent¹⁰, the period before the end of which the works to which the consent relates are required to be begun in pursuance of the above provisions must be taken to be extended by one year¹¹; and nothing in the above provisions prevents the works being begun from the time the consent is granted¹².

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 I.e. three years: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(1)(a) (s 18(1)(a), (2) amended by the Planning and Compulsory Purchase Act 2004 s 51(4)(a), partly, in relation to Wales as from a day to be appointed under s 121). At the date at which this title states the law, s 51 was in force in relation to England only (see PARA 4 note 8 ante); in relation to Wales, and in relation to applications which were received by the local planning authority in England before 24 August 2005, the specified period was five years: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(1)(a) (as originally enacted); the Planning and Compulsory Purchase Act 2004 s 51(6); and the Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 2.

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(1)(a) (as amended: see note 2 supra). Nothing in s 18 (as amended) applies to any consent to the retention of works granted under s 8(3) (see PARA 1109 ante): s 18(3). As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18 (as amended) see PARA 1096 note 9 ante. For the purposes of s 18 (as so amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

As to the application of s 18 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18 (as amended) see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

4 Ibid s 18(1)(b). As to what are material considerations see PARAS 484 note 4, 485 ante.

5 I.e. the condition required by ibid s 18(1) (as amended): see heads (1)-(2) in the text.

6 I.e. three years: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(2) (as amended: see note 2 supra). For transitional purposes, however, and, at the date at which this title states the law, in relation to Wales, that period is five years: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(2) (as originally enacted); the Planning and Compulsory Purchase Act 2004 s 51(6).

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(2) (as amended, partly as from a day to be appointed in relation to Wales: see note 2 supra).

8 See the Planning and Compulsory Purchase Act 2004 s 51(6); and note 2 supra.

9 I.e. as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed in relation to Wales.

10 I.e. a grant on an application received after the appointed day: see ibid s 51(6).

- 11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(2A), (2B) (s 18(2A)-(2C) added by the Planning and Compulsory Purchase Act 2004 s 51(4)(b), partly as from a day to be appointed: see note 9 supra).
- 12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 18(2C) (as added: see note 12 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(E) Grant of Consent subject to Conditions/1130. Power to impose conditions on grant of listed building consent.

(E) GRANT OF CONSENT SUBJECT TO CONDITIONS

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1130. Power to impose conditions on grant of listed building consent.

The conditions subject to which listed building consent¹ may be granted may include² conditions with respect to:

- 4185 (1) the preservation of particular features of the building³, either as part of it or after severance from it;
- 4186 (2) the making good, after the works are completed, of any damage caused to the building by the works;
- 4187 (3) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions⁴.

A condition may also be imposed requiring specific details of the works, whether or not set out in the application, to be approved subsequently by the local planning authority⁵ or, in the case of consent granted either by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷, specifying whether such details are to be approved by the local planning authority or by him or, as the case may be, by the Assembly⁸.

Listed building consent for the demolition⁹ of a building may be granted subject to a condition that the building shall not be demolished before:

- 4188 (a) a contract for the carrying out of works of redevelopment of the site has been made; and
- 4189 (b) planning permission¹⁰ has been granted for the redevelopment for which the contract provides¹¹.

¹ For the meaning of 'listed building consent' see PARA 1109 ante.

2 le without prejudice to the generality of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 16(1): see PARA 1127 ante.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 17(1). As to the application of s 17 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 17 see s 81, Sch 4 paras 1(2)(b), 7 (as respectively added and modified); and PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

5 As to the exercise in England and outside Greater London of the functions of a local planning authority under ibid s 17 see Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the purposes of s 17, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante; and for the meaning of 'local planning authority' see PARA 1073 ante.

As to the imposition of a condition limiting the benefit of the consent to a specified person or specified persons see PARA 1128 note 14 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 17, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 17(2).

9 For the meaning of 'demolition' para 1109 note 2 ante.

10 For the meaning of 'planning permission' see PARA 1095 note 1 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 17(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/(E) Grant of Consent subject to Conditions/1131. Application for variation or discharge of conditions.

1131. Application for variation or discharge of conditions.

Any person interested in a listed building¹ with respect to which listed building consent² has been granted subject to conditions³ may apply to the local planning authority⁴ for the variation or discharge of the conditions⁵.

As respects a building⁶ situated in an area of a National Park in England⁷ outside a metropolitan county⁸, however, such an application must be made to the council of the district⁹ which must send it on, together with all accompanying documents¹⁰, to the body authorised to exercise the functions¹¹ relating to such applications¹². As respects a building situated in an area of a National Park within a metropolitan county, such an application must be made to the joint planning board¹³.

The application must be made on a form issued by the local planning authority and obtainable from that authority and must¹⁴ be lodged with the local planning authority together with two further copies of the form, plans and drawings¹⁵. The application must indicate what variation or discharge of conditions is applied for¹⁶. The same prescribed requirements as to publicity¹⁷ apply as apply to an application for listed building consent¹⁸.

On such an application the local planning authority or, as the case may be, the Secretary of State¹⁹ or, in relation to Wales, the National Assembly for Wales²⁰ may vary or discharge the conditions attached to the consent and may add new conditions consequential upon the variation or discharge, as it or he thinks fit²¹. Subject to transitional provisions²², however, and partly as from a day to be appointed in relation to Wales²³, a variation or discharge of conditions under these provisions must not:

- 4190 (1) vary a condition subject to which a consent was granted by extending the time within which the works must be started;
- 4191 (2) discharge such a condition²⁴.

1 For the meaning of 'listed building' see PARA 1091 ante.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 As to the power to impose conditions on the grant of listed building consent see PARA 1130 ante.

4 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 19 (as amended) (see the text and notes 5-24 infra) see PARA 1096 note 9 ante. For the purposes of s 19 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante; and for the meaning of 'local planning authority' see PARA 1073 ante.

5 Ibid s 19(1). Sections 10-15 (as amended) (see PARA 1111 et seq ante) apply to such an application as they apply to an application for listed building consent: s 19(3).

As to the application of s 19 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1176 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 19 (as amended) see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

6 For the meaning of 'building' see PARA 1073 note 8 ante.

7 As to the National Parks see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 636 et seq.

8 As to the metropolitan countries see PARA 28 ante.

9 As to district councils see PARA 28 ante.

10 Ie all accompanying documents required by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519 (as amended).

11 le the council of the county, joint planning board or special planning board: *ibid* reg 7(1) (amended by SI 1996/525). For the meaning of 'functions' see PARA 1073 note 3 ante; and as to joint planning boards and special planning boards see PARA 30 ante.

12 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 7(1) (as amended: see note 11 supra).

13 *Ibid* reg 7(2). As to the application of reg 7 (as amended) to conservation area consent see PARA 1176 post.

14 le subject to *ibid* reg 7 (as amended): see the text and notes 6-13 supra.

15 *Ibid* reg 4(1). As to the application of reg 4 to conservation area consent see PARA 1176 post. Where an electronic communication is used for the purpose of making an application under reg 4, reg 4(1) applies as if for the words 'two further copies of the form,' there were substituted the words 'any related': reg 8A(1)(b), (2) (added by SI 2003/965; a corresponding amendment has been made in relation to Wales by SI 2004/3156). As to the use of electronic communications see PARA 1072 note 7 ante. The Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(2)-(5) (as amended) (see PARAS 1112, 1127 ante) has effect in relation to an application under reg 4 as it has effect in relation to an application under reg 3(1) (see PARA 1112 ante), except that for the reference in reg 3(5)(a) (as substituted in relation to England) or in reg 3(5) (as originally enacted and as applying in relation to Wales) (amended in relation to England) to a notification in the terms set out in reg 4(2), Sch 1 Pt II (as amended) there is substituted a reference to a notification in the terms set out in Sch 1 Pt III (as amended): reg 4(2) (amended in relation to England by SI 2003/2048). For the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 2(3), Sch 1 Pt III.

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 19(2).

17 le the Planning (Listed Buildings and Conservation Areas) Regulations 1990 reg 5 (as amended), reg 8A(4), (5) (as added): see PARA 1112 ante.

18 See *ibid* reg 5 (as amended), reg 8A(4), (5) (as added); and see PARA 1112 ante.

19 As to the Secretary of State see PARA 19 ante.

20 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 19 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

21 Planning (Listed Buildings and Conservation Areas) Act 1990 s 19(4). As to the procedure in Wales where such an application has been referred to the Assembly and is decided on the basis of written representations see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended); and PARAS 628-630 ante. At the date at which this title states the law, no equivalent procedure had been prescribed for these purposes in relation to England.

22 The Planning and Compulsory Purchase Act 2004 s 51(5) (see note 24 *infra*) has effect only in relation to applications received by the local planning authority after its commencement: s 51(6). Moreover, in relation to England only and during the period of one year beginning on 24 August 2005, s 51(5) has no effect in relation to an application to change, vary or discharge a condition subject to which a previous listed building consent was granted before that date: Planning and Compulsory Purchase Act 2004 (Commencement No 5 and Savings) Order 2005, SI 2005/2081, art 4(2).

23 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed in relation to Wales.

24 Planning (Listed Buildings and Conservation Areas) Act 1990 s 19(5) (added by the Planning and Compulsory Purchase Act 2004 s 51(5), (6), partly as from a day to be appointed: see note 23 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1131 Application for variation or discharge of conditions

NOTE 15--SI 1990/1519 reg 4(1) amended, reg 4(2) further amended: SI 2008/551 (England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/ (F) Revocation and Modification of Consent/1132. Revocation and modification by local planning authority; in general.

(F) REVOCATION AND MODIFICATION OF CONSENT

1132. Revocation and modification by local planning authority; in general.

If it appears to the local planning authority¹ that it is expedient to revoke or modify any listed building consent², the authority may by order revoke or modify the consent to such extent as it considers expedient³. In performing such functions⁴ the local planning authority must have regard to any material considerations⁵.

The power so conferred to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed but the revocation or modification does not affect so much of those works as has been previously carried out⁶.

1 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended) see PARA 1096 note 9 ante. For the purposes of s 23 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' see PARA 1073 ante.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 23(1). As to the application of s 23 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1178 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended) see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

4 For the meaning of 'functions' see PARA 1073 note 3 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 23(2) (amended by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 21). As to what are material considerations see PARAS 484 note 4, 485 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 23(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/ (F) Revocation and Modification of Consent/1133. Revocation and modification by local planning authority; opposed cases.

1133. Revocation and modification by local planning authority; opposed cases.

Subject to the statutory exception for unopposed cases¹, an order made by a local planning authority² for the revocation or modification of listed building consent³ does not take effect until it is confirmed by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵.

Where a local planning authority submits such an order to the Secretary of State or to the Assembly for confirmation, it must serve notice on:

- 4192 (1) the owner⁶ of the building⁷ affected;
- 4193 (2) the occupier of that building; and
- 4194 (3) any other person who in its opinion will be affected by the order⁸.

The notice must specify the period, which must not be less than 28 days after its service, within which any person on whom it is served may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose⁹. If within that period a person on whom the notice is served so requires, the Secretary of State or the Assembly must give such an opportunity both to that person and to the local planning authority before he or the Assembly confirms the order¹⁰.

The Secretary of State or the Assembly may confirm an order so submitted to him or to it either without modification or subject to such modifications as he or the Assembly considers expedient¹¹.

¹ ie except as provided in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 25: see PARA 1134 post.

² As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 24 (see the text and notes 3-11 infra) see PARA 1096 note 9 ante. For the purposes of s 24, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' see PARA 1073 ante.

³ For the meaning of 'listed building consent' see PARA 1109 ante.

⁴ As to the Secretary of State see PARA 19 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 24(1). As to the transfer of functions under s 24, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante. As to the application of s 24 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1178 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 24 see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

6 For the meaning of 'owner' see PARA 1075 note 17 ante.

7 For the meaning of 'building' see PARA 1073 note 8 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 24(2).

9 Ibid s 24(3).

10 Ibid s 24(4).

11 Ibid s 24(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/ (F) Revocation and Modification of Consent/1134. Revocation and modification by local planning authority; unopposed cases.

1134. Revocation and modification by local planning authority; unopposed cases.

Where (1) the local planning authority¹ has made an order² revoking or modifying a listed building consent³ granted by it; and (2) the owner⁴ and occupier of the land⁵ and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order, then, instead of submitting the order to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷ for confirmation, the authority must:

4195 (a) advertise in the prescribed manner⁸ the fact that the order has been made, specifying in the advertisement:

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89. (i) the period⁹ within which persons affected by the order may give notice to the Secretary of State or the Assembly that they wish for an opportunity of

appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose; and

90. (ii) the period¹⁰ at the end of which, if no such notice is given to the Secretary of State or the Assembly, the order may take effect without being confirmed by him or by the Assembly;

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- 4196 (b) serve notice to the same effect on the person mentioned in head (2) above;

- 4197 (c) send a copy of any such advertisement to the Secretary of State or the Assembly not more than three days after its publication¹¹.

If no person claiming to be affected by the order has given notice to the Secretary of State or the Assembly as mentioned in head (a)(i) above within the specified period and the Secretary of State or the Assembly has not directed within that period that the order be submitted to him or to it for confirmation, the order takes effect at the end of the period referred to in head (a)(ii) above without being confirmed¹² by the Secretary of State or by the Assembly¹³.

1 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 25 (see the text and notes 2-12 *infra*) see PARA 1096 note 9 *ante*. For the purposes of s 25, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 *ante*. As to district planning authorities see PARA 28 *ante*. For the meaning of 'local planning authority' see PARA 1073 *ante*.

2 *Ie* under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended): see PARA 1132 *ante*.

3 For the meaning of 'listed building consent' see PARA 1109 *ante*.

4 For the meaning of 'owner' see PARA 1075 note 17 *ante*.

5 For the meaning of 'land' see PARA 1077 note 1 *ante*.

6 As to the Secretary of State see PARA 19 *ante*.

7 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 25, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 *ante*.

8 The local planning authority must publish the advertisement in a local newspaper circulating in the area in which the building is situated: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 10.

9 Such period must not be less than 28 days from the date on which the advertisement first appears: Planning (Listed Buildings and Conservation Areas) Act 1990 s 25(4).

10 Such period must not be less than 14 days from the end of the period referred to in *ibid* s 25(2)(a)(i) (see head (a)(i) in the text): s 25(5).

11 *Ibid* s 25(1), (2). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 25 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1178 *post*.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 25 see PARA 1098 note 7 *ante*. As to rights of entry see PARAS 1083-1086 *ante*.

12 *Ie* as required by *ibid* s 24(1): see PARA 1133 *ante*.

13 *Ibid* s 25(3).

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(v) Authorisation of Works affecting Listed Buildings/B. LISTED BUILDING CONSENT/ (F) Revocation and Modification of Consent/1135. Revocation and modification by the Secretary of State or by the Assembly.

1135. Revocation and modification by the Secretary of State or by the Assembly.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that it is expedient that an order should be made³ revoking or modifying any listed building consent⁴ granted on an application duly made⁵, the Secretary of State or the Assembly may himself or itself make such an order revoking or modifying the consent to such extent as he or it considers expedient⁶. In performing such functions⁷ the Secretary of State or the Assembly must have regard to any material considerations⁸.

The Secretary of State or the Assembly may not, however, so make an order without first consulting⁹ the local planning authority¹⁰.

Where the Secretary of State or the Assembly proposes to make such an order, he or it must serve notice on:

- 4198 (1) the owner¹¹ of the building¹² affected;
- 4199 (2) the occupier of that building; and
- 4200 (3) any other person who in his or its opinion will be affected by the order¹³.

The notice must specify the period, which must be not less than 28 days after its service, within which any person on whom it is served may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose¹⁴. If within that period a person on whom it is served so requires, before the Secretary of State or the Assembly makes the order, he or it must give such opportunity both to that person and to the local planning authority¹⁵.

The power so conferred to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed but the revocation or modification does not affect so much of those works as has been previously carried out¹⁶.

Such an order has the same effect as if it had been made by the local planning authority¹⁷ and confirmed¹⁸ by the Secretary of State or by the Assembly¹⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended): see PARA 1132 ante.

4 For the meaning of 'listed building consent' see PARA 1109 ante.

5 Ie any listed building consent granted on an application under the Planning (Listed Buildings and Conservation Areas) Act 1990. As to application for such consent see PARA 1111 et seq ante.

6 Ibid s 26(1). As to the application of s 26 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1178 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 26 (as amended) see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante.

7 For the meaning of 'functions' see PARA 1073 note 3 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 26(2) (amended by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 paras 19, 22). As to what are material considerations see PARAS 484 note 4, 485 ante.

9 For the meaning of 'consult' para 2 note 1 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 26(3). As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 26 (as amended) see PARA 1096 note 9 ante. For the purposes of s 26 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. For the meaning of 'local planning authority' see PARA 1073 ante.

11 For the meaning of 'owner' see PARA 1075 note 17 ante.

12 For the meaning of 'building' see PARA 1073 note 8 ante.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 26(4).

14 Ibid s 26(5).

15 Ibid s 26(6).

16 Ibid s 26(7).

17 See note 3 supra.

18 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 24: see PARA 1133 ante.

19 Ibid s 26(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/A. COMPENSATION/1136. Revocation or modification of listed building consent.

(vi) Owners' Rights

A. COMPENSATION

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1136. Revocation or modification of listed building consent.

Where listed building consent¹ is revoked or modified², then except in an unopposed case³ if, on a claim made to the local planning authority⁴ within the prescribed⁵ time and in the prescribed manner, it is shown that a person interested in the building⁶:

- 4201 (1) has incurred expenditure in carrying out works⁷ which are rendered abortive by the revocation or modification; or
- 4202 (2) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the authority must pay that person compensation in respect of that expenditure, loss or damage⁸.

Any such claim must be in writing and must be served on the local planning authority by delivering it at the offices of that authority addressed to the authority's clerk, or by sending it so addressed by prepaid post⁹; and the time within which such a claim must be made is six months from the date of the decision in respect of which the claim is made, or such longer period as the Secretary of State or, in relation to Wales, the National Assembly for Wales¹⁰ may allow in any particular case¹¹.

No compensation may, however, be paid¹² in respect of:

- 4203 (a) any works carried out before the grant of the listed building consent which is revoked or modified; or
- 4204 (b) any other loss or damage, not being loss or damage consisting of depreciation of the value of an interest in land¹³, arising out of anything done or omitted to be done before the grant of that consent¹⁴.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 Ie by an order under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended) (see PARA 1132 ante), other than an order which takes effect by virtue of s 25 (see PARA 1134 ante): s 28(1).

3 Ie a case where the order takes effect by virtue of ibid s 25: see PARA 1134 ante.

4 Claims under ibid s 28 must be made to, and paid by, the local planning authority which made the order in question or, where it was made by the Secretary of State or by the National Assembly for Wales under s 26 (as amended) (see PARA 1135 ante), the local planning authority which is treated as having made it under s 26 (as amended); and references in s 28 to a local planning authority are to be construed accordingly: s 30(1)(b).

After consultation with all the authorities concerned the Secretary of State or the Assembly may direct that, where a local planning authority is liable to pay compensation under s 28 in any particular case or class of case, that authority shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he or

the Assembly may direct from one or more authorities specified in the direction: s 30(2) (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 para 42(2), Sch 19 Pt II). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 26, 28, 30 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 30 (as amended) does not apply in Greater London: s 30(3). For the meaning of 'local planning authority' see PARA 1073 ante; for the meaning of 'consult' see PARA 2 note 1 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

6 For the meaning of 'building' see PARA 1073 note 8 ante.

7 For these purposes, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, is to be taken to be included in the expenditure incurred in carrying out those works: Planning (Listed Buildings and Conservation Areas) Act 1990 s 28(4).

8 Ibid s 28(1), (2). As to the calculation of compensation, and as to disputed claims, see PARA 1138 post. Compensation payable under s 28 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the order under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended) (see PARA 1132 ante) until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28 to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

Compensation was also payable where, before 1 November 1990 (1) an application was made for listed building consent for the alteration or extension of a listed building; (2) the works did not constitute development, or if they did, they were permitted development under a development order; (3) consent was refused or granted subject to conditions; and (4) the refusal or imposition of conditions resulted in the depreciation in value of an interest in the land: see the Planning (Listed Buildings and Conservation Areas) Act 1990 s 27 (repealed); the Planning and Compensation Act 1991 s 31(8). *Shimizu (UK) Ltd v Westminster City Council* [1997] 1 All ER 481, [1997] 1 WLR 168, HL, cited in PARA 1109 note 2 ante, involved a claim for such compensation.

9 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 9(1).

10 As to the transfer of functions to the Assembly see note 4 supra.

11 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 9(2)(a).

12 Ie subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28(4): see note 7 supra.

13 For the meaning of 'land' see PARA 1077 note 1 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 28(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/A. COMPENSATION/1137. Loss or damage caused by service of building preservation notice.

1137. Loss or damage caused by service of building preservation notice.

Where a building preservation notice¹ ceases to have effect without the building² having been included in a list compiled or approved by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴, any person who at the time when the notice was served had an interest in the building is entitled, on making a claim to the authority within the prescribed⁵ time and in the prescribed manner, to be paid compensation by the local planning authority⁶ in respect of any loss or damage directly attributable to the effect of the notice⁷.

Any such claim must be in writing and must be served on the local planning authority by delivering it at the offices of that authority addressed to the authority's clerk, or by sending it so addressed by prepaid post⁸; and the time within which such a claim must be made is six months from the date of the decision in respect of which the claim is made, or such longer period as the Secretary of State or the Assembly may allow in any particular case⁹.

The loss or damage in respect of which compensation is so payable includes a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it¹⁰.

1 For the meaning of 'building preservation notice' see PARA 1098 ante.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 I.e. the list compiled or approved under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante. As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

6 Claims under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 29 must be made to, and paid by, the local planning authority which served the building preservation notice; and references to a local planning authority in s 29 are to be construed accordingly: s 30(1)(c).

After consultation with all the authorities concerned the Secretary of State or the Assembly may direct that, where a local planning authority is liable to pay compensation under s 29 in any particular case or class of case, that authority shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he or the Assembly may direct from one or more authorities specified in the direction: s 30(2) (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 para 42(2), Sch 19 Pt II).

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 30 (as amended) does not apply in Greater London: s 30(3). For the meaning of 'consult' see PARA 2 note 1 ante; for the meaning of 'local planning authority' see PARA 1073 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

7 Ibid s 29(1), (2). As to the calculation of compensation, and as to disputed claims, see PARA 1138 post. Compensation payable under s 29 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date the building preservation notice is served until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

8 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 9(1).

9 Ibid reg 9(2)(a).

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 29(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/A. COMPENSATION/1138. Calculation of compensation; disputed claims.

1138. Calculation of compensation; disputed claims.

For the purpose of assessing any compensation payable under the provisions discussed above¹ in respect of depreciation of the value of an interest in land², the rules set out in the Land Compensation Act 1981³ have effect, so far as applicable and subject to any necessary modifications, as they have effect for the purpose of assessing compensation for the compulsory acquisition⁴ of an interest in land⁵.

Where an interest in land is subject to a mortgage:

- 4205 (1) any such compensation which is payable in respect of depreciation of the value of that interest must be assessed as if the interest were not subject to the mortgage;
- 4206 (2) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- 4207 (3) no such compensation is payable in respect of the interest of the mortgagee, as distinct from the interest which is subject to the mortgage; and
- 4208 (4) any such compensation which is payable in respect of the interest which is subject to the mortgage must be paid to the mortgagee or, if there is more than one mortgagee, to the first mortgagee, and must in either case be applied by him as if it were proceeds of sale⁶.

Any question of disputed compensation must⁷ be referred to, and determined by, the Lands Tribunal⁸.

¹ ie any compensation which is payable under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28 (see PARA 1136 ante) or s 29 (see PARA 1137 ante).

² For the meaning of 'land' see PARA 1077 note 1 ante.

³ ie the rules set out in the Land Compensation Act 1961 s 5 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754.

⁴ For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 31(1), (2) (s 31(1), (2), (4) amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 para 43).

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 31(3).

7 le except in so far as may be otherwise provided by any regulations made under the Planning (Listed Buildings and Conservation Areas) Act 1990. At the date at which this title states the law, no such regulations had been made.

8 Ibid s 31(4) (as amended: see note 5 supra). In relation to the determination of any such question, the provisions of the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply subject to any necessary modifications and to the provisions of any regulations made under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 31 (as amended): s 31(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1138 Calculation of compensation; disputed claims

TEXT AND NOTE 8--Reference to the Lands Tribunal is now to the Upper Tribunal; Land Compensation Act 1961 s 2 omitted: Planning (Listed Buildings and Conservation Areas) Act 1990 s 31(4), (5) (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1139. Purchase notice on refusal or conditional grant of listed building consent.

B. LISTED BUILDING PURCHASE NOTICES

1139. Purchase notice on refusal or conditional grant of listed building consent.

Where (1) listed building consent¹ in respect of a building² is refused, or granted subject to conditions, or is revoked or modified by an order by the local planning authority³ or by the Secretary of State or, in relation to Wales, by the National Assembly for Wales⁴; and (2) any owner⁵ of the building claims:

- 4209 (a) that the statutory conditions set out in heads (i) to (iii) below are satisfied with respect to it and any land⁶ comprising the building, or contiguous or adjacent to it, and owned with it; and
- 4210 (b) that the use⁷ of that land is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding,

he may, within the prescribed⁸ time and in the prescribed manner, serve on the council of the district⁹, Welsh county, county borough or London borough¹⁰ in which the building and land are situated a notice (a 'listed building purchase notice') requiring that council to purchase his interest¹¹ in the building and land¹². Such a notice may also be served on any National Park authority¹³ which is the local planning authority¹⁴ for the area in which the building and land in question are situated¹⁵.

Any such notice must be in writing and must be served on the council or authority by delivering it at the offices of that council or authority addressed to its clerk, or by sending it so addressed by prepaid post¹⁶; and the time within which such a notice must be served is 12 months from the date of the decision in respect of which the notice is given, or such longer period as the Secretary of State or the Assembly may allow in any particular case¹⁷.

The statutory conditions are:

- 4211 (i) that the building and land in respect of which the notice is served have become incapable of reasonably beneficial use in their existing state;
- 4212 (ii) in a case where listed building consent has been granted subject to conditions with respect to the execution of the works or has been modified by the imposition of such conditions, that the land cannot be rendered capable of such use by the carrying out of the works in accordance with those conditions; and
- 4213 (iii) in any case, that the land cannot be rendered capable of such use by the carrying out of any other works for which listed building consent has been granted or for which the local planning authority or, as the case may be, the Secretary of State or the Assembly has undertaken to grant such consent¹⁸.

In determining for these purposes what is or would in any particular circumstances be a reasonably beneficial use of land, no account may be taken of any prospective use which would involve the carrying out of development¹⁹ or any works requiring listed building consent which might be executed to the building, other than works for which the local planning authority or, as the case may be, the Secretary of State or the Assembly, has undertaken to grant such consent²⁰.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended): see PARA 1132 ante. For the meaning of 'local planning authority' see PARA 1073 ante.

4 Ie under ibid s 26 (as amended): see PARA 1135 ante. As to the Secretary of State see PARA 19 ante. As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 For the meaning of 'owner' see PARA 1075 note 17 ante.

6 For the meaning of 'land' see PARA 1077 note 1 ante.

7 For these purposes, except in so far as the context otherwise requires, 'use' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 221 note 4 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

8 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

9 As to district councils see PARA 28 ante.

10 For the meaning of 'London borough' see PARA 1094 note 3 ante.

11 Ie in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 33-37 (as amended): see PARA 1141 et seq post.

12 Ibid s 32(1), (3) (s 32(1) amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(3)). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32 (as amended) to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990 SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

13 As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

14 For the meaning of 'local planning authority' see PARA 1073 ante.

15 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4A) (added by the Environment Act 1995 s 78, Sch 10 para 33(1), (2)). The Planning (Listed Buildings and Conservation Areas) Act 1990 ss 32-37 (as amended) have effect as if (1) the bodies on whom a listed building purchase notice may be served under s 32 (as amended) included any National Park authority which is the local planning authority for the area in which the building and land in question are situated; and (2) a National Park authority were a local authority for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Park for which it is the local planning authority were its area; and the references in ss 32-37 (as amended) and in s 63(7)(a) (see PARA 1090 ante) to a council and to a local authority are to be construed accordingly: s 32(4A) (as so added).

16 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 9(1) (amended by SI 1996/525; modified by SI 1995/2803; SI 1996/1243; and by SI 2005/421).

17 Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 9(2)(b).

18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(2).

19 Ie development other than any development specified in the Town and Country Planning Act 1990 Sch 3 para 1 or 2: see PARA 920 ante. For the meaning of 'development' see PARA 1095 note 2 ante.

20 Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4) (amended by the Planning and Compensation Act 1991 s 31(4), Sch 6 para 44)).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1140. Purchase notices in respect of Crown land.

1140. Purchase notices in respect of Crown land.

At the date at which this title states the law, the power to serve a listed building purchase notice¹ applies and is exercisable in relation to Crown land² to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown³.

As from a day to be appointed⁴, however, a listed building purchase notice⁵ may be served⁶ in respect of Crown land⁷ only as mentioned below⁸.

The owner⁹ of a private interest¹⁰ in Crown land must not serve a listed building purchase notice unless he first offers to dispose of his interest to the appropriate authority¹¹ on equivalent terms¹² and the offer is refused by the appropriate authority¹³.

The appropriate authority may serve a listed building purchase notice in relation to the following land:

- 4214 (1) land belonging to Her Majesty in right of Her private estates¹⁴;
- 4215 (2) land belonging to Her Majesty in right of the Duchy of Lancaster;
- 4216 (3) land belonging to the Duchy of Cornwall;
- 4217 (4) land which forms part of the Crown Estate¹⁵.

1 le the power conferred by the Town and Country Planning Act 1990 s 32 (as amended): see PARA 1139 ante.

2 For the meaning of 'Crown land' for these purposes see PARA 1075 note 2 ante.

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(1)(b) (prospectively repealed); and PARA 1075 ante.

4 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

5 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

6 As to the service of notices para 1072 ante at head (6) in text.

7 For the meaning of 'Crown land' for these purposes see PARA 1076 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 32A(1) (s 32A(1)-(4) prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 2 as from a day to be appointed: see note 4 supra).

9 For the meaning of 'owner' see PARA 1075 note 17 ante.

10 For the meaning of 'private interest' see PARA 1076 note 11 ante.

11 For the meaning of 'appropriate authority' for these purposes see PARA 1076 note 12 ante.

12 An offer is made on equivalent terms if the price payable for the interest is equal to (and, in default of agreement, determined in the same manner as) the compensation which would be payable in respect of it if it were acquired in pursuance of a listed building purchase notice: Planning (Listed Buildings and Conservation Areas) Act 1990 s 32A(4) (as added: see note 8 supra).

13 Ibid s 32A(2) (as added: see note 8 supra).

14 As to Her Majesty's private estates see PARA 1076 note 10 ante.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 32A(3) (as added: see note 8 supra). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1140 Purchase notices in respect of Crown land

TEXT AND NOTE 4--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1141. Action by council or authority on which listed building purchase notice is served.

1141. Action by council or authority on which listed building purchase notice is served.

The council or National Park authority¹ on which a listed building purchase notice² is served by an owner³ must, before the end of the period of three months beginning with the date of service of the listed building purchase notice, serve on him a notice stating either:

- 4218 (1) that the council or authority is willing to comply with the purchase notice;
or
- 4219 (2) that another local authority⁴ or statutory undertakers⁵ specified in the notice has or have agreed to comply with it in its place; or
- 4220 (3) that for reasons so specified the council or authority is not willing to comply with the purchase notice and has not found any other local authority or statutory undertakers who will agree to comply with it in its place and that it has transmitted to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷ a copy of the purchase notice and of the notice⁸.

Where such a notice as is mentioned in heads (1) or (2) above has been duly served, the council or National Park authority or, as the case may be, the other local authority or statutory undertakers specified in the notice is or are deemed:

- 4221 (a) to be authorised to acquire the interest of the owner compulsorily⁹; and
- 4222 (b) to have served a notice to treat¹⁰ in respect of it on the date of service of that notice¹¹.

Where the council proposes to serve such a notice as is mentioned in head (3) above, it must first send to the Secretary of State or to the Assembly a copy of the proposed notice and the listed building purchase notice which was served on it¹².

1 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4A) (as added), cited in PARA 1139 note 15 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

3 For the meaning of 'owner' see PARA 1075 note 17 ante.

4 For the meaning of 'local authority' see PARA 1072 note 8 ante. In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 33, 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). This reference to a local authority is to be construed as if a National Park authority were a local authority: see s 32(4A) (as added); and PARA 1139 note 15 ante. For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante.

5 For the meaning of 'statutory undertakers' see PARA 1081 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 33, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 33(1), (2). As to the application of s 33 to conservation area purchase notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 33 has effect as if: (1) in s 33(1)(b) (see head (2) in the text) after the word 'undertakers' there were inserted the words 'or an urban development corporation'; (2) in s 33(1)(c) (see head (3) in the text) after the word 'undertakers' there were inserted the words 'or an urban development corporation'; (3) in s 33(3) (see the text and notes 9-11 infra) after the word 'undertakers' there were inserted the words 'or corporation'; and s 91(2) (as amended) (definitions) so has effect as if the words 'urban development corporation' were inserted at the appropriate place: Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II paras 10, 14 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). As to urban development corporations see PARA 1426 et seq post.

9 In accordance with the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARAS 1154, 1157 post.

10 For the meaning of words importing a reference to service of a notice to treat see PARA 1079 note 8 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 33(3).

12 Ibid s 33(4).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1142. Procedure on reference of listed building purchase notice to the Secretary of State or the Assembly.

1142. Procedure on reference of listed building purchase notice to the Secretary of State or the Assembly.

Where a copy of a listed building purchase notice¹ is sent² to the Secretary of State³ or to the National Assembly for Wales⁴, he or the Assembly must consider whether to confirm the notice or to take other action⁵ in respect of it⁶. Before confirming such a notice or taking such other action, the Secretary of State or the Assembly must give notice of such proposed action:

- 4223 (1) to the person who served the notice;
- 4224 (2) to the council or National Park authority⁷ on which it was served;
- 4225 (3) in England outside Greater London⁸:

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91. (a) to the county planning authority⁹ and also, where that authority is a joint planning board¹⁰, to the county council; and

92. (b) if the district council on which the purchase notice in question was served is a constituent member of a joint planning board, to that board;

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4226 (4) in Wales, to the local planning authority¹¹ where it is a joint planning board; and

4227 (5) if the Secretary of State or the Assembly proposes to substitute any other local authority¹² or statutory undertakers¹³ for the council or authority on which the notice was served, to it or them¹⁴.

A notice so served must specify the period, which must be not less than 28 days from its service, within which any of the persons on whom it is served may require the Secretary of State or the Assembly to give him an opportunity of appearing before, and being heard by, a person appointed by him or by the Assembly for the purpose¹⁵. If any of those persons so require, before the Secretary of State or the Assembly confirms the listed building purchase notice or takes any other action¹⁶ in respect of it, he or the Assembly must give such an opportunity to each of them¹⁷.

If, after any of those persons have appeared before, and been heard by, the appointed person, it appears to the Secretary of State or the Assembly to be expedient to take action¹⁸ otherwise than in accordance with the notice given by him or by it, the Secretary of State or the Assembly may take that action accordingly¹⁹.

1 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

2 I.e. under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 33(4): see PARA 1141 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 34 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 I.e. under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 35: see PARA 1143 post. For these purposes, any reference to the taking of action by the Secretary of State or the Assembly under s 35 includes a reference to the taking by him or by it of a decision not to confirm the notice on the grounds that any of the conditions referred to in s 35(1) are not satisfied: s 35(7).

6 Ibid s 34(1). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 34 (as amended) to conservation area purchase notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

7 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4A) (as added), cited in PARA 1139 note 15 ante.

8 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

9 As to county planning authorities see PARA 28 ante.

10 For these purposes, except in so far as the context otherwise requires, 'joint planning board' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 30 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

11 For the meaning of 'local planning authority' see PARA 1073 ante.

12 This reference to a local authority is to be construed as including a National Park authority: see PARA 1139 note 15 ante. For the meaning of 'local authority' see PARA 1072 note 8 ante. In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 34 (as amended), 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante.

13 For the meaning of 'statutory undertakers' see PARA 1081 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 34(2) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(4)). If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 34(2)(d) (see head (5) in the text) has effect as if after the word 'undertakers' there were inserted the words 'or an urban development corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 11 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). See also the Local Government, Planning and Land Act 1980 Sch 29 Pt II para 14 (as substituted) (cited in PARA 1141 note 8 ante). As to urban development corporations see PARA 1426 et seq post.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 34(3).

16 See note 5 supra.

17 Planning (Listed Buildings and Conservation Areas) Act 1990 s 34(4).

18 See note 5 supra.

19 Planning (Listed Buildings and Conservation Areas) Act 1990 s 34(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1143. Action by the Secretary of State or the Assembly in relation to listed building purchase notice.

1143. Action by the Secretary of State or the Assembly in relation to listed building purchase notice.

Subject to the following provisions, if the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that the specified statutory conditions³ are satisfied in the case of any listed building purchase notice⁴, he or it must confirm the notice⁵. If, however, he or the Assembly is satisfied that those conditions are fulfilled only in respect of part of the land⁶, he or the Assembly must confirm the notice only in respect of that part and the notice has effect accordingly⁷.

The Secretary of State or the Assembly may not confirm the notice unless he or it is satisfied that the land comprises such land contiguous or adjacent to the building⁸ as is in his or its opinion required for preserving the building or its amenities⁹ or for affording access to it¹⁰ or for its proper control or management¹¹.

If it appears to the Secretary of State or the Assembly to be expedient to do so, he or it may, instead of confirming the notice:

- 4228 (1) in the case of a notice served on account of the refusal of listed building consent¹² for any works, grant such consent for those works;
- 4229 (2) in the case of a notice served on account of such consent being granted subject to conditions, revoke or amend those conditions so far as it appears to him or to the Assembly to be required in order to enable the land to be rendered capable of reasonably beneficial use¹³ by the carrying out of those works;
- 4230 (3) in the case of a notice served on account of such consent being revoked by an order by the local planning authority¹⁴ or, as the case may be, by the Secretary of State or the Assembly¹⁵, cancel the order revoking the consent; or
- 4231 (4) in the case of a notice served on account of such consent being modified by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him or to the Assembly to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the works in respect of which the consent was granted¹⁶.

If it appears to the Secretary of State or to the Assembly that the land, or any part of it, could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out:

- 4232 (a) of any other works for which listed building consent ought to be granted; or
- 4233 (b) of any development¹⁷ for which planning permission¹⁸ ought to be granted,

he or the Assembly may, instead of confirming the listed building purchase notice, or confirming it so far as it relates to that part, direct that, if an application is made for such consent for those works or, as the case may be, for planning permission for that development, it shall be granted¹⁹.

If it appears to the Secretary of State or to the Assembly, having regard to the probable ultimate use of the building or its site, that it is expedient to do so, he or the Assembly may, if confirming the notice, modify it either in relation to the whole or any part of the land, by substituting another local authority²⁰ or statutory undertakers²¹ for the council or National Park authority²² on which the notice was served²³.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 35, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 I.e. the conditions specified in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(2)(a)-(c): see PARA 1139 ante at heads (i)-(iii) in the text.

4 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 35(1). As to the application of s 35 to conservation area purchase notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

6 For these purposes, references to the land are to the building and the land in respect of which the notice under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(1) (as amended) is served: s 32(5).

7 Ibid s 35(2).

- 8 For the meaning of 'building' see PARA 1073 note 8 ante.
- 9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 35(3)(a).
- 10 Ibid s 35(3)(b).
- 11 Ibid s 35(3)(c).
- 12 For the meaning of 'listed building consent' see PARA 1109 ante.
- 13 For the meaning of 'use' see PARA 1139 note 7 ante.
- 14 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 23 (as amended): see PARA 1132 ante. For the meaning of 'local planning authority' see PARA 1073 ante.
- 15 Ie under ibid s 26 (as amended): see PARA 1135 ante.
- 16 Ibid s 35(4).
- 17 For the meaning of 'development' see PARA 1095 note 2 ante.
- 18 For the meaning of 'planning permission' see PARA 1095 note 1 ante.
- 19 Planning (Listed Buildings and Conservation Areas) Act 1990 s 35(5).
- 20 For the meaning of 'local authority' see PARA 1072 note 8 ante. This reference to a local authority is to be construed as including a National Park authority: see PARA 1139 note 15 ante. In ibid s 35, 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'land' see PARA 1077 note 1 ante.
- 21 For the meaning of 'statutory undertakers' see PARA 1081 ante.
- 22 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4A) (as added); and PARA 1139 note 15 ante.
- 23 Ibid s 35(6). If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, s 35(6) has effect as if after the word 'undertakers' there were inserted the words 'or an urban development corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 12 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 paras 44(6)(c), 44(13)). See also the Local Government, Planning and Land Act 1980 Sch 29 Pt II para 14 (as substituted), cited in PARA 1141 note 8 ante. As to urban development corporations see PARA 1426 et seq post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1144. Effect of Secretary of State's or Assembly's action in relation to listed building purchase notice.

1144. Effect of Secretary of State's or Assembly's action in relation to listed building purchase notice.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² confirms a listed building purchase notice³, the council or National Park authority⁴ on which the notice was served⁵ is deemed:

- 4234 (1) to be authorised to acquire the owner's interest⁶ in the land compulsorily⁷; and
- 4235 (2) to have served a notice to treat⁸ in respect of it on such date as the Secretary of State or the Assembly may direct⁹.

If, before the end of the relevant period¹⁰, the Secretary of State or the Assembly has neither:

- 4236 (a) confirmed the listed building purchase notice; nor
- 4237 (b) notified the owner by whom it was served that he or the Assembly does not propose to confirm it; nor
- 4238 (c) taken any specified action¹¹ in respect of it,

the notice is deemed to be confirmed at the end of that period and the council or authority on which it was served is deemed to have been authorised as mentioned in head (1) above and to have served a notice to treat in respect of the owner's interest at the end of that period¹².

Where any decision by the Secretary of State or by the Assembly to confirm or not to confirm a listed building purchase notice, including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent¹³ or planning permission¹⁴, is quashed¹⁵, the notice is treated as cancelled but the owner may serve a further notice¹⁶ in its place¹⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 36, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 32(4A) (as added), cited in PARA 1139 note 15 ante.

5 Where a listed building purchase notice is modified under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 35(6) (see PARA 1143 ante) by the substitution of another local authority or statutory undertakers for the council on which the notice was served, the reference to that council is to that other local authority or those statutory undertakers: s 36(4). For the meaning of 'statutory undertakers' see PARA 1081 ante; and for the meaning of 'local authority' see PARA 1072 note 8 ante. References to a local authority in s 36 are to be construed as including a National Park authority: see PARA 1139 note 15 ante. In s 36 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante.

If the Secretary of State or the Assembly so provides by order, in relation to an urban development corporation specified in the order and to land in that corporation's area, s 36(4) has effect as if (1) after the word 'undertakers' in the first place where it occurs there were inserted the words 'or an urban development corporation'; and (2) in the second place where it occurs there were inserted the words 'or that corporation': Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II para 13 (respectively amended and substituted by the Planning (Consequential Provisions) Act 1980 s 4, Sch 2 paras 44(6)(c), 44(13)). See also the Local Government, Planning and Act 1980 Sch 29 Pt II para 14 (as substituted), cited in PARA 1141 note 8 ante. As to urban development corporations see PARA 1426 et seq post.

6 For these purposes, where a listed building purchase notice is confirmed in respect of only part of the land, references to the owner's interest in the land are references to the owner's interest in that part: Planning (Listed

Buildings and Conservation Areas) Act 1990 s 36(3). For the meaning of 'owner' see PARA 1075 note 17 ante; and for the meaning of references to the land for these purposes see PARA 1143 note 6 ante.

7 le in accordance with *ibid* s 47 (as amended): see PARAS 1154, 1157 post.

8 For the meaning of words importing a reference to service of a notice to treat see PARA 1079 note 8 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 36(1). As to the application of s 36 to conservation area purchase notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

10 For these purposes, 'the relevant period' means (1) the period of nine months beginning with the date of the service of the listed building purchase notice; or (2) if it ends earlier, the period of six months beginning with the date on which a copy of the notice was sent to the Secretary of State or to the Assembly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 36(5). The relevant period does not, however, run if the Secretary of State or the Assembly has before him or it at the same time both (a) a copy of the listed building purchase notice sent to him or to it under s 33(4) (see PARA 1141 ante); and (b) a notice of appeal under s 20 (as amended) (see PARA 1186 post) or s 39 (as amended) (see PARAS 1191, 1193 post) relating to any of the land to which the listed building purchase notice relates: s 36(6).

11 le any such action as is mentioned in *ibid* s 35(4) or (5): see PARA 1143 ante.

12 *Ibid* 36(2).

13 For the meaning of 'listed building consent' see PARA 1109 ante.

14 For the meaning of 'planning permission' see PARA 1095 note 1 ante.

15 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 63 (as amended): see PARA 1090 ante.

16 For the purpose of determining whether such a further notice has been served within the period prescribed for the service of listed building purchase notices, the decision concerning listed building consent on account of which the notice has been served is treated as having been made on the date on which the Secretary of State's or the Assembly's decision was quashed: *ibid* s 36(8). For the prescribed period see PARA 1139 ante; and for the meaning of 'prescribed' see PARA 1077 note 4 ante.

17 *Ibid* s 36(7).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vi) Owners' Rights/B. LISTED BUILDING PURCHASE NOTICES/1145. Reduction in compensation.

1145. Reduction in compensation.

Where, on the revocation or modification of listed building consent¹, compensation is payable² in respect of expenditure incurred in carrying out any works to a building³, any compensation which then becomes payable in respect of the acquisition of an interest in the land⁴ in

pursuance of a listed building purchase notice⁵ must be reduced by an amount equal to the value of those works⁶.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28: see PARA 1136 ante.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 For the meaning of references to the land for these purposes see PARA 1143 note 6 ante.

5 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 37. As to the application of s 37 to conservation area purchase notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1179 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1146. Power to issue listed building enforcement notice.

(vii) Enforcement

A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES

1146. Power to issue listed building enforcement notice.

Where it appears to the local planning authority¹:

4239 (1) that any works have been or are being executed to a listed building² in its area; and

4240 (2) that the works are such as to involve a contravention of the statutory controls³ on works affecting such buildings,

it may, if it considers it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice (a 'listed building enforcement notice')⁴.

Such a notice must specify the alleged contravention and require such steps as may be specified in the notice to be taken:

4241 (a) for restoring the building to its former state; or

- 4242 (b) if the authority considers that such restoration would not be reasonably practicable or would be undesirable, for executing such further works⁵ specified in the notice as it considers necessary to alleviate the effect of the works which were carried out without listed building consent⁶; or
- 4243 (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with⁷.

A listed building enforcement notice must specify:

- 4244 (i) the date on which it is to take effect and takes effect⁸ on that date; and
- 4245 (ii) the period within which any steps are required to be taken and may specify different periods for different steps⁹.

A copy of the listed building enforcement notice must be served, not later than 28 days after the date of its issue and not later than 28 days before the date specified in it as the date on which it is to take effect:

- 4246 (A) on the owner¹⁰ and on the occupier of the building to which it relates; and
- 4247 (B) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice¹¹.

Electronic communications may not be used for such service of the copy notice¹².

1 As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) (see the text and notes 2-11 *infra*; and PARA 1147 *post*) see PARA 1096 note 9 *ante*. For the purposes of s 38 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 *ante*. As to district planning authorities see PARA 28 *ante*.

As respects any London borough the Historic Buildings and Monuments Commission for England ('English Heritage') has concurrently with the council of that borough the functions of a local planning authority under ss 38-43 (as amended) (see the text and notes 2-11 *infra*; and PARA 1147 *et seq post*); and references to the local planning authority in ss 38-43 (as amended) are to be construed accordingly: s 45. For the meaning of 'London borough' see PARA 1094 note 3 *ante*; for the meaning of 'functions' see PARA 1073 note 3 *ante*; and for the meaning of 'local planning authority' see PARA 1073 *ante*. As to English Heritage see PARA 1058 *ante*.

As to the application of s 38 (as amended), s 45 to the enforcement of conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 *post*.

2 For the meaning of 'listed building' see PARA 1091 *ante*.

3 *Ie* the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1) or (2): see PARA 1110 *ante*.

4 *Ibid* s 38(1). A listed building enforcement notice may be served where the building, albeit dismantled, has extant component parts and may be served on the owners of those parts requiring restoration: *R v Leominster District Council, ex p Antique Country Buildings Ltd* [1988] JPL 554.

As to appeals against listed building enforcement notices see PARA 1191 *et seq post*; and as to rights of entry see PARAS 1083-1086 *ante*.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended) see PARA 1098 note 7 *ante*.

5 The provision for further works is not designed to enable a local planning authority to require steps to be taken that would be more burdensome than those which could previously have been required but is designed to enable the authority to require steps to be carried out different from those that could have otherwise been

required in order to alleviate the effect of the works carried out without consent: *Bath City Council v Secretary of State for the Environment* (1983) 47 P & CR 663.

6 Where a listed building enforcement notice imposes any such requirement as is mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(2)(b) (see head (b) in the text), listed building consent is deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of a compliance with the notice: s 38(7). For the meaning of 'listed building consent' see PARA 1109 ante.

7 Ibid s 38(2) (s 38(2), (4) amended; and s 38(3) substituted, by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 paras 2, 19, Sch 19 Pt I).

8 le subject to ibid s 39(3) (as amended) (see PARA 1193 post) and s 65(3A) (as added) (see PARA 1195 post).

9 Ibid s 38(3) (as substituted: see note 7 supra). Where different periods apply to different steps, references in Pt I (ss 1-68) (as amended) (see PARA 1092 et seq ante, PARA 1147 et seq post) to the period for compliance with a listed building enforcement notice, in relation to any step, are to the period within which the step is required to be taken: s 38(3) (as so substituted).

10 For the meaning of 'owner' see PARA 1075 note 17 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(4) (as amended: see note 7 supra).

12 See PARA 1072 note 7 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1147. Power to withdraw, waive etc a listed building enforcement notice.

1147. Power to withdraw, waive etc a listed building enforcement notice.

The local planning authority¹ may withdraw a listed building enforcement notice², without prejudice to its power to issue another, or may waive or relax any requirement of such a notice and, in particular, may extend the specified period³; and such powers may be exercised whether or not the notice has taken effect⁴. Immediately after exercising the powers so conferred, the local planning authority must give notice of the exercise to every person who has been served with a copy of the listed building enforcement notice or would, if the notice were reissued, be served with a copy of it⁵. Such notice may not be given by the use of electronic communications⁶.

1 For the meaning of 'local planning authority' see PARA 1073 ante; and as to the exercise of a local planning authority's functions for these purposes see PARA 1146 notes 1, 4 ante.

2 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

3 le the period specified in accordance with the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(3) (as substituted): see PARA 1146 ante.

- 4 Ibid s 38(5) (s 38(5), (6) substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 2).
 5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(6) (as substituted: see note 4 supra).
 6 See PARA 1072 note 7 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1148. Execution of works required by listed building enforcement notice.

1148. Execution of works required by listed building enforcement notice.

If any of the steps¹ specified in the listed building enforcement notice² have not been taken within the period for compliance with the notice³, the authority may:

- 4248 (1) enter the land⁴ and take those steps; and
 4249 (2) recover from the person who is then the owner⁵ of the land any expenses reasonably incurred by it in doing so⁶.

Any person who wilfully obstructs a person acting in the exercise of such powers is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁷.

Where a listed building enforcement notice has been served in respect of a building⁸:

- 4250 (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it; and
 4251 (b) any sums paid⁹ by the owner of the building in respect of expenses incurred by the local planning authority in taking steps required by it,

are deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates¹⁰.

1 Regulations under the Planning (Listed Buildings and Conservation Areas) Act 1990 may provide that all or any of the following sections of the Public Health Act 1936, namely: (1) s 276 (power of local authorities to sell materials removed in executing works subject to accounting for the proceeds of sale); (2) s 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises); (3) s 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable), shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice: Planning (Listed Buildings and Conservation Areas) Act 1990 s 42(3). Regulations so made applying all or any of the Public Health Act 1936 s

289 may include adaptations and modifications for the purpose of giving the owner of the land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice: Planning (Listed Buildings and Conservation Areas) Act 1990 s 42(4). Such regulations may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under s 42(1): s 42(5).

The provisions of the Public Health Act 1936 ss 276, 289 and 294 (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARAS 118, 123-124) apply in relation to any step required to be taken by a listed building enforcement notice as if (a) references to a local authority were references to the local planning authority which issued the enforcement notice or, where the notice was issued by the Historic Buildings and Monuments Commission for England ('English Heritage'), to the Commission; (b) references, in whatever form, to the execution of works under the Public Health Act 1936 were references to the taking of steps required to be taken under notice; (c) references in s 289 to the occupier were references to the person having an interest in the premises other than the owner; and (d) the reference in s 294 to 'expenses under this Act' were a reference to expenses incurred in the taking of such steps: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 11(1) (renumbered by SI 1991/2804). As to English Heritage see PARA 1058 ante.

As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42 (as amended) see PARA 1096 note 9 ante.

2 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

3 For the meaning of references to the period for compliance with the notice see PARA 1146 note 9 ante.

4 For the meaning of 'land' see PARA 1077 note 1 ante.

5 For the meaning of 'owner' see PARA 1075 note 17 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 42(1) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 21(a)). The expenses recoverable by a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42(1) (as so amended) are, until recovered, a charge that is binding on successive owners of the land to which the listed building enforcement notice related; and the charge takes effect as from the date of the completion by the local planning authority of the steps required to be taken by the listed building enforcement notice: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/2909, reg 11(2) (added by SI 1991/2804).

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42 (as amended) to the enforcement of conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 post.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42 (as amended) see PARA 1098 note 7 ante.

7 Ibid s 42(6) (substituted by the Planning and Compensation Act 1991 Sch 3 para 5). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1072 ante at head (8) in the text.

8 For the meaning of 'building' see PARA 1073 note 8 ante.

9 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42(1) (as amended: see note 6 supra).

10 Ibid s 42(2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1149. Non-compliance with listed building enforcement notice.

1149. Non-compliance with listed building enforcement notice.

Where, at any time after the end of the period for compliance with a listed building enforcement notice¹, any step required by such a notice to be taken has not been taken, the person who is then the owner² of the land³ is in breach of the notice⁴.

If at any time the owner of the land is in breach of a listed building enforcement notice, he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000⁵; and, in determining the amount of any fine to be imposed on a person convicted of such an offence, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence⁶.

Such an offence may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent such offence by reference to any period of time following the preceding conviction for such an offence⁷.

In proceedings against any person for such an offence it is a defence for him to show:

- 4252 (1) that he did everything he could be expected to do to secure that all the steps required by the notice were taken⁸; or
- 4253 (2) that he was not served with a copy of the listed building enforcement notice and was not aware of its existence⁹.

1 For the meaning of 'listed building enforcement notice' see PARA 1146 ante; and for the meaning of references to the period for compliance with such a notice see PARA 1146 note 9 ante.

2 For the meaning of 'owner' see PARA 1075 note 17 ante.

3 For the meaning of 'land' see PARA 1077 note 1 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 43(1) (s 43 substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 6). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 43 (as so substituted) to conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 post. As to rights of entry see PARAS 1083-1086 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 43(2), (5) (as substituted: see note 4 supra). As to offences by corporations see PARA 1072 ante at head (8) in the text.

6 Ibid s 43(6) (as substituted: see note 4 supra).

7 Ibid s 43(3) (as substituted: see note 4 supra).

8 Ibid s 43(4)(a) (as substituted: see note 4 supra). Cf *Mid Devon District Council v Avery* (1992) 65 P & CR 47, [1993] Crim LR 220, DC (decided under previous legislation).

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 43(4)(b) (as substituted: see note 4 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1150. Effect of listed building consent on listed building enforcement notice.

1150. Effect of listed building consent on listed building enforcement notice.

If, after the issue of a listed building enforcement notice¹, consent is granted²:

- 4254 (1) for the retention of any work to which the notice relates; or
- 4255 (2) permitting the retention of works without compliance with some condition subject to which a previous listed building consent³ was granted,

the notice ceases to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition⁴.

The fact that such a notice has wholly or partly ceased so to have effect does not, however, affect the liability of any person for an offence in respect of a previous failure to comply with that notice⁵.

1 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

2 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(3): see PARA 1109 ante.

3 For the meaning of 'listed building consent' see PARA 1109 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 44(1).

5 Ibid s 44(2). As to the application of s 44 to conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/A. ENFORCEMENT BY LOCAL PLANNING AUTHORITIES/1151. Injunctions.

1151. Injunctions.

Where a local planning authority¹ considers it necessary or expedient for any actual or apprehended contravention of the statutory controls² on work affecting listed buildings to be restrained by injunction, it may apply to the court³ for an injunction, whether or not it has exercised or is proposing to exercise⁴ any of its other statutory powers⁵. On such an application the court may grant such an injunction as the court thinks appropriate for the purposes of restraining the contravention⁶.

Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown⁷. Without prejudice to the court's power to make an order for service by an alternative method or an order dispensing with service⁸, an applicant for such an injunction must, in the claim form, describe the defendant by reference to (1) a photograph; (2) a thing belonging to or in the possession of the defendant; or (3) any other evidence, with sufficient particularity to enable service to be effected⁹. The applicant must file¹⁰ in support of the application evidence by witness statement or affidavit:

- 4256 (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant's identity;
- 4257 (b) setting out the action taken to ascertain the defendant's identity; and
- 4258 (c) verifying the means by which the defendant has been described in the application and that the description is the best that the applicant is able to provide¹¹.

1 For these purposes, the references to a local planning authority include, as respects England, the Historic Buildings and Monuments Commission for England ('English Heritage'): Planning (Listed Buildings and Conservation Areas) Act 1990 s 44A(4) (s 44A added by the Planning and Compensation Act 1991 s 25, Sch 3 para 7). For the meaning of 'local planning authority' see PARA 1073 ante. As to English Heritage see PARA 1058 ante.

2 I.e. the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1) or (2): see PARA 1110 ante.

3 For these purposes, 'the court' means the High Court or the county court: *ibid* s 44A(5) (as added: see note 1 supra).

4 I.e. whether or not it has exercised or is proposing to exercise any of its powers under *ibid* Pt I (ss 1-68) (as amended) (see PARA 1092 et seq ante, PARA 1152 et seq post): s 44A(1) (as added: see note 1 supra).

5 *Ibid* s 44A(1) (as added: see note 1 supra). As to the application of s 44A (as added) to conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 post. As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq. For guidance as to the use of injunctions by local authorities in England see *PPG 15--Planning and the Historic Environment* para 3.48; and as to the status of such guidance see PARA 9 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 44A(2) (as added: see note 1 supra). See eg *Fenland District Council v Reuben Rose (Properties) Ltd* [2000] EGCS 46, CA (injunction granted despite contravention stemming from planning authority's oversight).

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 44A(3) (as added: see note 1 supra); and see CPR Sch 1 RSC Ord 110 r 1(1), Sch 2 CCR Ord 49 r 7(1).

8 As to service of court documents see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

9 CPR Sch 1 RSC Ord 110 r 1(2), (4), Sch 2 CCR Ord 49 r 7(2), (4).

10 For the meaning of 'filing' see PARA 585 note 11 ante.

11 CPR Sch 1 RSC Ord 110 r 1(3), Sch 2 CCR Ord 49 r 7(3). As to witness statements and affidavits see generally CIVIL PROCEDURE vol 11 (2009) PARA 979 et seq.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/B. ENFORCEMENT BY THE SECRETARY OF STATE OR THE ASSEMBLY/1152. In general.

B. ENFORCEMENT BY THE SECRETARY OF STATE OR THE ASSEMBLY**1152. In general.**

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² to be expedient that a listed building enforcement notice³ should be issued in respect of any land⁴, he or the Assembly may issue such a notice⁵.

Before the Secretary of State serves such a notice, he must consult⁶ the local planning authority⁷ and the Historic Buildings and Monuments Commission for England ('English Heritage')⁸; and before the Assembly serves such a notice it must consult the local planning authority⁹. Electronic communications may not be used for service of the notice¹⁰.

A listed building enforcement notice issued by the Secretary of State or by the Assembly, has the same effect as a notice issued by the local planning authority¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

4 For the meaning of 'land' see PARA 1077 note 1 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 46(1). As to the application of s 46 (as amended) to conservation area control see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1180 post. As to rights of entry see PARAS 1083-1086 ante.

In relation to a listed building enforcement notice issued by the Secretary of State or by the Assembly, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 42 (as amended) (execution of works required by listed building enforcement notice: see PARA 1148 ante) applies as if for any reference therein to the local planning authority there were substituted a reference to the Secretary of State or, as the case may be, to the Assembly: s 46(4) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 22).

As to appeals against enforcement notices issued under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended) see PARA 1191 et seq post.

- 6 For the meaning of 'consult' para 2 note 1 ante.
- 7 For these purposes, references to the local planning authority are, in the case of an authority for an area in England outside Greater London, to be construed as references to the district planning authority: Planning (Listed Buildings and Conservation Areas) Act 1990 s 46(5) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(5)). For the meaning of 'local planning authority' see PARA 1073 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29. As to district planning authorities see PARA 28 ante.
- 8 As to English Heritage see PARA 1058 ante.
- 9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 46(2).
- 10 See PARA 1072 note 7 ante.
- 11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 46(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(vii) Enforcement/C. ENFORCEMENT IN RELATION TO THE CROWN/1153. Enforcement in relation to the Crown; in general.

C. ENFORCEMENT IN RELATION TO THE CROWN

1153. Enforcement in relation to the Crown; in general.

At the date at which this title states the law, notwithstanding any interest of the Crown in Crown land¹, any restrictions or powers imposed or conferred by the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 relating to enforcement² apply and are exercisable³ in relation to Crown land to the extent of any interest⁴ in it for the time being held otherwise than by or on behalf of the Crown⁵.

As from a day to be appointed⁶, however, the above provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷ and new provision is made regarding enforcement in relation to the Crown. As from such a day, and despite the general application of the Planning (Listed Buildings and Conservation Areas) Act 1990 to the Crown⁸, no act or omission done or suffered by or on behalf of the Crown constitutes an offence under that 1990 Act⁹. A local planning authority¹⁰ must not take any step for the purposes of enforcement in relation to Crown land¹¹ unless it has the consent of the appropriate authority¹²; and the appropriate authority may give such consent subject to such conditions as it thinks appropriate¹³. A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done¹⁴ or prohibited by or under the Planning (Listed Buildings and Conservation Areas) Act 1990¹⁵; and this includes entering land, bringing proceedings and the

making of an application¹⁶ but does not include service of a notice¹⁷ or the making of an order, other than by a court¹⁸.

- 1 For the meaning of 'Crown interest' and 'Crown land' for these purposes see PARA 1075 notes 1-2 ante.
- 2 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 38-46 (as amended); see PARA 1146 et seq ante.
- 3 No listed building enforcement notice may, however, be issued or served in relation to land which is for the time being Crown land, except with the consent of the appropriate authority: see *ibid* s 83(2)(a) (as prospectively repealed); and PARA 1075 ante at head (a) in the text. Nor may such a notice be issued in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed: see s 83(3) (as prospectively repealed); and PARA 1075 ante.
- 4 A person who is entitled to occupy Crown land by virtue of a licence in writing is treated as having an interest in land for these purposes: see *ibid* s 83(6) (as prospectively repealed); and PARA 1075 note 8.
- 5 See *ibid* s 83(1)(b) (as prospectively repealed); and PARA 1075 ante at head (2) in the text.
- 6 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed for these purposes.
- 7 See *ibid* ss 79(4), 120, Sch 3 para 18(1), Sch 9. At the date at which this title states the law, those repeals were not in force.
- 8 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82A (as prospectively added); and PARA 1076 ante. Section 42(1), (5), (6) (as amended) (certain powers of entry: see PARA 1148 ante), s 43 (as substituted) (offence where listed building enforcement notice not complied with: see PARA 1149 ante), and s 44A (as added) (injunctions: see PARA 1151 ante) do not, however, apply: see PARA 1076 note 2 ante.
- 9 *Ibid* s 82D(1) (ss 82D, 82E added by the Planning and Compulsory Purchase Act 2004 s 84(3), as from a day to be appointed: see note 6 supra).
- 10 For the meaning of 'local planning authority' see PARA 1073 ante.
- 11 For the meaning of 'Crown land' for these purposes see PARA 1076 ante.
- 12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82D(2) (as added: see note 9 supra). For the meaning of 'the appropriate authority' for these purposes see PARA 1076 note 12 ante.
- 13 *Ibid* s 82D(3) (as added: see note 9 supra).
- 14 To the extent that an interest in land is a Crown interest or a Duchy interest, anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority: *ibid* s 82E(1), (2) (as added: see note 9 supra). For the meanings of 'Crown interest' and 'Duchy interest' for these purposes see PARA 1076 notes 10-11 ante. An interest in land includes an interest only as occupier of the land: s 82E(3) (as so added).
- 15 *Ibid* s 82D(4) (as added: see note 9 supra).
- 16 *Ibid* s 82D(5) (as added: see note 9 supra).
- 17 As to the service of notices generally see PARA 1072 ante at head (6) in the text.
- 18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 82D(6) (as added: see note 9 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1153 Enforcement in relation to the Crown; in general

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

NOTE 8--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 82D: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 5(1), (2)(c).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1154. In general.

(viii) Prevention of Deterioration

A. ACQUISITION OF LISTED BUILDINGS

(A) COMPULSORY ACQUISITION

1154. In general.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that reasonable steps are not being taken for properly preserving a listed building³, he or the Assembly may:

- 4259 (1) authorise the appropriate authority⁴ to acquire compulsorily the buildings and any relevant land⁵; or
- 4260 (2) himself or itself compulsorily acquire them⁶.

The Secretary of State or the Assembly may not so make or confirm a compulsory purchase order for the acquisition of any building unless:

- 4261 (a) in the case of the acquisition of a building situated in England otherwise than by the Historic Buildings and Monuments Commission for England ('English Heritage'), the Secretary of State has consulted⁷ with the Commission; and
- 4262 (b) in any case, the Secretary of State or the Assembly is satisfied that it is expedient to make provisions for the preservation of the building and to authorise its compulsory acquisition⁸ for that purpose⁹.

Before taking any steps with a view to making a dangerous structure order in respect of a listed building under building control legislation, a local planning authority must consider whether it should instead exercise the above powers¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 as to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and

conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For the meaning of 'listed building' see PARA 1091 ante. There is no specific duty on owners to keep their buildings in a good state of repair: see *PPG 15--Planning and the Historic Environment* para 7.4. However, attention is drawn to the need to safeguard architectural features, statuary, monuments and specialist materials; local authorities and owners are recommended to take precautions to safeguard them from theft, especially when historic buildings are vacant or being refurbished: para 7.3. As to the status of such guidance see PARA 9 ante.

4 For these purposes, 'the appropriate authority' means (1) the council of the county, county borough or district in which the building is situated; or (2) in the case of a building situated in Greater London, the Historic Buildings and Monuments Commission for England ('English Heritage') or the council of the London borough in which the building is situated; or (3) in the case of a building situated outside Greater London, the joint planning board for the area in which the building is situated; or (4) in the case of a building situated within the Broads, the Broads Authority: Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(7)(a)-(d) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(6)). In the case of a building situated in a National Park for which a National Park authority is the local planning authority, that authority and no other authority is the appropriate authority for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 47-51 (as amended): Environment Act 1995 s 70, Sch 9 para 13(1). For the meaning of 'building' see PARA 1073 note 8 ante; for the meaning of 'London borough' see PARA 1101 note 3 ante; for the meaning of 'joint planning board' see PARA 1142 note 10 ante; and for the meaning of 'local planning authority' see PARA 1073 ante. As to English Heritage see PARA 1058 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

5 For these purposes, 'relevant land' in relation to any building, means the land comprising or contiguous or adjacent to it which appears to the Secretary of State or to the Assembly to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management: Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(7). For the meaning of 'land' see PARA 1077 note 1 ante.

6 Ibid s 47(1). As to the procedure see PARA 1157 post.

7 For the meaning of 'consult' para 2 note 1 ante.

8 For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(3). Privately owned historic buildings should, wherever possible, remain in the private sector. Local planning authorities are encouraged to identify a private individual or body, such as a building preservation trust, which has access to funds to carry out the necessary repairs and to which the building will be sold on as quickly as possible: see *PPG 15--Planning and the Historic Environment* para 7.13.

10 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 56; and PARA 1165 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1155. Crown land.

1155. Crown land.

At the date at which this title states the law, any power to acquire land¹ compulsorily under the provisions set out in the previous paragraph² may be exercised in relation to any interest in Crown land³ which is for the time being held otherwise than by or behalf of the Crown, notwithstanding any interest of the Crown in that land⁴; but no such interest may be so acquired except with the consent of the appropriate authority⁵.

As from a day to be appointed⁶, the above provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷. As from that day, however, the following provisions have similar effect. The provisions allowing the compulsory acquisition of land⁸ do not permit the acquisition of any interest in Crown land⁹ unless:

- 4263 (1) it is an interest which is for the time being held otherwise than by or on behalf of the Crown; and
 4264 (2) the appropriate authority¹⁰ consents to the acquisition¹¹.

1 For the meaning of 'land' see PARA 1077 note 1 ante.

2 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante.

3 For the meaning of 'Crown land' for these purposes see PARA 1075 note 2 ante.

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 83(1)(c) (prospectively repealed); and PARA 1075 ante.

5 See ibid s 83(2)(b) (prospectively repealed); and PARA 1075 ante.

6 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed for these purposes.

7 See ibid ss 79(4), 120, Sch 13 para 18(1), Sch 9. At the date at which this title states the law, those repeals were not in force.

8 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante.

9 For the meaning of 'Crown land' for these purposes see PARA 1076 ante.

10 Ie within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 82C (as prospectively added): see PARA 1076 ante.

11 Ibid s 47(6A) (prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 5, as from a day to be appointed: see note 6 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1155 Crown land

TEXT AND NOTES--The National Assembly for Wales Commission is to be treated as a Crown body for the purposes of the 1990 Act s 47: National Assembly for Wales Commission (Crown Status) (No 2) Order 2007, SI 2007/1353, art 5(1), (2)(a).

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1156. Repairs notice as preliminary to compulsory acquisition.

1156. Repairs notice as preliminary to compulsory acquisition.

The compulsory purchase¹ of a listed building² in need of repair may not be started³ by the appropriate authority⁴ or by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶ unless, at least two months previously, the authority or, as the case may be, the Secretary of State or the Assembly has served on the owner⁷ of the building⁸ a notice (a 'repairs notice'):

- 4265 (1) specifying the works which the appropriate authority or, as the case may be, the Secretary of State or the Assembly considers reasonably necessary for the proper preservation⁹ of the building; and
- 4266 (2) explaining the effect of the statutory provisions relating to the compulsory acquisition of listed buildings in need of repair¹⁰,

and the repairs notice has not been withdrawn¹¹.

Where (a) a building is demolished¹² after a repairs notice has been served in respect of it by an appropriate authority or by the Secretary of State or the Assembly; but (b) the Secretary of State or the Assembly is satisfied that he or it would have confirmed or, as the case may be, would have made a compulsory purchase order in respect of the building had it not been demolished, the demolition of the building does not prevent the authority or the Secretary of State or the Assembly from being authorised¹³ to acquire compulsorily the site of the building¹⁴.

An appropriate authority or the Secretary of State or the Assembly may at any time withdraw a repairs notice served by it or him on any person; and must, if it or he does so, immediately give such person notice of the withdrawal¹⁵. The Secretary of State must, however, consult¹⁶ with the Historic Buildings and Monuments Commission for England ('English Heritage')¹⁷ before he serves or withdraws a repairs notice in relation to a building situated in England¹⁸.

Where a repairs notice has been served on a person in respect of a building he is not entitled to serve a listed building purchase notice¹⁹ in respect of it:

- 4267 (i) until the expiration of three months beginning with the date of the service of the repairs notice; or
- 4268 (ii) if during that period the compulsory acquisition of the building is begun²⁰, unless and until the compulsory acquisition is discontinued²¹.

Before taking any steps with a view to making a dangerous structure order in respect of a listed building under building control legislation, a local planning authority must consider whether it should instead exercise the above powers²².

¹ ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante.

² For the meaning of 'listed building' see PARA 1091 ante.

3 For these purposes, a compulsory acquisition is started when the notice required by the Acquisition of Land Act 1981 s 12 (as amended) or, as the case may be, s 2(3), Sch 1 para 3(1) (as amended) is served: Planning (Listed Buildings and Conservation Areas) Act 1990 s 48(6)(a). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 560, 607. For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

4 For these purposes, 'appropriate authority' has the same meaning as in *ibid* s 47 (as amended) (see PARA 1154 note 4 ante): s 48(7). Where appropriate, it includes a National Park authority: see the Environment Act s 70, Sch 9 para 13(1), cited in PARA 1154 note 4 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 48, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

7 For the meaning of 'owner' see PARA 1075 note 17 ante.

8 For the meaning of 'building' see PARA 1073 note 8 ante.

9 On its true construction the word 'preservation' must be given its ordinary meaning and does not extend to restoration work; but, having regard to the policy of the statutory provisions and the public interest in preserving buildings of special architectural or historic interest, the preservation of a listed building refers to its being kept in the state it was in when first listed and not when the repairs notice was served: *Robbins v Secretary of State for the Environment* [1989] 1 All ER 878, [1989] 1 WLR 201, HL. If, however, repairs are necessary to preserve what remains of the rest of the building, eg to a roof that was defective at the time of listing, it is legitimate to include them in a repairs notice: *PPG 15--Planning and the Historic Environment* para 7.10. As to the status of such guidance see PARA 9 ante.

10 *Ie* the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 47-50 (as amended): see PARA 1154 ante; the text and notes 1-9 *supra*, 11-21 *infra*; and PARAS 1157-1159 *post*.

11 *Ibid* s 48(1). Section 48(1) does not, however, require an authority to take the means of the owner into account in deciding what steps are reasonably necessary for the proper preservation of the building: *Rolf v North Shropshire District Council* (1987) 55 P & CR 242, CA.

A repairs notice so served on the owner of a listed building which specifies works considered reasonably necessary for the proper preservation of the building is an effective notice for the purposes of the compulsory purchase under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended) (see PARA 1154 ante) even if the list of works specified includes a number of items which go beyond the scope of s 48: *Robbins v Secretary of State for the Environment* [1989] 1 All ER 878, [1989] 1 WLR 201, HL.

12 For the meaning of 'demolition' para 1109 note 2 ante.

13 *Ie* under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante.

14 *Ibid* s 48(2).

15 *Ibid* s 48(3).

16 For the meaning of 'consult' para 2 note 1 ante.

17 As to English Heritage see PARA 1058 ante.

18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 48(4).

19 For the meaning of 'listed building purchase notice' see PARA 1139 ante.

20 See note 13 *supra*. See also note 3 *supra*.

21 Planning (Listed Buildings and Conservation Areas) Act 1990 s 48(5). For these purposes, a compulsory acquisition is discontinued (1) in the case of acquisition by the Secretary of State or the Assembly, when he or it decides not to make the compulsory purchase order; and (2) in any other case, when the order is withdrawn or the Secretary of State or the Assembly decides not to confirm it: s 48(6)(b). See also the Town and Country Planning Act 1990 s 137(6); and PARA 966 ante.

22 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 56; and PARA 1165 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1157. Procedure for acquisition.

1157. Procedure for acquisition.

The Acquisition of Land Act 1981¹ applies to the compulsory acquisition² of a listed building³ in need of repair⁴.

Any person having an interest in a building⁵ which it is proposed compulsorily so to acquire may, within 28 days after the service of the prescribed notice⁶, apply to a magistrates' court for an order staying further proceedings on the compulsory purchase order⁷. If, on such an application, the court is satisfied that reasonable steps have been taken for properly preserving the building, the court must make an order accordingly⁸.

Any person aggrieved⁹ by the decision of a magistrates' court on such an application may appeal against the decision to the Crown Court¹⁰.

1 As to the Acquisition of Land Act 1981 see generally COMPULSORY ACQUISITION OF LAND.

2 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante. For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

3 For the meaning of 'listed building' see PARA 1091 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(2).

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Ie the notice required by the Acquisition of Land Act 1981 s 12 (as amended) or, as the case may be, s 2(3), Sch 1 para 3(1) (as amended): Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(4). See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 560, 607.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(4) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 344, Sch 10).

8 Ibid s 47(5).

9 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(6).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1158. Compensation on compulsory acquisition; in general.

1158. Compensation on compulsory acquisition; in general.

For the purpose of assessing compensation in respect of any compulsory acquisition¹ of land² including a building³ which immediately before the date of the compulsory purchase order was listed⁴, it is to be assumed⁵ that listed building consent⁶ would be granted for any works:

- 4269 (1) for the alteration or extension of the building; or
- 4270 (2) for the demolition⁷ of the building for the purpose of development of any specified⁸ class⁹.

1 For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

2 For the meaning of 'land' see PARA 1077 note 1 ante.

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 For the meaning of 'listed building' see PARA 1091 ante.

5 Ie subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 50 (as amended): see PARA 1159 post.

6 For the meaning of 'listed building consent' see PARA 1109 ante.

7 For the meaning of 'demolition' see PARA 1109 note 2 ante.

8 Ie for the purpose of development of any class specified in the Town and Country Planning Act 1990 Sch 3 (as amended): see PARA 920 ante. For the meaning of 'development' see PARA 1095 note 2 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 49 (amended by the Planning and Compensation Act 1991 ss 31(4), 84(6), Sch 6 para 45, Sch 19 Pt II).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1159. Minimum compensation in case of listed building deliberately left derelict.

1159. Minimum compensation in case of listed building deliberately left derelict.

Where the appropriate authority¹:

- 4271 (1) proposes to acquire a building² compulsorily³; and
- 4272 (2) is satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition⁴ and the development⁵ or redevelopment of the site or any adjoining site,

it may include in the compulsory purchase order as submitted to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷ for confirmation a direction for minimum compensation⁸.

Where the Secretary of State or the Assembly so acquires a building compulsorily, he or it may⁹, if satisfied as mentioned in head (2) above, include a direction for minimum compensation in the compulsory purchase order¹⁰.

A direction for minimum compensation, in relation to a building compulsorily acquired, is a direction that, for the purpose of assessing compensation, it is to be assumed¹¹:

- 4273 (a) that planning permission¹² would not be granted for any development or redevelopment of the site of the building; and
- 4274 (b) that listed building consent¹³ would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to, and maintaining it in, a proper state of repair¹⁴.

If a compulsory purchase order is confirmed or made with the inclusion of a direction for minimum compensation, the compensation in respect of the compulsory acquisition¹⁵ must be assessed in accordance with the direction¹⁶.

Where such a direction is included in a compulsory purchase order or, as the case may be, in a draft order prepared by the Secretary of State or by the Assembly, any person having an interest in the building may, within 28 days after the service of the notice¹⁷, apply to a magistrates' court for an order that no such direction be included in the compulsory purchase order as confirmed or made by the Secretary of State or the Assembly¹⁸. If the court to which an application is so made is satisfied that the building in respect of which the application is made has not been deliberately allowed to fall into disrepair for the purposes mentioned in head (2) above, the court must make the order applied for¹⁹.

A person aggrieved²⁰ by the decision of a magistrates' court on such an application may appeal against the decision to the Crown Court²¹.

1 le the appropriate authority within the meaning of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 note 4 ante. This may include a National Park authority: see the Environment Act 1995 s 70, Sch 9 para 13(1), cited in PARA 1154 note 4 ante.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante.

4 For the meaning of 'demolition' see PARA 1109 note 2 ante.

5 For the meaning of 'development' see PARA 1095 note 2 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 50 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(1). Without prejudice to so much of the Acquisition of Land Act 1981 s 12 (as amended) or, as the case may be, s 2(3), Sch 1 para 3(1) (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 560, 607) as requires the notice to state the effect of the order, the notice required to be served in accordance with that provision must (1) include a statement that a direction for minimum compensation has been included in the order or, as the case may be, in the draft order prepared by the Secretary of State or the Assembly in accordance with Sch 1 (as amended); and (2) explain the meaning of the expression 'direction for minimum compensation': Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(3).

9 le subject to *ibid* s 50(3)-(9): see the text and notes 10-21 *infra*.

10 *Ibid* s 50(2).

11 le notwithstanding anything to the contrary in the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND), the Town and Country Planning Act 1990 or the Planning (Listed Buildings and Conservation Areas) Act 1990.

12 For the meaning of 'planning permission' see PARA 1095 note 1 ante.

13 For the meaning of 'listed building consent' see PARA 1109 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(4).

15 For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(5).

17 le the notice mentioned in *ibid* s 50(3): see note 8 *supra*.

18 *Ibid* s 50(6) (amended by the Courts Act 2003 s 109(1), (3), Sch 8 para 345, Sch 10). s 50(6) (as originally enacted). The rights conferred by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(6) (as so amended) and s 50(8) (see the text and notes 20-21 *infra*) do not prejudice those conferred by s 47(4), (6) (see PARA 1157 ante): s 50(9).

19 *Ibid* s 50(7).

20 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

21 Planning (Listed Buildings and Conservation Areas) Act 1990 s 50(8). See also note 18 *supra*.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(A) Compulsory Acquisition/1160. Ending of rights over land compulsorily acquired.

1160. Ending of rights over land compulsorily acquired.

Upon the completion of a compulsory acquisition¹ of land²:

- 4275 (1) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished; and
- 4276 (2) any such apparatus vests in the acquiring authority³.

The above provisions do not, however, apply:

- 4277 (a) to any right vested in, or apparatus belonging to, statutory undertakers⁴ for the purpose of the carrying on of their undertaking; or
- 4278 (b) to any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network; or
- 4279 (c) to any electronic communications apparatus kept installed for the purposes of any such network⁵;

but, in respect of any right or apparatus not falling within heads (a) to (c) above, the above provisions have effect subject to:

- 4280 (i) any direction given by the acquiring authority before the completion of the acquisition that the above provisions shall not apply to any right or apparatus specified in the direction; and
- 4281 (ii) any agreement which may be made, whether before or after the completion of the acquisition, between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs⁶.

Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under these provisions is entitled to compensation from the acquiring authority⁷; and any compensation so payable must be determined in accordance with the Land Compensation Act 1961⁸.

1 For the meaning of 'compulsory acquisition' see PARA 1079 note 7 ante.

2 I.e. under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47 (as amended): see PARA 1154 ante. For the meaning of 'land' see PARA 1077 note 1 ante.

3 Ibid s 51(1). For these purposes, except in so far as the context otherwise requires, 'acquiring authority' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 933 note 11 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

4 For the meaning of 'statutory undertakers' see PARA 1081 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 51(2) (amended by the Communications 2003 s 406(1), Sch 17 para 106(1), (2)).

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 51(3).

7 Ibid s 51(4).

8 Ibid s 51(5). As to the Land Compensation Act 1961 see generally COMPULSORY ACQUISITION OF LAND.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(B) Acquisition by Agreement/1161. In general.

(B) ACQUISITION BY AGREEMENT

1161. In general.

The council of any county¹, county borough, district² or London borough³ or a joint planning board⁴ for an area outside Greater London⁵ may acquire by agreement:

4282 (1) any building⁶ appearing to it to be of special architectural or historic interest; and

4283 (2) any land⁷ comprising or contiguous or adjacent to such a building which appears to the Secretary of State⁸ or, in relation to Wales, to the National Assembly for Wales⁹ to be required:

326

93. (a) for preserving the building or its amenities; or

94. (b) for affording access to it; or

95. (c) for its proper control or management¹⁰.

327

In relation to any building or land in a National Park for which the National Park authority is the local planning authority, these powers are exercisable by the National Park authority and not by any other authority¹¹.

1 As to county councils see PARA 28 ante.

2 As to district councils see PARA 28 ante.

3 For the meaning of 'London Borough' see PARA 1094 note 3 ante.

4 For the meaning of 'joint planning board' see PARA 1142 note 10 ante.

- 5 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.
- 6 For the meaning of 'building' see PARA 1073 note 8 ante.
- 7 For the meaning of 'land' see PARA 1077 note 1 ante.
- 8 As to the Secretary of State see PARA 19 ante.
- 9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 52 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 52(1) (amended by the Local Government (Wales) Act 1994 s 20(4), Sch 6, PARA 25(7)). The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended) (see generally COMPULSORY ACQUISITION OF LAND), so far as applicable, other than ss 4-8 (as amended), s 10 (as amended) and s 31 (as amended), apply in relation to the acquisition of land under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 52 (as amended), but references in the Compulsory Purchase Act 1965 Pt I (as amended) to the execution of the works are to be construed as including references to (1) any erection, construction or carrying out of buildings or works authorised by the Town and Country Planning Act 1990 s 237 (as amended) (see PARA 954 ante); and (2) any erection, construction or carrying out of buildings or works on behalf of a minister or statutory undertakers on land acquired by that minister or those undertakers, where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired: Planning (Listed Buildings and Conservation Areas) Act 1990 s 52(2). For the meaning of 'minister' see PARA 1082 note 4 ante; and for the meaning of 'statutory undertakers' see PARA 1081 ante.
- 11 Environment Act 1995 s 70, Sch 9 para 13(1), (2). This is without prejudice to powers apart from the Planning (Listed Buildings and Conservation Areas) Act 1990 s 52 (as amended): Environment Act 1995 Sch 9 para 13(2). The Planning (Listed Buildings and Conservation Areas) Act 1990 s 52(2) (see note 10 supra) has effect accordingly: Environment Act 1995 Sch 9 para 13(2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/A. ACQUISITION OF LISTED BUILDINGS/(C) Management of Acquired Buildings/1162. Management of acquired listed buildings.

(C) MANAGEMENT OF ACQUIRED BUILDINGS

1162. Management of acquired listed buildings.

Where (1) a local authority¹ or joint planning board² acquires any building or other land compulsorily³ or by agreement⁴; or (2) the Historic Buildings and Monuments Commission for England ('English Heritage')⁵ acquires any building or other land compulsorily⁶, it may make such arrangements as to its management, use⁷ or disposal⁸ as it considers appropriate for the

purpose of the preservation of the building or other land⁹. These powers of management may also be exercised by a National Park authority which has so acquired a building or land situated in a National Park for which it is the local planning authority¹⁰.

When the Secretary of State¹¹ or, in relation to Wales, the National Assembly for Wales¹² acquires any building or other land compulsorily¹³, he or the Assembly may:

- 4284 (a) make such arrangements¹⁴ as he or it thinks fit as to the management, custody or use of the building or land; and
- 4285 (b) dispose of, or otherwise deal with, any such building or land as he or the Assembly may from time to time determine¹⁵.

1 In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 53(1) 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'local authority' see PARA 1072 note 8 ante. See also the text and note 10 infra. For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' para 1077 note 1 ante.

2 For the meaning of 'joint planning board' see PARA 1142 note 10 ante.

3 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 47(1): see PARA 1154 ante.

4 Ie under ibid s 52(1)(a) or (b): see PARA 1161 ante.

5 As to English Heritage see PARA 1058 ante.

6 See note 3 supra.

7 For the meaning of 'use' see PARA 1139 note 7 ante.

8 For the meaning of 'disposal' see PARA 1075 note 18 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 53(1). The power so conferred authorises the local authority to acquire the building with the prospect that it might thereafter make arrangements for the disposal of the building to another person in order to carry out the necessary repairs for its preservation: *Rolf v North Shropshire District Council* (1987) 55 P & CR 242, CA. The purpose of compulsory purchase is to ensure that reasonable steps are taken for properly preserving a listed building: it is not a requirement that the local authority should itself carry out the repairs or pay for them: see *PPG 15--Planning and the Historic Environment* para 7.15. As to the status of such guidance para 9 ante.

10 See the Environment Act 1995 s 70, Sch 9 para 13(1), (3). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 53, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

13 See note 3 supra.

14 The Commission (ie English Heritage) may be a party to such arrangements if they relate to property situated in England: Planning (Listed Buildings and Conservation Areas) Act 1990 s 53(3).

15 Ibid s 53(2).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/B. URGENT PRESERVATION/1163. Urgent works to preserve unoccupied listed buildings.

B. URGENT PRESERVATION

1163. Urgent works to preserve unoccupied listed buildings.

A local authority¹, including a National Park authority², may execute any works which appear to it to be urgently necessary for the preservation of a listed building³ in its area⁴. Before taking any steps with a view to the making of a dangerous structure order in respect of a listed building under building control legislation, a local planning authority⁵ must consider whether it should instead exercise these powers⁶.

If it appears to the Secretary of State⁷ that any works are urgently necessary for the preservation of a listed building in England, he must authorise the Historic Buildings and Monuments Commission for England ('English Heritage') to execute any works specified in the authorisation which appear to him to be urgently necessary for its preservation⁸. If it appears to the National Assembly for Wales⁹ that any works are urgently necessary for the preservation of a listed building in Wales, the Assembly may itself execute any works which appear to it to be urgently necessary for the building's preservation¹⁰.

The works which may be executed under these provisions may consist of or include works for affording temporary support or shelter for the building¹¹. If, however, the building is occupied, works may be carried out only to those parts which are not in use¹².

The owner¹³ of the building must be given not less than seven days' notice in writing of the intention to carry out the works¹⁴. Such a notice must describe the works proposed to be carried out¹⁵.

1 In the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'local authority' see PARA 1072 note 8 ante. See also note 2 infra. For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante. As respects buildings in Greater London, the functions of a local authority under s 54 are exercisable concurrently by the Historic Buildings and Monuments Commission for England ('English Heritage') and the relevant London borough council: s 54(7). As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29; for the meaning of 'functions' see PARA 1073 note 3 ante; and for the meaning of 'London borough' see PARA 1094 note 3 ante. As to English Heritage see PARA 1058 ante.

2 The Planning (Listed Buildings and Conservation Areas) Act 1990 has effect as if a National Park authority were the local authority for the purposes of ss 54, 55 (as amended) (see the text and notes 3-15 infra; and PARA 1164 post) and as if, in relation to ss 54, 55 (as amended), the relevant Park were the authority's area: Environment Act 1995 s 70, Sch 9 para 13(4)(a). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 For the meaning of 'listed building' see PARA 1091 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(1). Section 54(1) requires only that the works appear to be urgently necessary: *R v Secretary of State for Wales, ex p the City and County of Swansea*

[1999] JPL 524 (expenses incurred in respect of works carried out in the belief that they were urgently necessary and which after the event were determined to have been necessary, but not urgently necessary for the preservation of the building, were properly recoverable under s 55 (as amended) (see PARA 1164 post)). The fact that the future of the building, including its possible demolition, is under consideration cannot be a reason for the local authority not so acting, bearing in mind that the whole purpose of such action is to prevent all question of demolition being decided by the elements, perhaps assisted by the owner, rather than by the local authority or the Secretary of State: *R v Secretary of State for the Environment, ex p Hampshire County Council* (1980) 44 P & CR 343, DC. As to rights of entry see PARAS 1083-1086 ante.

The Planning (Listed Buildings and Conservation Areas) Act 1990 s 54 is not well adapted to works of a continuing nature, such as the continued maintenance of scaffolding, or of a continuing liability: *R v Secretary of State for the Environment, ex p Hampshire County Council* supra. Planning policy guidance issued in relation to England advises that use of the powers under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54 should be restricted to emergency repairs, eg works to keep a building wind- and weather-proof and safe from collapse, or action to prevent vandalism or theft. The steps taken should be the minimum consistent with achieving this objective, and should not involve an owner in great expense: see *PPG 15--Planning and the Historic Environment* para 7.7. As to the status of such guidance see PARA 9 ante.

5 For the meaning of 'local planning authority' see PARA 1073 ante.

6 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 56; and PARA 1165 post.

7 As to the Secretary of State see PARA 19 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(2)(a). The Secretary of State's policy is to use these powers only in exceptional cases, eg where a building is of exceptional interest or is in local authority ownership: see *PPG 15--Planning and the Historic Environment* para 7.6.

9 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(2)(b).

11 Ibid s 54(3).

12 Ibid s 54(4).

13 For the meaning of 'owner' see PARA 1075 note 17 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(5). In the case of works authorised under s 54(2)(a) (see the text and notes 7-8 supra), the Commission must give that notice: s 54(5). The purpose of the seven days' notice is to enable the owner of the building to discuss the matter with the local authority, discuss what works are necessary and what alternative ways there may be of achieving the object of preserving the building and perhaps to volunteer to carry out the works himself: *R v Secretary of State for the Environment, ex p Hampshire County Council* (1980) 44 P & CR 343, DC.

15 Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(6). The notice must state with sufficient particularity the steps which the owner is required to take: *R v Camden London Borough Council, ex p Comyn Ching & Co (London) Ltd* (1983) 47 P & CR 417 (notice requiring the owner to take 'all such steps as may be necessary ...' insufficient and thus defective).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/B. URGENT PRESERVATION/1164. Recovery of expenses of urgent works to preserve unoccupied listed buildings.

1164. Recovery of expenses of urgent works to preserve unoccupied listed buildings.

The following provisions have effect for enabling the expenses of urgent works executed to preserve unoccupied listed buildings¹ to be recovered by the authority which carried out the works, that is to say the local authority², the Historic Buildings and Monuments Commission for England ('English Heritage')³, the National Assembly for Wales⁴ or, in the case of works carried out by the Commission on behalf of the Secretary of State⁵, the Secretary of State⁶.

The authority may give notice to the owner⁷ of the building requiring him to pay the expenses of the works⁸.

Where the works consist of or include works for affording temporary support or shelter for the building:

- 4286 (1) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and
- 4287 (2) notices⁹ in respect of any such continuing expenses may be given from time to time¹⁰.

The owner may, within 28 days of the service of the notice, represent to the Secretary of State or to the Assembly:

- 4288 (a) that some or all of the works were unnecessary for the preservation of the building; or
- 4289 (b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or
- 4290 (c) that the amount specified in the notice is unreasonable; or
- 4291 (d) that the recovery of that amount would cause him hardship¹¹,

and the Secretary of State or the Assembly must determine to what extent the representations are justified¹². The Secretary of State or the Assembly must give notice of this determination, the reasons for it and the amount recoverable:

- 4292 (i) to the owner of the building; and
- 4293 (ii) if the authority which gave notice is a local authority or the Commission, to it¹³.

1 le works executed under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54: see PARA 1163 ante.

2 le including a National Park authority: see PARA 1163 note 2 ante. In *ibid* s 55 (as amended) 'local authority', in relation to a building or land in the Broads, includes the Broads Authority: s 91(6). For the meaning of 'local authority' see PARA 1072 note 8 ante. For the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 As to English Heritage see PARA 1058 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 55 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54(2)(a); and PARA 1163 ante. As to the Secretary of State see PARA 19 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 55(1). As to rights of entry see PARAS 1083-1086 ante.

7 For the meaning of 'owner' see PARA 1075 note 17 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 55(2).

9 I.e. notices under *ibid* s 55(2): see the text and notes 7-8 *supra*.

10 *Ibid* s 55(3).

11 'Hardship' clearly covers the personal circumstances of the owner in financial terms; it may also cover a gross disparity between what is paid out by the local authority and sought to be recovered from the building's owner and the benefit that the owner derives in terms of the value of the building. Hardship is a question of fact: *R v Secretary of State for the Environment, ex p Hampshire County Council* (1980) 44 P & CR 343, DC.

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 55(4). Planning policy guidance issued in relation to England indicates that the Secretary of State will be particularly concerned to establish whether the works carried out were the minimum required to secure the building's preservation and prevent further deterioration. If an authority intends to attempt to recover the cost of the works, the financial circumstances of the owner should be taken into account at the outset and any sums the authority wishes to recover from an owner should not be unreasonable in relation to his or her means: see *PPG 15--Planning and the Historic Environment* para 7.8. As to the status of such guidance see PARA 9 ante.

The Planning (Listed Buildings and Conservation Areas) Act 1990 54 (see PARA 1163 ante) creates an emergency procedure and authorities are expected to decide what may be difficult questions quickly. In those circumstances a balance has to be struck between the interests of owners and the interest of society in the preservation of listed buildings; if the works are necessary, it is reasonable that, subject to the other defences set out in s 55(4)(b)-(d) (see heads (b)-(d) in the text), the owner should be liable to reimburse the authority with the costs: see *R v Secretary of State for Wales, ex p City and County of Swansea* (1999) 78 P & CR 317, [1999] JPL 524.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 55(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/B. URGENT PRESERVATION/1165. Dangerous structure orders.

1165. Dangerous structure orders.

Building control legislation¹ enables a local authority outside inner London, if it appears to it that a building or structure, or part of a building or structure, is in such a condition, or is used to carry such loads, as to be dangerous, to apply to a magistrates' court for a dangerous structure order requiring the owner of the building either to execute such work as may be necessary to obviate the danger or, if he so elects, to demolish the building or structure, or any dangerous part of it, and remove any rubbish resulting from the demolition². That legislation also enables a local authority, if it appears to it that a building or structure is by reason of its ruinous or dilapidated condition seriously detrimental to the amenities of the neighbourhood, to require the owner of it, by notice, to execute such works of repair or restoration, or, if he so elects, to take such steps for demolishing the building or structure, or any part of it, and removing any rubbish or other material resulting from or exposed by the demolition, as may be necessary in the interests of amenity³.

In inner London, London building control legislation⁴ enables a magistrates' court, on complaint by a local authority:

- 4294 (1) to make any order which the court thinks fit for remedying the dangerous state of a structure or taking down repairing or otherwise securing it⁵; or
- 4295 (2) to order the owner to take down or repair or rebuild a neglected structure or any part of it or to fence in the land upon which it or any part of it is situated or otherwise to put the structure or any part of it into a state of repair and good condition to the satisfaction of the local authority⁶.

That legislation also provides that, acting on a certificate by the district surveyor that a structure is in a dangerous condition, the local authority may shore up or otherwise secure the structure, may erect a proper hoarding or fence for the protection of passengers and must cause notice in writing to be served on the owner or occupier of the structure requiring him forthwith to take down, repair or otherwise secure it as the case requires⁷.

Before taking any steps with a view to the making of any such order in respect of a listed building⁸, or the service of any such notice⁹, as is described above, a local planning authority¹⁰ must consider whether it should instead exercise its powers to issue a repairs notice¹¹, to acquire the building compulsorily¹² or to execute urgent works to preserve it¹³ under the Planning (Listed Buildings and Conservation Areas) Act 1990¹⁴.

1 Ie the Building Act 1984: see generally BUILDING.

2 See *ibid* s 77(1)(a); and BUILDING vol 4(2) (2002 Reissue) PARA 398.

3 See *ibid* s 79(1); and BUILDING vol 4(2) (2002 Reissue) PARA 399.

4 Ie the London Building Acts (Amendment) Act 1939: see generally BUILDING.

5 See *ibid* s 65 (as amended); and BUILDING vol 4(2) (2002 Reissue) PARA 302.

6 See *ibid* s 69(1) (as amended); and BUILDING vol 4(2) (2002 Reissue) PARA 302.

7 See *ibid* s 62(2) (as amended); and BUILDING vol 4(2) (2002 Reissue) PARA 302.

8 Ie an order under the Building Act 1984 s 77(1)(a) or under the London Building Acts (Amendment) Act 1939 s 65 (as amended) or s 69(1) (as amended) (see the text and notes 1-2, 4-6 *supra*): Planning (Listed Buildings and Conservation Areas) Act 1990 s 56(a). For the meaning of 'listed building' para 1091 *ante*.

9 Ie a notice under the Building Act 1984 s 79(1) or the London Building Acts (Amendment) Act 1939 s 62(2) (as amended) (see the text and notes 3, 7 *supra*): Planning (Listed Buildings and Conservation Areas) Act 1990 s 56(b).

10 For the meaning of 'local planning authority' see PARA 1073 ante. For the purposes of s 56, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

11 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 48: see PARA 1156 ante.

12 Ie under ibid s 47 (as amended): see PARA 1154 ante.

13 Ie under ibid s 54: see PARA 1163 ante.

14 Ibid s 56. As to the application of s 56 to buildings in conservation areas see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1181 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/C. GRANTS FOR REPAIR AND MAINTENANCE/1166. Power of local authority to contribute to preservation of listed buildings etc.

C. GRANTS FOR REPAIR AND MAINTENANCE

1166. Power of local authority to contribute to preservation of listed buildings etc.

A local authority¹, including a National Park authority², may contribute towards the expenses incurred or to be incurred in the repair or maintenance:

- 4296 (1) of a listed building³ which is situated in or in the vicinity of its area; or
- 4297 (2) of a building⁴ in its area which is not listed but which appears to it to be of architectural or historic interest⁵.

At the time of making such a contribution the local authority may also contribute towards the expenses incurred, or to be incurred, in the upkeep of any garden occupied with the building and contiguous or adjacent to it⁶.

Such a contribution may be made by grant or loan⁷. A contribution by way of loan may be made upon such terms and conditions as the local authority may determine including, but without prejudice to the above provisions, a term that the loan shall be free of interest⁸.

A local authority may:

- 4298 (a) renounce its right to repayment of such a loan or any interest for the time being outstanding; and
- 4299 (b) by agreement with the borrower, otherwise vary any of the terms and conditions on which such a loan is made⁹.

A local authority may require as a condition of the making by it of a contribution by way of grant towards the expenses of the repair or maintenance or upkeep of any property that the person to whom the grant is made shall enter into an agreement with it for the purpose of enabling the public to have access to the property or part of it during such period and at such times as the agreement may provide¹⁰.

1 For these purposes, and for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 58 (see PARA 1167 post), 'local authority' means (1) the council of a county, county borough, borough or district; (2) a joint planning board constituted under the Town and Country Planning Act 1990 s 2 (as amended) (see PARA 30 ante); and (3) in relation to a building or land in the Broads, the Broads Authority: Planning (Listed Buildings and Conservation Areas) Act 1990 s 57(7) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(8)). For the meaning of 'joint planning board' see PARA 1142 note 10 ante; for the meaning of 'building' see PARA 1073 note 8 ante; and for the meaning of 'land' see PARA 1077 note 1 ante. As to county and district councils see PARA 28 ante.

2 The Planning (Listed Buildings and Conservation Areas) Act 1990 has effect as if a National Park authority were a local authority for the purposes of s 57 (as amended) and s 58 and, in relation to those provisions, as if the relevant Park were the authority's area: Environment Act 1995 s 70, Sch 9 para 13(4). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

3 For the meaning of 'listed building' see PARA 1091 ante.

4 For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 57(1)(b) and s 57(2) as it applies for the purposes of s 57(1)(b), the definition of 'building' in the Town and Country Planning Act 1990 applies (see PARA 2 note 10 ante) with the omission of the words 'but does not include any plant or machinery comprised in a building': Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(7). See also PARA 1073 note 8 ante.

5 Ibid s 57(1). Planning policy guidance issued in relation to England advises that authorities' resources for conservation will be used to best effect if some are devoted to identifying buildings at risk, from neglect or inappropriate changes, as early as possible and providing advice, encouragement and (where appropriate) grants to owners: see *PPG 15--Planning and the Historic Environment* para 7.2. As to the status of such guidance see PARA 9 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 57(2).

7 Ibid s 57(3). As to the recovery of grants see PARA 1167 post.

8 Ibid s 57(4).

9 Ibid s 57(5).

10 Ibid s 57(6).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see **ADMINISTRATIVE LAW** vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/C. GRANTS FOR REPAIR AND MAINTENANCE/1167. Recovery of grants.

1167. Recovery of grants.

If, during the period of three years beginning with the day on which a grant is made¹ towards the repair or maintenance or upkeep of any property ('the grant property'), the grantee disposes² of the interest held by him in the property on that day or any part of that interest, by way of sale or exchange or lease³ for a term of not less than 21 years, the local authority⁴ may recover the amount of the grant, or such part of it as it thinks fit, from the grantee in any court of competent jurisdiction⁵.

If the grantee gives:

4300 (1) the whole of that interest to any person, whether directly or indirectly, but otherwise than by will, the above provisions⁶ have effect as if the donee were the grantee⁷;

4301 (2) part of that interest to any person, whether directly or indirectly, but otherwise than by will, the above provisions⁸ have effect as if any disposal or part disposal of that interest by the donee were a disposal by the grantee⁹.

If any condition imposed on the making of a grant is contravened or not complied with, the grantor may recover the amount of the grant, or such part of it as the grantor thinks fit, from the grantee¹⁰.

Nothing in the above provisions entitles a grantor to recover amounts in the aggregate exceeding the amount of the grant, for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property¹¹.

1 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 57 (as amended): see PARA 1166 ante.

2 For the meaning of 'disposal' and cognate expressions see PARA 1075 note 18 ante.

3 For these purposes, except in so far as the context otherwise requires, 'lease' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 38 note 6 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 91(1), (2).

4 For the meaning of 'local authority' for these purposes see PARA 1166 note 1 ante. A National Park authority is treated, where appropriate, as a local authority for these purposes: see PARA 1166 note 2 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 58(1). Section 58(1) is concerned only with disposal by way of sale, exchange or lease for a term of not less than 21 years and not with disposal by way of mortgage or charge: *Canterbury City Council v Quine* (1987) 86 LGR 467, CA.

6 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 58(1): see the text and notes 1-5 supra.

7 Ibid s 58(2).

8 See note 6 supra.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 58(3).

10 Ibid s 58(4).

11 Ibid s 58(5).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/ (2) LISTED BUILDINGS/(viii) Prevention of Deterioration/D. DAMAGE TO LISTED BUILDINGS/1168. Acts causing or likely to result in damage to listed buildings.

D. DAMAGE TO LISTED BUILDINGS

1168. Acts causing or likely to result in damage to listed buildings.

If, with the intention of causing damage to a listed building¹, any relevant person² does or permits the doing of any act which causes or is likely to result in damage to the building³, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁴.

The above provisions do not, however, apply to an act for the execution:

- 4302 (1) of works authorised by planning permission⁵ granted or deemed to be granted in pursuance of an application duly made⁶; or
- 4303 (2) of works for which listed building consent⁷ has been given⁸.

If a person convicted of such an offence fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he is guilty of a further offence and liable on summary conviction to a fine not exceeding one-tenth of level 3 on the standard scale for each day on which the failure continues⁹.

1 For the meaning of 'listed building' see PARA 1091 ante.

2 For these purposes, a person is a relevant person if, apart from the Planning (Listed Buildings and Conservation Areas) Act 1990 s 59(1), he would be entitled to do or permit the act in question: s 59(2).

3 For the meaning of 'building' see PARA 1073 note 8 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 59(1). For the meaning of 'the standard scale' see PARA 53 note 10 ante. The Town and Country Planning Act 1990 s 331 (offences by corporations) does not apply for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 59 (as amended): see s 89(2); and PARA 1072 the text and notes 11-12 ante. As to rights of entry see PARAS 1083-1086 ante.

5 For the meaning of 'planning permission' see PARA 1095 note 1 ante.

6 Ie an application under the Town and Country Planning Act 1990: see PARA 448 et seq ante.

7 For the meaning of 'listed building consent' see PARA 1109 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 59(3).

9 Ibid s 59(4) (amended by the Planning and Compensation Act 1991 s 32, Sch 7 para 58).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(i) Designation of Conservation Areas/1169. Designation of conservation areas.

(3) CONSERVATION AREAS

(i) Designation of Conservation Areas

1169. Designation of conservation areas.

Every local planning authority¹ including, in relation to Greater London², the Historic Buildings and Monuments Commission for England ('English Heritage')³ must:

- 4304 (1) from time to time determine which parts of its area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance; and
- 4305 (2) designate those areas as conservation areas⁴.

It is the duty of a local planning authority from time to time to review the past exercise of its functions under these provisions and to determine whether any parts or any further parts of its area should be designated as conservation areas; and, if it so determines, it must designate those parts accordingly⁵.

A local planning authority must give notice of the designation of any part of its area as a conservation area⁶ and of any variation or cancellation of any such designation to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ and, if it affects an area in England and the designation or, as the case may be, the variation or cancellation was not made by the Commission, to the Commission⁹.

The Secretary of State or the Assembly may from time to time determine that any part of a local planning authority's area which is not for the time being designated as a conservation area is an area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance; and, if he or the Assembly so determines, he or it may designate that part as a conservation area¹⁰. Before so making a determination, however, the Secretary of State or the Assembly must consult the local planning authority¹¹. The Secretary of State or the Assembly must give notice of the designation of any part of the area of a local planning authority as a conservation area¹² and of any variation or cancellation of any such designation to the authority and, if it affects an area in England, the Secretary of State must give such notice to the Commission¹³.

Notice of any such designation, variation or cancellation¹⁴, with particulars of its effect, must be published in the London Gazette and in at least one newspaper circulating in the area of the local planning authority, by that authority or, as the case may be, by the Secretary of State or the Assembly¹⁵.

The designation of any area as a conservation area is a local land charge¹⁶.

1 For the meaning of 'local planning authority' see PARA 1073 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69, 70 (see the text and notes 2-16 infra) and s 73 (as amended) (see PARA 1173 post), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante.

As to the exercise in England of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69, 70 see PARA 1096 note 14 ante. See also note 3 infra.

2 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

3 The functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69, 70 (see the text and notes 4-16 infra) are also exercisable in Greater London by the Historic Buildings and Monuments Commission for England ('English Heritage') (s 70(1)); and, before making a determination under s 69, the Commission must consult the council of each London borough of which any part is included in the area to which the proposed determination relates (s 70(2)). Before designating any area in Greater London as a conservation area, the Commission must obtain the consent of the Secretary of State: s 70(4). For the meaning of 'functions' see PARA 1073 note 3 ante; for the meaning of 'consult' para 2 note 1 ante; and for the meaning of 'London borough' see PARA 1094 note 3 ante. As to English Heritage see PARA 1058 ante.

4 Ibid s 69(1). For these purposes, except in so far as the context otherwise requires, 'conservation area' means an area for the time being so designated: s 91(1). Before making a determination under s 69, a county planning authority or National Park authority in England must consult the council of each district of which any part is included in the area to which the proposed determination relates: Sch 4 para 1(2) (as added), Sch 4 para 4(2) (amended by the Environment Act 1995 s 78, Sch 10 para 33). As to county planning authorities and district planning authorities see PARA 28 ante. In deciding whether to designate an area as a conservation area, the local planning authority is entitled to consider the whole of the area as an entity; not every part of the area need have on it something of interest, but interesting features and their setting are together to be treated as the 'area': *R v Canterbury City Council, ex p Halford* (1991) 64 P & CR 513, [1992] 2 PLR 137. For guidance on designation see PPG 15--*Planning and the Historic Environment* para 4; and as to the status of such guidance see PARA 9 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69, 70 see PARA 1098 note 7 ante.

The decision to designate a conservation area may be challenged by judicial review: see eg *R v Canterbury City Council, ex p Halford* supra; *R v Swansea City Council, ex p Elitstone Ltd* [1993] 2 EGLR 212, CA (unsuccessful challenge on grounds, inter alia, of procedural irregularity of sub-committee meeting accepting council officer's recommendation for designation; Court of Appeal holding that procedural irregularity in original designation cured by later confirmation of designation by full planning committee).

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 69(2).

6 Ie under ibid s 69(1) or (2): see the text and notes 1-5 supra.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 69, 70, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 70(5). A notice under s 70(5) or s 70(6) (see the text and notes 12-13 infra) must contain sufficient particulars to identify the area affected: s 70(7).

10 Ibid s 69(3).

11 Ibid s 70(3).

12 Ie under ibid s 69(3): see the text and note 10 supra.

13 Ibid s 70(6).

14 le under *ibid* s 70(5) or (6): see the text and notes 6-9, 12-13 *supra*.

15 *Ibid* s 70(8).

16 *Ibid* s 69(4). See generally LAND CHARGES.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1169 Designation of conservation areas

NOTE 4--See *R (on the application of Metro Construction Ltd) v Barnet LBC* [2009] EWHC 2956 (Admin), [2009] All ER (D) 266 (Nov) (Secretary of State refused to list building to afford it protection from demolition; local planning authority's designation of site on which building was situated as conservation area in order for purpose of saving building from demolition was unlawful).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(ii) General Duties of Planning Authorities/1170. Formulation and publication of proposals for preservation and enhancement of conservation areas.

(ii) General Duties of Planning Authorities

1170. Formulation and publication of proposals for preservation and enhancement of conservation areas.

It is the duty of a local planning authority¹ from time to time to formulate and publish proposals for the preservation and enhancement of any parts of its area which are conservation areas². Such proposals must be submitted for consideration to a public meeting in the area to which they relate³; and the local planning authority must have regard to any views concerning the proposals expressed by persons attending the meeting⁴.

1 For the meaning of 'local planning authority' see PARA 1073 *ante*. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 71 (see the text and notes 2-4 *infra*), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 *ante*. As to district planning authorities see PARA 28 *ante*.

2 *Ibid* s 71(1). For the meaning of 'conservation area' see PARA 1169 *ante*. As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 71 see PARA 1098 note 7 *ante*. As to the Secretary of State and the Assembly see PARAS 19-20 *ante*. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 *ante*.

3 *Ibid* s 71(2).

4 Ibid s 71(3). For guidance as to consultation see *PPG 15--Planning and the Historic Environment* paras 4.10-4.12; and as to the status of such guidance see PARA 9 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(ii) General Duties of Planning Authorities/1171. Exercise of planning functions; in general.

1171. Exercise of planning functions; in general.

In the exercise, with respect to any buildings¹ or other land² in a conservation area³, of any functions⁴ under or by virtue of any of the provisions of the planning Acts⁵, of Part I of the Historic Buildings and Ancient Monuments Act 1953⁶ and of certain provisions of the Leasehold Reform, Housing and Urban Development Act 1993 relating to estate management schemes⁷, special attention must be paid to the desirability of preserving or enhancing the character or appearance of that area⁸.

Without prejudice to these provisions, in the exercise of its powers of appropriation, disposal⁹ and development, including redevelopment, under the Town and Country Planning Act 1990¹⁰ a local authority¹¹ must have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings¹².

A local planning authority has power to direct that certain types of development for which permission is granted by the Town and Country Planning (General Permitted Development) Order 1995¹³ may nevertheless not be carried out within the whole or part of a conservation area unless specific permission for such development has been granted on an application made to the authority¹⁴. The power to issue such directions, known as 'article 4(2) directions', has already been discussed¹⁵.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 For the meaning of 'land' see PARA 1077 note 1 ante.

3 For the meaning of 'conservation area' see PARA 1169 ante.

4 For the meaning of 'functions' see PARA 1073 note 3 ante.

5 For the meaning of 'the planning Acts' para 2 ante.

6 Ie the Historic Buildings and Ancient Monuments Act 1953 Pt I (ss 2-9) (as amended): see PARA 1060 et seq ante.

7 Ie the Leasehold Reform, Housing and Urban Development Act 1993 ss 70, 73 (as amended): see LANDLORD AND TENANT vol 27(3) (2006 Reissue) PARAS 1736, 1739. For these purposes, references to provisions of the Leasehold Reform, Housing and Urban Development Act 1993 include references to those provisions as they

have effect by virtue of the Housing Act 1996 s 118(1): Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(3) (added by the Housing Act 1996 s 118(7)).

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 72(1), (2) (amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 30). For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 72 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 72 (as amended) see PARA 1098 note 7 ante; and as to the Secretary of State and the Assembly see PARAS 19-20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

Section 72 (as amended) only imposes a duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area. It does not require as a consideration of a development proposal that it must preserve or enhance, or serve to preserve or enhance, the character or appearance of a conservation area. There may be cases where other important factors in the public interest operate which render a development acceptable in a conservation area notwithstanding the conservation considerations: *Harrow London Borough Council v Secretary of State for the Environment and the Keepers and Governors of Harrow School* (1989) 60 P & CR 525. See also *Bath Society v Secretary of State for the Environment* [1991] JPL 663, CA. As to the quashing of planning consent for the retention of a development already carried out see *Historic Buildings and Monuments Commission for England v Secretary of State for the Environment* [1997] 3 PLR 8.

Preserving the character of appearance of a conservation area can be achieved not only by a positive contribution to preservation but also by development which leaves the character or appearance of the conservation area unharmed. Accordingly, where a particular development would not adversely affect the character or appearance of the area and is otherwise unobjectionable on planning grounds, there is no planning reason for refusing to allow it to proceed: *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141, [1992] 1 All ER 573, HL. See also *Historic Buildings and Monuments Commission v Secretary of State for the Environment* [1997] JPL 424 (inspector entitled to conclude that uPVC front door in keeping with character and appearance of conservation area).

For general guidance on the use of planning powers in conservation areas see, in relation to England, *PPG 15--Planning and the Historic Environment* paras 4.14-4.20; and as to permitted development see PARAS 4.21-4.24. As to the status of such guidance see PARA 9 ante.

9 For the meaning of 'disposal' see PARA 1075 note 18 ante.

10 Ie the powers conferred by the Town and Country Planning Act 1990 s 232 (see PARAS 945-946 ante), s 233 (see PARAS 948-949 ante) and s 235(1) (see PARA 952 ante).

11 For these purposes, the reference to a local authority includes a reference (1) to a joint planning board (Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(3) (amended by the Environment Act 1995 s 120, Sch 24)); and (2) to a National Park authority (Environment Act 1995 s 65(7), Sch 8 para 2(4)). The Planning (Listed Buildings and Conservation Areas) Act 1990 s 66 (as amended) is applied in relation to conservation areas by s 74(3), (4); and modified, so far as so applying, by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3: see note 12 infra; and PARA 1174 note 5 post. For the meaning of 'local authority' see PARA 1072 note 8 ante; as to joint planning boards see PARA 30 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 66(2) (as applied and modified: see note 11 supra). Section 66(1) (see PARA 1106 ante) does not apply for these purposes: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

13 Ie granted by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418, art 3(1), Sch 2 (as amended): see PARA 255 et seq ante. As to the types of development in respect of which such a direction may be issued see PARA 262 ante.

14 See *ibid* art 4(2); and PARA 262 ante.

15 See PARAS 262-263 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1171 Exercise of planning functions; in general

NOTE 8--See *Chandler v Secretary of State for the Communities and Local Government* [2007] EWHC 1000 (Admin), [2007] 2 P & CR 481 (a more stringent requirement than that contained by the 1990 Act s 72(1) was not required where neither the structure plan nor the local development plan sought to inhibit any development in a conservation area which was not either a development by way of reinstatement or restoration or a development which positively enhanced the character or appearance of the area).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(ii) General Duties of Planning Authorities/1172. Preservation of trees and control of advertisements.

1172. Preservation of trees and control of advertisements.

Trees in conservation areas¹ which are not subject to tree preservation orders² are afforded special statutory protection. These provisions have already been discussed³.

In relation to the control of advertisements⁴, the statutory exceptions from control do not apply to balloons in conservation areas⁵ and deemed consent is not granted for the following classes of advertisements in conservation areas:

- 4306 (1) illuminated advertisements on business premises in a retail park (with a saving for such advertisements already displayed when the area was designated)⁶;
- 4307 (2) illuminated advertisements on other business premises, with a similar saving⁷;
- 4308 (3) certain flag advertisements⁸; and
- 4309 (4) advertisements on hoardings (with a saving for such advertisements already displayed when the area was designated)⁹.

Planning policy guidance issued in relation to England accepts that the local planning authority's duty to pay special attention to the desirability of preserving or enhancing the character or appearance of a conservation area will result in practice in applying more exacting standards when the authority considers whether to grant consent for a proposed advertisement in such an area¹⁰.

1 For the meaning of 'conservation area' see PARA 1169 ante.

2 For the meaning of 'tree preservation order' see PARA 850 ante.

3 See the Town and Country Planning Act 1990 ss 211-214 (as amended); and PARA 877 et seq ante. When considering whether to extend protection to trees in conservation areas, local planning authorities should always take into account the visual, historic and amenity contribution of trees. In some instances new plantings

or re-plantings may be desirable where this would be consistent with the character and appearance of the area: see *PPG 15--Planning and the Historic Environment* para 4.40. As to the status of such guidance see PARA 9 ante.

4 As to the control of advertisements see PARA 769 et seq ante.

5 See the Town and Country Planning (Control of Advertisements) Regulations 1992, SI 1992/666, reg 3(2), Sch 2, Class A para 1; and PARA 779 ante.

6 See *ibid* reg 6, Sch 3 Pt I, Class 4A paras (1), (11); and PARA 802 ante.

7 See *ibid* Sch 3 Pt I, Class 4B paras (1), (12); and PARA 803 ante.

8 See *ibid* Sch 3 Pt I, Class 7B para (1) (as substituted); and PARA 807 ante.

9 See *ibid* Sch 3 Pt I, Class 8 paras (1), (7); and PARA 808 ante.

10 See *PPG 15--Planning and the Historic Environment* para 4.31. As to the status of such guidance see PARA 9 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(ii) General Duties of Planning Authorities/1173. Publicity for applications affecting conservation areas.

1173. Publicity for applications affecting conservation areas.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may prescribe³ requirements as to publicity for applications for planning permission⁴ in cases where the local planning authority⁵ thinks that the development⁶ of land⁷ would affect the character or appearance of a conservation area⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 73(1), (2) (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'prescribe' see PARA 1077 note 4 ante.

4 For these purposes, references to planning permission do not include references to planning permissions falling within the Town and Country Planning Act 1990 s 73A (as added) (retrospective permissions: see PARA 525 ante): Planning (Listed Buildings and Conservation Areas) Act 1990 s 73(2) (substituted by the Planning and Compensation Act 1991 s 32, Sch 7 para 60). For the meaning of 'planning permission' see PARA 1095 note 1 ante.

5 For the meaning of 'local planning authority' see PARA 1073 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 73 (as substituted), the Broads Authority is the sole district

planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

6 For the meaning of 'development' see PARA 1095 note 2 ante.

7 For the meaning of 'land' see PARA 1077 note 1 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 s 73(1) (substituted by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 118(1), Sch 6 paras 19, 24). For the meaning of 'conservation area' see PARA 1169 ante. At the date at which this title states the law, no such requirements had been prescribed.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1174. Control of demolition in conservation areas.

(iii) Control of Demolition

1174. Control of demolition in conservation areas.

A building¹ in a conservation area² may not be demolished³ without the consent of the appropriate authority⁴ ('conservation area consent')⁵. These provisions for controlling demolition do not, however, apply to:

- 4310 (1) listed buildings⁶;
- 4311 (2) ecclesiastical buildings⁷ which are for the time being used for ecclesiastical purposes⁸;
- 4312 (3) buildings for the time being included in the schedule of monuments complied and maintained⁹ under the Ancient Monuments and Archaeological Areas Act 1979; or
- 4313 (4) buildings in relation to which a direction¹⁰ by the Secretary of State or, in relation to Wales, by the National Assembly for Wales that they are not to apply to any description of building specified in the direction is for the time being in force¹¹.

The Secretary of State or the Assembly may by order provide for restricting or excluding the operation of head (2) above in such cases as may be specified in the order¹²; and any such order may make:

- 4314 (a) provision for buildings generally, for descriptions of building or for particular buildings;
- 4315 (b) different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;

- 4316 (c) such provision in relation to a part of a building, including in particular an object or structure falling to be treated as part of the building¹³, as may be made in relation to a building and make different provision for different parts of the same building;
- 4317 (d) different provision with respect to works of different descriptions or according to the extent of the works;
- 4318 (e) such consequential adaptations or modifications of the operation of any other provision of the Planning (Listed Buildings and Conservation Areas) Act 1990 or the Town and Country Planning Act 1990, or of any instrument made under either of those Acts, as appear to the Secretary of State or the Assembly to be appropriate¹⁴.

The order which has been made by the Secretary of State under heads (a) to (e) above, prior to the transfer of planning functions in Wales to the Assembly¹⁵, and the extent to which ecclesiastical exemption¹⁶ still applies and the bodies to which it applies have already been discussed¹⁷.

Any proceedings on or arising out of an application for conservation area consent made while the above provisions for controlling demolition apply to a building lapse if those provisions cease to apply to it; and any conservation area consent granted with respect to the building also lapses¹⁸. The fact that those provisions have ceased to apply to a building does not, however, affect the liability of any person to be prosecuted and punished for an offence¹⁹ committed with respect to the building while those provisions did apply to it²⁰.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 For the meaning of 'conservation area' see PARA 1169 ante.

3 For the meaning of 'demolition' see PARA 1109 note 2 ante.

4 For these purposes, the appropriate authority is (1) in relation to applications for consent made by local planning authorities, the Secretary of State or the National Assembly for Wales; and (2) in relation to other applications for consent, the local planning authority or, as the case may be, the Secretary of State or the Assembly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(2). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under ss 74, 75, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

For the meaning of 'local planning authority' see PARA 1073 ante. For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 74, 75, the Broads Authority is the sole planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. As to the exercise in England of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74 see PARA 1096 note 14 ante.

5 Ibid ss 74(1), 91(1). As to rights of entry see PARAS 1083-1086 ante. As to the granting of planning permission and conservation area consent subject to conditions see *R v Bristol City Council, ex p Anderson* (1999) 79 P & CR 358, [2000] PLCR 104, CA (condition attached to permission for student accommodation block).

The Planning (Listed Buildings and Conservation Areas) Act 1990 ss 7-26 (as amended) (see PARA 1109 et seq ante), ss 32-46 (as amended) (see PARA 1139 et seq ante), s 56 (see PARA 1165 ante), ss 62-65 (as amended) (see PARAS 1088-1090 ante, PARA 1195 post), s 66(1) (as amended) (see PARA 1106 ante), s 82(2)-(4) (as amended) (see PARA 1077 ante), s 83(1)(b), (3), (4) (see PARA 1075 ante) and s 90(2)-(4) (as amended) (see PARA 1082 ante) have effect in relation to buildings in conservation areas as they have effect in relation to listed buildings subject to such exceptions and modifications as may be prescribed by regulations (s 74(3)); and any such regulations may make different provision in relation to applications made by local planning authorities and in relation to other applications (s 74(4)). For the meaning of 'prescribed' see PARA 1077 note 4 ante. As to the making of regulations generally see PARA 1074 ante.

In their application to buildings in conservation areas specified provisions referred to in s 74(3) and set out in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3 col 1 have effect in relation to listed buildings subject to (1) the substitution of 'conservation area enforcement notice' for any reference to 'listed buildings enforcement notice' and the substitution of 'conservation area purchase notice' for any reference to 'listed building purchase notice' (reg 12(a)); and (2) the specified exceptions and additional modifications, if any, set out in Sch 3 col 2 opposite provisions so specified (reg 12(b)).

As to the Secretary of State's or the Assembly's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 74, 75 see PARA 1098 note 7 ante.

6 For the meaning of 'listed building' see PARA 1091 ante. Listed buildings are subject to stricter statutory controls: see PARA 1091 et seq ante.

7 For these purposes, a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office is treated as not being an ecclesiastical building: Planning (Listed Buildings and Conservation Areas) Act 1990 s 75(5). Regulations under the Planning (Listed Buildings and Conservation Areas) Act 1990 may provide that s 75(5)-(8) shall have effect subject to such exceptions and modifications as may be prescribed: and any such regulations may make different provision in relation to applications made by local planning authorities and in relation to other applications: s 75(9). As to the exercise of this power see the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771; and PARAS 1102-1104 ante.

8 For the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 7-9 (as amended), as they apply by virtue of s 74(3) (see note 5 supra; and PARA 1175 post), a building is taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question: s 75(6).

9 Ie the schedule of monuments compiled and maintained under the Ancient Monuments and Archaeological Areas Act 1979 s 1 (as amended): see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 1010. Such buildings are subject to stricter statutory controls: see PARA 1105 ante.

10 Such a direction may be given either to an individual local planning authority exercising functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74 or to local planning authorities generally: s 75(3). The Secretary of State or the Assembly may vary or revoke such a direction by a further such direction: s 75(4). For the meaning of 'functions' see PARA 1073 note 3 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 75(1), (2) (as modified: see note 4 supra). For the direction so given in relation to England see ODPM (ex DETR) Circular 01/2001, Culture, Media and Sport Circular 01/2001 *Arrangements for handling heritage applications--Notification and Directions by the Secretary of State* para 31.

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 75(7).

13 Ie by virtue of *ibid* s 1(5): see PARA 1091 ante.

14 *Ibid* ss 75(8), 91(1).

15 Ie the Ecclesiastical Exemption (Listed Buildings and Conservation Areas) Order 1994, SI 1994/1771: see PARAS 1102-1104 ante.

16 For the meaning of 'ecclesiastical exemption' see PARA 1102 note 1 ante.

17 See PARAS 1102-1104 ante.

18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 75(10).

19 Ie an offence under *ibid* s 9 (as amended) (see PARA 1110 ante) or s 43 (as substituted) (see PARA 1149 ante), as applied s 74(3) (see note 5 supra; and PARA 1175 post).

20 *Ibid* s 75(11).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1175. Authorisation of demolition of unlisted building in conservation area.

1175. Authorisation of demolition of unlisted building in conservation area.

No person may execute or cause to be executed any works for the demolition¹ of an unlisted building in a conservation area² unless the works are authorised³. Works for the demolition of such a building are authorised if conservation area consent⁴ has been granted for their execution and the works are executed in accordance with the terms of the consent and of any conditions attached to it⁵. Where works for the demolition of such a building are executed without such consent and written consent is granted by the local planning authority⁶ or by the Secretary of State⁷ (or, in relation to Wales, by the National Assembly for Wales⁸) for the retention of the works, the works are authorised from the grant of that consent⁹.

Contravention of these provisions is an offence and the like provisions apply¹⁰ as apply in relation to contravention of listed building control, with the appropriate modifications in terminology¹¹.

1 For the meaning of 'demolition' see PARA 1109 note 2 ante.

2 For the meaning of 'conservation area' see PARA 1169 ante.

3 Planning (Listed Buildings and Conservation Areas) Act 1990 s 7 (ss 7, 8 applied by s 74(2); modified by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3).

4 For the meaning of 'conservation area consent' see PARA 1174 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(2) (as modified and applied: see note 3 supra).

6 For the meaning of 'local planning authority' see PARA 1073 ante. See also PARA 1109 note 7 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 8(3) (as modified and applied: see note 3 supra).

10 I.e. the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9 (as amended): see PARA 1110 ante.

11 See *ibid* s 74(2); and the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1176. Application for and granting of conservation area consent.

1176. Application for and granting of conservation area consent.

The statutory provisions relating to making applications for listed building consent¹, certificates as to the applicant's status², and reference of certain applications to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ apply to applications for conservation area consent⁵ with the appropriate modifications in terminology⁶. Except where the building in question is in Greater London⁷, there is no statutory requirement to notify the Secretary of State or the Assembly of such applications⁸. Where application for conservation area consent is made as respects a building situated in Greater London, the local planning authority⁹ must notify the Historic Buildings and Monuments Commission for England ('English Heritage')¹⁰ of that application, may not determine such application until the expiry of a period of 28 days from such notification, must take into account any representations made by the Commission within such period in respect of that application, and must notify the Commission of the authority's decision on that application¹¹.

The Secretary of State or the Assembly may give directions to local planning authorities requiring them, in such cases or classes of case as may be specified in the directions, to notify him and such other persons as may be so specified of any applications made to the authorities for conservation area consent and of the decisions taken by the authorities on those applications¹². Such directions may be given to authorities generally or to particular authorities or descriptions of authority¹³.

The local planning authority or, as the case may be, the Secretary of State or the Assembly may grant or refuse an application for conservation area consent and, if it or he grants consent, may grant it subject to conditions¹⁴. Except in so far as it otherwise provides, any conservation area consent enures for the benefit of the building and of all persons for the time being interested in it¹⁵. The statutory provisions relating to the granting of listed building consent subject to conditions¹⁶ apply to the granting of conservation area consent with the appropriate modifications in terminology¹⁷.

The regulations relating to procedure on:

- 4319 (1) applications for conservation area consent¹⁸;
- 4320 (2) applications to vary or discharge conditions attached to a conservation area consent¹⁹;
- 4321 (3) the advertisement of applications²⁰;
- 4322 (4) the certificates which must accompany applications and appeals²¹;
- 4323 (5) applications under head (1) or head (2) above in National Parks²²;

- 4324 (6) the use of electronic communications²³; and
 4325 (7) applications for conservation area consent in anticipation of the disposal of Crown land²⁴,

are identical to those which apply in the case of listed building consent²⁵ and have already been discussed in that context²⁶. Those procedures are modified where there is a concurrent application for an order under the Transport and Works Act 1992, as has already been discussed²⁷.

1 le the Planning (Listed Buildings and Conservation Areas) Act 1990 s 10 (as amended): see PARAS 1111-1112 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

2 le ibid s 11: see PARA 1113 ante.

3 le ibid s 12 (as amended): see PARA 1115 ante. As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 For the meaning of 'conservation area consent' see PARA 1174 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

7 As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

8 le the Planning (Listed Buildings and Conservation Areas) Act 1990 s 13 (see PARA 1116 ante) does not apply: see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 3.

9 For the meaning of 'local planning authority' see PARA 1073 ante.

10 As to English Heritage see PARA 1058 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 14 (substituted for these purposes by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3).

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(5) (ss 15-19 (as amended) applied by s 74(3), (4); modified by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 3). The Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(1)-(4) (see PARA 1118 ante) does not apply for these purposes: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 3.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 15(6) (as applied and modified: see note 12 supra).

14 Ibid s 16(1) (as applied and modified: see note 12 supra).

15 Ibid s 16(3) (as applied and modified: see note 12 supra). Section 16(2) (see PARA 1127 ante) does not apply for these purposes: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, Sch 3.

16 le the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 17-19 (as amended): see PARAS 1129-1131 ante.

17 See note 6 supra.

18 le the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3 (as amended): see PARAS 1112, 1127 ante.

- 19 le ibid reg 4 (as amended): see PARA 1131 ante.
- 20 le ibid reg 5 (as amended): see PARAS 1112, 1131 ante.
- 21 le ibid reg 6: see PARA 1114 ante.
- 22 le ibid reg 7 (as amended): see PARAS 1111, 1131 ante.
- 23 le ibid reg 8A (as added and amended): see PARAS 1072 note 7, 1112, 1131 ante.
- 24 le ibid reg 15(1): see PARAS 1112 note 10, 1114 note 11 ante.
- 25 Planning (Listed Buildings and Conservation Areas) Regulations 1990 regs 4-7, 8A, 15(1) (as amended).
- 26 See the paragraphs of this title referred to in notes 16-24 supra.
- 27 See the Transport and Works Applications (Listed Buildings, Conservation Areas and Ancient Monuments Procedure) Regulations 1992, SI 1992/3138, reg 3, Sch 1; and PARAS 1112, 1114, 1131 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1177. Power to refuse to determine applications for conservation area consent.

1177. Power to refuse to determine applications for conservation area consent.

Partly as from a day to be appointed¹, a local planning authority² may decline to determine certain applications for conservation area consent³. These provisions also apply to listed building consent⁴ and have already been discussed in that context⁵.

1 le partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121: see note 3 infra.

2 For the meaning of 'local planning authority' see PARA 1073 ante.

3 See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 81A, 81B (as added); and PARAS 1125-1126 ante. At the date at which this title states the law, s 81A (as added) was in force in relation to England but not in relation to Wales, and s 81B (as prospectively added) had not been brought in force: see PARAS 4 note 8, 1125-1126 ante. For the meaning of 'conservation area consent' see PARA 1174 ante.

4 For the meaning of 'listed building consent' see PARA 1109 ante.

5 See PARAS 1125-1126 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1177 Power to refuse to determine applications for conservation area consent

NOTE 3--1990 Act s 81B in force 6 April 2009 in relation to England: SI 2009/384.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1178. Revocation and modification of conservation area consent.

1178. Revocation and modification of conservation area consent.

The statutory provisions relating to the revocation and modification of listed building consent¹ apply to conservation area consent² with the appropriate modifications in terminology³.

¹ See the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 23-26 (as amended): see PARAS 1132-1135 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

² For the meaning of 'conservation area consent' see PARA 1174 ante.

³ See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1179. Owners' rights.

1179. Owners' rights.

The statutory provisions relating to compensation where listed building consent¹ is revoked or modified², and to the service of purchase notices where listed building consent is refused or

granted subject to conditions³, apply in relation to conservation area consent⁴ with the appropriate modifications in terminology⁵.

1 For the meaning of 'listed building consent' see PARA 1109 ante.

2 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 28: see PARA 1136 ante.

3 Ie ibid ss 32-37 (as amended): see PARA 1139 et seq ante.

4 For the meaning of 'conservation area consent' see PARA 1174 ante.

5 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1180. Enforcement.

1180. Enforcement.

Where it appears to the local planning authority¹ that any works have been or are being executed to an unlisted building in a conservation area² in the authority's area and that the works are such as to involve a contravention of the requirement for conservation area consent³, the authority may, if it considers it expedient to do so having regard to the effect of the works on the character or appearance of the conservation area in which the building is situated, issue a conservation area enforcement notice⁴. Subject to this modification, the statutory provisions relating to the issue of listed building enforcement notices⁵, the execution of works required by such notices⁶, the effect of non-compliance⁷, the effect of statutory consent on such a notice⁸, the granting of injunctions⁹, enforcement in Greater London¹⁰ and enforcement by the Secretary of State¹¹ or, in relation to Wales, by the National Assembly for Wales¹² apply in relation to conservation area enforcement notices with the appropriate modifications in terminology¹³.

Appeals against conservation area enforcement notices are discussed below¹⁴.

1 For the meaning of 'local planning authority' see PARA 1073 ante. See also PARA 1146 note 1 ante.

2 For the meaning of 'conservation area' see PARA 1169 ante.

3 Ie the works involve a contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1) or (2), as applied to conservation area consent: see PARA 1175 ante. For the meaning of 'conservation area consent' see PARA 1174 ante.

4 Ibid s 38(1) (applied by s 74(3), (4); modified by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3).

- 5 le the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38 (as amended): see PARA 1146 ante.
- 6 le ibid s 42 (as amended): see PARA 1148 ante.
- 7 le ibid s 43 (as substituted): see PARA 1149 ante.
- 8 le ibid s 44: see PARA 1150 ante.
- 9 le ibid s 44A (as added): see PARA 1151 ante.
- 10 le ibid s 45: see PARA 1146 note 1 ante.
- 11 le ibid s 46 (as amended): see PARA 1152 ante. As to the Secretary of State see PARA 19 ante.
- 12 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 13 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.
- 14 See PARA 1197 et seq post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iii) Control of Demolition/1181. Urgent works to preserve unoccupied buildings in conservation areas.

1181. Urgent works to preserve unoccupied buildings in conservation areas.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that the preservation of a building³ in a conservation area⁴ is important for maintaining the character or appearance of that area, he or the Assembly may direct that the statutory provisions relating to urgent works to preserve unoccupied listed buildings⁵ are to apply to it as they apply to listed buildings⁶. The Secretary of State must, however, consult⁷ the Historic Buildings and Monuments Commission for England ('English Heritage')⁸ before giving such a direction in respect of a building in England⁹.

Where such a direction has been given, then before taking any steps with a view to obtaining certain orders relating to dangerous structures under building control legislation¹⁰, or serving certain notices under that legislation¹¹, a local planning authority¹² must instead consider whether it should exercise those powers relating to urgent works¹³.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 76, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 3 For the meaning of 'building' para 1073 note 8 ante.
- 4 For the meaning of 'conservation area' see PARA 1169 ante.
- 5 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 54: see PARA 1163 ante.
- 6 Ibid s 76(1). Authorities or members of the public may ask the Secretary of State to make such a direction; such requests should be supported by evidence confirming the importance of the building: see *PPG 15--Planning and the Historic Environment* para 7.5. As to the status of such guidance see PARA 9 ante.
- 7 For the meaning of 'consult' para 2 note 1 ante.
- 8 As to English Heritage see PARA 1058 ante.
- 9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 76(2).
- 10 Ie an order under the Building Act 1984 s 77(1)(a) or under the London Building Acts (Amendment) Act 1939 s 65 (as amended) or s 69(1) (as amended): see PARA 1165 ante.
- 11 Ie a notice under the Building Act 1984 s 79(1) or under the London Building Acts (Amendment) Act 1939 s 62(1) (as amended): see PARA 1165 ante.
- 12 For the meaning of 'local planning authority' see PARA 1073 ante.
- 13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 56 (applied by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); modified by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iv) Grants and Loans/1182. Grants and loans for preservation or enhancement of conservation areas.

(iv) Grants and Loans

1182. Grants and loans for preservation or enhancement of conservation areas.

If, in the opinion of the Historic Buildings and Monuments Commission for England ('English Heritage')¹, any relevant expenditure² has made or will make a significant contribution towards

the preservation or enhancement of the character or appearance of any conservation area³ situated in England or any part of such an area, the Commission may make grants or loans for the purposes of defraying the whole or part of that expenditure⁴.

If, in the opinion of the National Assembly for Wales⁵, any relevant expenditure has made or will make a significant contribution towards the preservation or enhancement of the character or appearance of any conservation area situated in Wales or any part of such an area, the Assembly may make grants or loans for the purposes of defraying the whole or part of that expenditure⁶.

Any such grant or loan may be made subject to such conditions as the Commission or, as the case may be, the Assembly may think fit to impose⁷; and any loan so made must be made on such terms as to repayment, payment of interest or otherwise as the Commission may⁸ determine or, as the case may be, the Assembly may⁹ determine¹⁰.

Unless the making of a grant or loan appears to the Assembly to be a matter of immediate urgency, before making the grant or loan, the Assembly must consult¹¹ the Historic Buildings Council for Wales¹² as to its making and the conditions subject to which it should be made¹³.

The Assembly may pay such remuneration and allowances as it may determine to any member of the Historic Buildings Council for Wales by whom services are rendered in connection with any question as to the exercise of the Assembly's powers under these provisions¹⁴. If any such member is also a member of the House of Commons, those payments extend only to allowances in respect of travelling and subsistence expenses and any other expenses necessarily incurred by him in connection with those services¹⁵.

1 As to English Heritage see PARA 1058 ante.

2 Expenditure is relevant for these purposes if it has been or is to be incurred in or in connection with, or with a view to the promotion of, such preservation or enhancement as is mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 77(1) or s 77(2): s 77(3).

3 For the meaning of 'conservation area' see PARA 1169 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 77(1). As to the recovery of grants see PARA 1183 post.

5 As to the transfer of functions under *ibid* s 77, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 77(2). See also note 2 supra.

7 *Ibid* s 77(4).

8 *Ie* in the case of any loan under *ibid* s 77(1).

9 *Ie* in the case of any loan under *ibid* s 77(2).

10 *Ibid* s 77(5), (6). Determination of the terms of a loan under s 77(2) when made by the Secretary of State for Wales was subject to Treasury approval: see s 77(6).

11 For the meaning of 'consult' para 2 note 1 ante.

12 As to the Historic Buildings Council for Wales see PARA 1059 ante.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 77(7).

14 *Ibid* s 77(8) (as modified: see note 6 supra). Determination of the remuneration etc when made by the Secretary of State for Wales was subject to Treasury approval: see s 77(8).

15 Ibid s 77(9).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1182 Grants and loans for preservation or enhancement of conservation areas

TEXT AND NOTES 13-15--1990 Act s 77(7)-(9) repealed: Historic Buildings Council for Wales (Abolition) Order 2006, SI 2006/63, art 3(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(iv) Grants and Loans/1183. Recovery of grants.

1183. Recovery of grants.

The following provisions apply to any grant for the preservation or enhancement of conservation areas¹ made on terms that it shall be recoverable²; and a grant is regarded as made on those terms only if, before or on making the grant, the grantor gives the grantee notice in writing:

- 4326 (1) summarising the effect of these provisions³; and
- 4327 (2) if the grant is made for the purpose of defraying the whole or part of expenditure in relation to any particular property ('the grant property') specifying the recovery period⁴.

If during the recovery period the grantee disposes⁵ of the interest which was held by him in the grant property on the day on which the grant was made or any part of that interest by way of sale or exchange or lease⁶ for a term of not less than 21 years, the grantor may recover the amount of the grant, or such part of it as the grantor thinks fit, from the grantee⁷.

If any condition imposed on the making of such a grant is contravened or not complied with, the grantor may recover the amount of the grant, or such part of it as he thinks fit, from the grantee⁸.

Nothing in the above provisions entitles a grantor to recover amounts in the aggregate exceeding the amount of the grant, for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property⁹.

1 le any grant made under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 77: see PARA 1182 ante.

2 Ibid s 78(1).

3 le the effect of *ibid* s 78: see the text and notes 1-2 *supra*, 4-9 *infra*.

4 *Ibid* s 78(2). For these purposes, 'the recovery period' means the period, beginning with the day on which the grant is made and ending not more than ten years after that day, during which the grant is to be recoverable in accordance with s 78(4): s 78(3).

5 For the meaning of 'disposal' and cognate expressions see PARA 1075 note 18 *ante*.

6 For the meaning of 'lease' see PARA 1167 note 3 *ante*.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 78(4). If the grantee gives the whole of that interest to any person, whether directly or indirectly, but otherwise than by will, s 78(4) has effect as if the donee were the grantee (s 78(5)); and, if the grantee gives part of that interest to any person, whether directly or indirectly, but otherwise than by will, s 78(4) has effect as if any disposal or part disposal of that interest by the donee were a disposal by the grantee (s 78(6)).

8 *Ibid* s 78(7).

9 *Ibid* s 78(8).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(v) Town Schemes/1184. Town scheme agreements.

(v) Town Schemes

1184. Town scheme agreements.

The Historic Buildings and Monuments Commission for England ('English Heritage')¹ and one or more local authorities² in England, or the National Assembly for Wales³ and one or more local authorities in Wales, may enter into an agreement (a 'town scheme agreement') that a specified sum of money shall be set aside for a specified period of years for the purpose of making grants for the repair of buildings⁴ which are:

- 4328 (1) included in a list compiled for the purpose of such an agreement by the parties to the agreement, or by them and other such authorities; or
- 4329 (2) shown on a map prepared for those purposes by the parties, or by them and such other authorities⁵.

Before such a list is compiled or such a map is prepared by the Assembly and any local authorities as respects any buildings in Wales, they must consult⁶ the Historic Buildings Council for Wales⁷.

1 As to English Heritage see PARA 1058 ante.

2 For these purposes, 'local authority' means (1) a county council; (2) a county borough council; (3) a district council; (4) in relation to any building situated within the Broads, the Broads Authority; (5) in relation to any building in a National Park for which a National Park authority is the local planning authority, that authority; (6) a London borough council or the Common Council of the City of London; (7) the Council of the Isles of Scilly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 79(3) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 para 25(9); and by the Environment Act 1995 s 78, Sch 10 para 33(1), (3)). For the meaning of 'London borough' see PARA 1094 note 3 ante. As to county councils, county borough councils and district councils see PARA 28 ante; as to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734; as to National Park authorities see open spaces and ancient monuments vol 34 (Reissue) PARA 157 et seq; as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 51 et seq; and as to the Council of the Isles of Scilly see LOCAL GOVERNMENT vol 69 (2009) PARA 36.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 For the meaning of 'building' see PARA 1073 note 8 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 ss 79(1), 91(1).

6 For the meaning of 'consult' para 2 note 1 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 79(2). As to the Historic Buildings Council for Wales see PARA 1059 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1184 Town scheme agreements

NOTE 7--1990 Act s 79(2) repealed: Historic Buildings Council for Wales (Abolition) Order 2006, SI 2006/63, art 3(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(3) CONSERVATION AREAS/(v) Town Schemes/1185. Grants for repairing buildings in town schemes.

1185. Grants for repairing buildings in town schemes.

The Historic Buildings and Monuments Commission for England ('English Heritage')¹ may make grants for the purpose of defraying the whole or part of any expenditure incurred or to be incurred in the repair of any building² which:

- 4330 (1) is the subject of a town scheme agreement³;
- 4331 (2) is situated in a conservation area⁴ in England; and

4332 (3) appears to the Commission to be of architectural or historic interest⁵.

The National Assembly for Wales⁶ may make grants for the purpose of defraying the whole or part of any expenditure incurred or to be incurred in the repair of any building which:

- 4333 (a) is the subject of a town scheme agreement;
- 4334 (b) is situated in a conservation area in Wales; and
- 4335 (c) appears to the Assembly to be of architectural or historic interest⁷.

Such a grant may be made subject to conditions imposed by the Commission or, as the case may be, the Assembly for such purposes as the Commission or, as the case may be, the Assembly thinks fit⁸.

Unless the making of such a grant appears to the Assembly to be a matter of immediate urgency, before it makes such a grant the Assembly may consult⁹ with the Historic Buildings Council for Wales¹⁰ as to the making of the grant and as to the conditions subject to which it should be made¹¹.

The Commission or the Assembly may:

- 4336 (i) pay any such grant to any authority which is a party to a town scheme agreement; and
- 4337 (ii) make arrangements with any such authority for the way in which the agreement is to be carried out¹².

Those arrangements may include such arrangements for the offer and payment of such grants as the parties may agree¹³.

1 As to English Heritage see PARA 1058 ante.

2 For the meaning of 'building' see PARA 1073 note 8 ante.

3 For the meaning of 'town scheme agreement' see PARA 1184 ante.

4 For the meaning of 'conservation area' see PARA 1169 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 80(1). Section 78(4)-(8) (recovery of grants: see PARA 1183 ante) applies to a grant under s 80 as it applies to a grant under s 78, but taking the recovery period to be three years beginning with the day on which the grant is made: s 80(7).

6 As to the transfer of functions under *ibid* s 80, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 80(2).

8 *Ibid* s 80(3).

9 For the meaning of 'consult' see PARA 2 note 1 ante.

10 As to the Historic Buildings Council for Wales see PARA 1059 ante.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 80(4).

12 *Ibid* s 80(5).

13 *Ibid* s 80(6).

UPDATE**1072-1209 Listed Buildings and Conservation Areas**

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1185 Grants for repairing buildings in town schemes

NOTE 11--1990 Act s 80(4) repealed: Historic Buildings Council for Wales (Abolition) Order 2006, SI 2006/63, art 3(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/A. APPEALS REGARDING LISTED BUILDING CONSENTS/1186. Right of appeal.

(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS

(i) Rights of Appeal

A. APPEALS REGARDING LISTED BUILDING CONSENTS

1186. Right of appeal.

Where a local planning authority¹:

- 4338 (1) refuses an application for listed building consent² or grants it subject to conditions³;
- 4339 (2) refuses an application for the variation or discharge of conditions⁴ subject to which such consent has been granted or grants it and adds new conditions; or
- 4340 (3) refuses an application for approval required by a condition imposed on the granting of listed building consent with respect to details of works or grants it subject to conditions,

the applicant, if aggrieved⁵ by the decision, may appeal to the Secretary of State⁶ or, in relation to Wales, to the National Assembly for Wales⁷.

A person who has made such an application may also appeal to the Secretary of State or to the Assembly if the local planning authority has done none of the following⁸:

- 4341 (a) given notice to the applicant of its decision on the application;
- 4342 (b) partly as from a day to be appointed⁹, given notice to the applicant that it has exercised its statutory power¹⁰ to decline to determine the application;

- 4343 (c) in the case of such an application as is mentioned in head (1) or head (2) above, given notice to the applicant that the application has been referred to the Secretary of State or to the Assembly in accordance with directions given¹¹ by him or by the Assembly,

within the relevant period¹² from the date of the receipt of the application, or within such extended period as may be at any time agreed upon in writing between the applicant and the authority¹³.

It has been held that the Secretary of State has jurisdiction to hear an appeal under the above provisions where the local planning authority has refused to consider the application on the grounds that it has not been validly made¹⁴.

The following provisions apply, partly as from a day to be appointed¹⁵, if a person who has made an application for listed building consent¹⁶ appeals to the Secretary of State or the Assembly under heads (a) to (c) above¹⁷. At any time before the end of the additional period¹⁸ the local planning authority may give the notice referred to in those heads¹⁹. If the local planning authority so gives notice that its decision is to refuse the application:

- 4344 (i) the appeal must be treated as an appeal²⁰ against the refusal;
 4345 (ii) the Secretary of State or the Assembly must give the person making the appeal an opportunity to revise the grounds of the appeal;
 4346 (iii) the Secretary of State or the Assembly must give such a person an opportunity to change any option the person has chosen relating to the procedure for the appeal²¹.

If, however, the local planning authority so gives notice that its decision is to grant the application subject to conditions, the Secretary of State or the Assembly must give the person making the appeal the opportunity:

- 4347 (A) to proceed with the appeal as an appeal²² against the grant of the application subject to conditions;
 4348 (B) to revise the grounds of the appeal;
 4349 (C) to change any option the person has chosen relating to the procedure for the appeal²³.

The Secretary of State or the Assembly must not issue his or its decision on the appeal before the end of the additional period²⁴.

1 For the meaning of 'local planning authority' see PARA 1073 ante. As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) see PARA 1096 note 9 ante. For the purposes of s 20 (as amended), the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

2 For the meaning of 'listed building consent' see PARA 1109 ante.

3 As to the power to impose conditions see PARA 1130 ante.

4 As to applications for variation or discharge of conditions see PARA 1131 ante.

5 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

6 As to the Secretary of State see PARA 19 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 20(1). As to the transfer of functions under s 20 (as amended), s 20A (as added), so far as exercisable in relation to Wales, to the Assembly see the National

Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 in relation to conservation area consents see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5 ante, PARA 1190 post; and as to rights of entry see PARAS 1083-1086 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) see PARA 1098 note 7 ante.

8 At the date at which this title states the law, head (b) in the text is omitted in relation to Wales and the words 'done none of the following' are replaced with the word 'neither': see *ibid* s 20(2) (as originally enacted). As to the amendment of s 20(2) see note 13 *infra*.

9 *Ie* partly as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121: see note 10 *infra*.

10 *Ie* under *ibid* s 81A (as added) or s 81B (as prospectively added): see PARAS 1125-1126 ante. At the date at which this title states the law, s 81A was in force in relation to England but not in relation to Wales and s 81B was not in force: see PARAS 4 note 8, 1125-1126 ante.

11 *Ie* in accordance with directions given under *ibid* s 12 (as amended): see PARA 1115 ante.

12 For these purposes, 'the relevant period' means (1) in the case of such an application as is mentioned in *ibid* s 20(1)(a) or (b) (see heads (1)-(2) in the text), such period as may be prescribed; and (2) in the case of such an application for approval as is mentioned in s 20(1)(c) (see head (3) in the text), the period of eight weeks from the date of the receipt of the application: s 20(3). The period so prescribed under head (1) *supra* is that specified in the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(4): see PARA 1127 ante. For the meaning of 'prescribed' see PARA 1077 note 4 ante.

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 20(2) (amended by the Planning and Compulsory Purchase Act 2004 s 43(4), (5), partly as from a day to be appointed (see notes 9-10 *supra*) and only in relation to applications which are received by the local planning authority after that day). For the purposes of the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(1) (see PARA 1189 post) and s 63(7)(b) (see PARA 1090 ante) in relation to an appeal under s 20(2) (as so amended), it is to be assumed that the authority decided to refuse the application: s 20(4).

14 See *R v Secretary of State for the Environment, Transport and Regions, ex p Bath and North East Somerset District Council* [1999] 4 All ER 418, [1999] 1 WLR 1759, CA.

15 See note 9 *supra*. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante.

16 *Ie* an application mentioned in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20(1) (a): see head (1) in the text.

17 *Ibid* s 20A(1) (s 20A added by the Planning and Compulsory Purchase Act 2004 s 50(2)-(4), partly as from a day to be appointed (see notes 9, 15 *supra*) and only in relation to applications which are received by the local planning authority after that day).

18 The additional period is the period prescribed for these purposes and which starts on the day on which the person appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20(2) (as amended): s 20A(6) (as added: see note 17 *supra*). At the date at which this title states the law, no such period had been prescribed. For the meaning of 'prescribed' see PARA 1077 note 4 ante.

19 *Ibid* s 20A(2) (as added: see note 17 *supra*).

20 *Ie* an appeal under *ibid* s 20(1): see the text and notes 1-7 *supra*.

21 *Ibid* s 20A(3) (as added: see note 17 *supra*). As to the procedure see PARA 1199 et seq post.

22 See note 20 *supra*.

23 Planning (Listed Buildings and Conservation Areas) Act 1990 s 20A(4) (as added: see note 17 *supra*).

24 Ibid s 20A(5) (as added: see note 17 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/A. APPEALS REGARDING LISTED BUILDING CONSENTS/1187. Power to make regulations.

1187. Power to make regulations.

An appeal¹ must be made by notice served in the prescribed manner within such period as may be prescribed².

Regulations³ may provide that an appeal in respect of an application for listed building consent⁴ or for the variation or discharge of conditions⁵ subject to which such consent has been granted shall not be entertained unless it is accompanied by a certificate⁶ as to the applicant's status⁷. If any person:

4350 (1) issues a certificate which purports to comply with the requirements of regulations so made⁸ and contains a statement which he knows to be false or misleading in a material particular; or

4351 (2) recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁹.

1 Ie an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 ante.

2 Ibid s 21(1). The period which may be so prescribed must be not less than: (1) in the case of an appeal under s 20(1), 28 days from the receipt by the applicant of notification of the decision; or (2) in the case of an appeal under s 20(2) (as amended), 28 days from the end of the relevant period, within the meaning of s 20 (as amended) (see PARA 1186 note 12 ante) or, as the case may be, the extended period there mentioned: s 21(2). For the meaning of 'prescribed' see PARA 1077 note 4 ante. In exercise of the power so conferred, and prior to the transfer of functions, so far as exercisable in relation to Wales, to the National Assembly for Wales (see PARA 20 ante), the Secretary of State made the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 8 (as amended): see PARA 1188 post.

As to the exercise in England and outside Greater London of the functions of a local planning authority under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 21 see PARA 1096 note 9 ante. For the purposes of s 21, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and 1073 ante. As to district planning authorities see PARA 28 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 21 see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante; and as to the application of s 21 in relation to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1190 post.

3 le under the Planning (Listed Buildings and Conservation Areas) Act 1990.

4 For the meaning of 'listed building consent' see PARA 1109 ante.

5 As to applications for the variation or discharge of conditions see PARA 1131 ante.

6 le a certificate in the prescribed form and corresponding to one of those described in the Planning (Listed Buildings and Conservation Areas) Act 1990 s 11(1); see PARA 1113 ante at heads (1)-(4) in the text.

7 Ibid s 21(5). Any such regulations may also include provisions corresponding to those which may be included in the regulations which may be made by virtue of s 11: s 21(6).

8 le regulations made by virtue of ibid s 21(5) or (6): see the text and notes 4-7 supra.

9 Ibid s 21(7). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1072 ante at head (8) in the text.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/A. APPEALS REGARDING LISTED BUILDING CONSENTS/1188. Procedure for making appeal.

1188. Procedure for making appeal.

An applicant who desires to appeal¹:

4352 (1) against a decision of a local planning authority²:
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96. (a) refusing listed building consent³ or granting such consent subject to conditions; or

97. (b) refusing to vary or discharge the conditions attached to a listed building consent, or in respect of the addition of new conditions consequential upon any such variation or discharge; or

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4353 (2) on the failure of a local planning authority to give notice of its decision or of the reference of the application to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵,

must give notice of appeal to the Secretary of State or to the Assembly, on a form obtained from him or from it, within six months of notice of the decision or of the expiry of the appropriate period allowed⁶, as the case may be, or such longer period as the Secretary of State or the Assembly may at any time allow⁷.

Such a person must also furnish to the Secretary of State or to the Assembly a copy of each of the following documents:

- 4354 (i) the application;
- 4355 (ii) all relevant plans, drawings, particulars and documents submitted with the application, including a copy of the certificate as to status⁸;
- 4356 (iii) the notice of the decision, if any;
- 4357 (iv) all other relevant correspondence with the local planning authority⁹.

The notice of appeal may include as the ground or one of the grounds of the appeal a claim that the building¹⁰ is not of special architectural or historic interest and ought to be removed from any list compiled or approved¹¹ by the Secretary of State or by the Assembly¹²; and, in the case of a building with respect to which a listed building preservation notice¹³ is in force, the notice of appeal may include a claim that the building should not be included in such a list¹⁴.

1 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 ante.

2 For the meaning of 'local planning authority' see PARA 1073 ante. See also PARA 1186 note 1 ante.

3 For the meaning of 'listed building consent' see PARA 1109 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Ie under the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 3(4): see PARA 1127 ante.

7 Ibid reg 8(1) (amended in relation to England by virtue of SI 2004/3341). For the prescribed forms of notice to be served in connection with appeals see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 6(8), Sch 2 Pt III (as amended); and for the prescribed versions of forms in Welsh see the Town and Country Planning (Listed Buildings in Wales and Buildings in Conservation Areas in Wales) (Welsh Forms) Regulations 1990, SI 1990/1147, reg 3(3), Sch 2 Pt III. As to the use of electronic communications for giving notice of appeal see PARA 1072 note 7 ante.

8 Ie the certificate given in accordance with the Planning (Listed Buildings and Conservation Areas) Regulations 1990 reg 6: see PARA 1114 ante.

9 Ibid reg 8(2).

10 For the meaning of 'building' see PARA 1073 note 8 ante.

11 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

12 Ibid s 21(3); and see note 5 supra. For the purposes of s 21, the Broads Authority is the sole district planning authority in respect of the Broads: see s 81, Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante. As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under s 21 see PARA 1098 note 7 ante. As to rights of entry see PARAS 1083-1086 ante; and as to the application of s 21 in relation to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990 reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1190 post.

13 For the meaning of 'building preservation notice' see PARA 1098 ante.

14 Planning (Listed Buildings and Conservation Areas) Act 1990 s 21(4).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1188 Procedure for making appeal

TEXT AND NOTES--Planning (Listed Buildings and Conservation Areas) Act 1990 s 21(8)-(11) added: Planning Act 2008 Sch 11 paras 1, 5 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/A. APPEALS REGARDING LISTED BUILDING CONSENTS/1189. Powers on determination of appeal.

1189. Powers on determination of appeal.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may allow or dismiss an appeal relating to listed building consent³ or may reverse or vary any part of the authority's decision, whether or not the appeal relates to that part, and may:

4358 (1) deal with the application as if it had been made to him or to the Assembly in the first instance; and

4359 (2) exercise the power⁴ to amend any list compiled or approved by him or by the Assembly by removing from it the building⁵ to which the appeal relates⁶.

Before determining the appeal, however, the Secretary of State or the Assembly must, if either the applicant or the local planning authority⁷ so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose⁸. The procedure on appeals is discussed below⁹.

The decision of the Secretary of State or the Assembly on the appeal is final¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 22, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 le an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 ante.

4 le under ibid s 1: see PARA 1092 ante.

5 For the meaning of 'building' see PARA 1073 note 8 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(1).

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 22 in relation to conservation area consent see the Planning (Listed Buildings and Conservation Areas) Regulations 1990 reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1190 post; and as to rights of entry see PARAS 1083-1086 ante.

As to the Secretary of State's or the National Assembly for Wales's power to direct the relevant local planning authority to submit for approval the arrangements which the authority proposes to make to obtain specialist advice in connection with its functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 22 see PARA 1098 note 7 ante.

7 For the meaning of 'local planning authority' see PARA 1073 ante. As to the exercise in England and outside Greater London of the functions of a local planning authority under ibid s 22 see Sch 4 paras 1(2), 2 (as respectively added and amended); and PARA 1096 note 9 ante. For the purposes of s 22, the Broads Authority is the sole district planning authority in respect of the Broads: see Sch 4 para 5 (as amended); and PARA 1073 ante. As to district planning authorities see PARA 28 ante.

8 Ibid s 22(2). Section 22(4), Sch 3 (as amended) (see PARA 1199 et seq post) applies to appeals under s 20 (as amended): s 22(4).

9 See PARA 1199 et seq post.

10 Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(3). As to questioning the validity of decisions of the Secretary of State or the Assembly on an appeal under s 20 (as amended) see PARAS 1088, 1090 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/B. APPEALS REGARDING CONSERVATION AREA CONSENTS/1190. In general.

B. APPEALS REGARDING CONSERVATION AREA CONSENTS

1190. In general.

The statutory right of appeal to the Secretary of State¹ or to the National Assembly for Wales² in relation to listed building consents³ applies in relation to conservation area consents⁴ with the appropriate modifications in terminology⁵ and the same procedure for making such an appeal⁶ applies⁷, except that the notice of appeal may not include the statutory grounds relating to inclusion of the relevant building in the statutory lists⁸. The Secretary of State or the Assembly may allow or dismiss such an appeal or may reverse or vary any part of the authority's

decision, whether or not the appeal relates to that part, and may deal with the application for conservation area consent as if it had been made to him or to the Assembly in the first instance⁹. There are the same rights to appear before and be heard by an appointed person before the appeal is determined¹⁰. The procedure on such appeals is discussed below¹¹.

The decision of the Secretary of State or the Assembly on the appeal is final¹².

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 I.e. the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

4 For the meaning of 'conservation area consent' see PARA 1174 ante.

5 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3), (4); the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

6 I.e. the Planning (Listed Buildings and Conservation Areas) Act 1990 s 21 (see PARAS 1186-1188 ante) and the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 8 (see PARA 1188 ante).

7 Ibid reg 8; and see note 5 supra.

8 I.e. the Planning (Listed Buildings and Conservation Areas) Act 1990 s 21(3), (4) (see PARA 1188 ante) does not apply: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(1)(a) (s 22 applied by s 74(3), (4); modified, so far as so applying, by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3). The Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(1)(b) (see PARA 1189 ante at head (2) in the text) does not apply: Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

10 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(2), (4) (as applied and modified: see note 9 supra); and PARA 1189 ante.

11 See PARA 1199 et seq post.

12 Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(3) (as applied and modified: see note 9 supra).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS

AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(A) Appeals to the Secretary of State or the Assembly/1191. Right of appeal.

C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES

(A) APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY

1191. Right of appeal.

A person having an interest in the building¹ to which a listed building enforcement notice² relates or a relevant occupier³ may appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ against the notice on any of the following grounds:

- 4360 (1) that the building is not of special architectural or historic interest;
- 4361 (2) that the matters alleged to constitute a contravention of the statutory controls⁶ on works affecting such buildings have not occurred;
- 4362 (3) that those matters, if they occurred, do not constitute such a contravention;
- 4363 (4) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- 4364 (5) that listed building consent⁷ ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- 4365 (6) that copies of the notice were not duly served⁸;
- 4366 (7) that, subject to certain exceptions⁹, the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- 4367 (8) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- 4368 (9) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- 4369 (10) that steps required to be taken¹⁰ exceed what is necessary to alleviate the effect of the works executed to the building;
- 4370 (11) that steps required to be taken¹¹ exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with¹².

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

3 For these purposes, 'relevant occupier' means a person who (1) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence; and (2) continues so to occupy the building when the appeal is brought: Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(7) (amended by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 para 20, Sch 19 Pt I).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20

ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 le a contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1) or (2): see PARA 1110 ante.

7 For the meaning of 'listed building consent' see PARA 1109 ante.

8 le as required by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(4) (as amended): see PARA 1146 ante.

9 le except in relation to such a requirement as is mentioned in *ibid* s 38(2) or (c) (as amended): see PARA 1146 ante at heads (b)-(c) in the text.

10 le by virtue of *ibid* s 38(2)(b)(as amended).

11 le by virtue of *ibid* s 38(2)(c) (as amended).

12 *Ibid* s 39(1) (amended by the Planning and Compensation Act 1991 Sch 3 para 3(1), (2)). It is, however, the duty of the Secretary of State in the case of a listed building enforcement notice to preserve the notice by correction or variation where that can be done without injustice to the appellant or the local planning authority: *Bath City Council v Secretary of State for the Environment* (1983) 47 P & CR 663.

An inspector hearing such an appeal is not entitled to ignore evidence of the condition of the building prior to the alterations made by the appellant: see *Braun v Secretary of State for Local Government, Transport and the Regions* [2002] EWHC 2767 (Admin), [2002] All ER (D) 309 (Dec); *affd* [2003] EWCA Civ 665, [2003] All ER (D) 266 (May).

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) in relation to conservation area enforcement notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1197 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(A) Appeals to the Secretary of State or the Assembly/1192. Power to make regulations.

1192. Power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe the procedure which is to be followed on appeals³ against listed building enforcement notices⁴ and, in particular, but without prejudice to the generality of these provisions, may:

- 4371 (1) require the local planning authority⁵ to submit, within such time as may be prescribed, a statement indicating the submissions which it proposes to put forward on the appeal;

- 4372 (2) specify the matters to be included in such a statement;
- 4373 (3) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in the opinion of the Secretary of State or the Assembly is likely to bring the appeal to the attention of persons in the locality in which the building⁶ in question is situated;
- 4374 (4) require the authority to send to the Secretary of State or to the Assembly, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it⁷.

If either the appellant or the local planning authority so wishes, the Secretary of State or the Assembly must, subject to certain exceptions⁸, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 40, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 I.e. appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARA 1191 ante.

4 For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

5 For the meaning of 'local planning authority' see PARA 1073 ante.

6 For the meaning of 'building' see PARA 1073 note 8 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 40(1) (s 40 modified by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1). Partly in exercise of the power so conferred, the Secretary of State has made (1) the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682 (as amended); and (2) Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended); and the Assembly has made (a) the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394 (as amended); and (b) the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended). As to the procedure on appeals see PARAS 1193 et seq, 1199 et seq post.

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 40 in relation to conservation area enforcement notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1197 post.

8 I.e. subject to the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(4): see PARA 1194 post.

9 Ibid s 40(2). Section 40(3), Sch 3 (as amended) (see PARA 1199 et seq post) applies to appeals under s 39 (as amended): s 40(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(A) Appeals to the Secretary of State or the Assembly/1193. Procedure for making appeal.

1193. Procedure for making appeal.

An appeal against a listed building enforcement notice¹ must be made:

- 4375 (1) by giving written notice of the appeal to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ before the date specified in the listed building enforcement notice as the date on which it is to take effect; or
- 4376 (2) by sending such notice to him or to the Assembly in a properly addressed and prepaid letter posted to him or to the Assembly at such time that, in the ordinary course of post, it would be delivered to him or to the Assembly before that date; or
- 4377 (3) by sending such notice to him or to the Assembly using electronic communications⁴ at such time that, in the ordinary course of transmission, it would be delivered to him or to the Assembly before that date⁵.

Where such an appeal is brought, and subject to any court order to the contrary under the relevant statutory power⁶, the listed building enforcement notice is of no effect pending the final determination or the withdrawal of the appeal⁷.

A person who so gives notice of appeal must submit to the Secretary of State or to the Assembly, either when giving the notice or within such time as may be prescribed⁸, a statement in writing:

- 4378 (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
- 4379 (b) giving such further information as may be prescribed⁹.

Upon receipt of the statement the Secretary of State or the Assembly must notify the local planning authority¹⁰ in writing that an appeal has been made and copy to the authority the appeal and the statement so made¹¹. On receiving such notification, the local planning authority must send to him or to the Assembly, not later than 14 days from the date of that notification, a certified copy of the listed building enforcement notice and a list of names and addresses of the persons on whom a copy of the notice has been served¹² under the relevant statutory provision¹³. The authority must also submit to the Secretary of State or to the Assembly, and to any person on whom a copy of the listed building enforcement notice has been served, a statement indicating the submissions which the authority proposes to put forward on the appeal¹⁴. When the Secretary of State or the Assembly considers that he or it has received all the documents required to enable him or it to entertain the appeal, he or the Assembly must send a notice to this effect to the appellant and the local planning authority¹⁵.

If, where more than one ground is specified in the statement referred to in heads (a) and (b) above, the appellant does not give information required under head (b) above in relation to each of those grounds within the prescribed time, the Secretary of State or the Assembly may

determine the appeal without considering any ground as to which the appellant has failed to give such information within that time¹⁶.

Where any person has so appealed to the Secretary of State or to the Assembly against a notice, no person is entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served¹⁷ on the person who appealed¹⁸.

1 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(1) (as amended): see PARA 1191 ante. For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 For the meaning of 'electronic communication' see PARA 1072 note 7 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(2) (substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 3(1), (3); amended in relation to England by the Town and Country Planning (Electronic Communications) (England) Order 2003, SI 2003/956, art 7 and in relation to Wales by the Town and Country Planning (Electronic Communications) (Wales) (No 1) Order 2004, SI 2004/3156, art 7). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) in relation to conservation area enforcement notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1197 post.

6 le subject to any order under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(3A) (as added): see PARA 1195 post.

7 Ibid s 39(3) (amended by the Planning and Compensation Act 1991 Sch 3 para 3(1), (4)).

8 For the meaning of 'prescribed' see PARA 1077 note 4 ante.

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(4). As to the required statement see the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 6; the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 5; and PARA 605 ante. Electronic communications may be used: see PARA 605 note 5 ante.

10 For the meaning of 'local planning authority' for these purposes see PARA 1073 ante.

11 Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 7; Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 6.

12 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(4) (as amended): see PARA 1146 ante.

13 See the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 8; the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 7; and PARA 606 ante.

14 See the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 9; the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 8; and PARA 607 ante. These provisions are modified when the appeal is against a notice issued by the Secretary of State or the Assembly under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 46 (as amended) (see PARA 1152 ante): see the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 11(d); the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 10(d); and PARA 608 ante.

15 See the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, reg 10; the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, reg 9; and PARA 607 ante.

- 16 Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(5).
- 17 As to service of notices see PARA 1072 ante at head (6) in the text.
- 18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(6).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(A) Appeals to the Secretary of State or the Assembly/1194. Powers on determination of appeals.

1194. Powers on determination of appeals.

On an appeal against a listed building enforcement notice¹ the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 4380 (1) correct any defect, error or misdescription in the listed building enforcement notice; or
- 4381 (2) vary the terms of the listed building enforcement notice,

if he or the Assembly is satisfied that the correction or variation will not cause injustice to the appellant or the local planning authority⁴.

Where the Secretary of State or the Assembly determines to allow the appeal, he or it may quash the notice⁵.

The Secretary of State or the Assembly must give any directions necessary to give effect to his or its determination on the appeal⁶.

The Secretary of State or the Assembly may:

- 4382 (a) dismiss such an appeal if the appellant fails to submit a statement in writing⁷ within the prescribed⁸ time; and
- 4383 (b) allow such an appeal and quash the listed building enforcement notice if the local planning authority fails to comply within the prescribed period with any requirement imposed by regulations⁹ relating to appeals¹⁰.

If the Secretary of State or the Assembly proposes to dismiss an appeal under head (a) above or to allow an appeal and quash the listed building enforcement notice under head (b) above, he or the Assembly need not give the appellant or the local planning authority an opportunity of appearing before, and being heard by, a person appointed¹¹ by the Secretary of State or the Assembly for the purpose¹².

Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State or the Assembly may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him¹³.

On the determination of an appeal the Secretary of State or the Assembly may:

- 4384 (i) grant listed building consent¹⁴ for the works to which the listed building enforcement notice relates or for part only of those works;
- 4385 (ii) discharge any condition or limitation subject to which listed building consent was granted and substitute any other conditions, whether more or less onerous;
- 4386 (iii) if he or it thinks fit, exercise the power¹⁵ to amend any list compiled or approved¹⁶ by him or by the Assembly by removing from it the building¹⁷ to which the appeal relates¹⁸.

Any listed building consent so granted by the Secretary of State or by the Assembly is treated as granted on a formal application for the same consent¹⁹ and the Secretary of State's or the Assembly's decision in relation to the grant is final²⁰.

1 He on an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARA 1191 ante. For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(1) (s 41(1), (2) substituted, and s 41(2A) added, by the Planning and Compensation Act 1991 s 25, Sch 3 para 4). For the meaning of 'local planning authority' see PARA 1073 ante.

As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41 (as amended) in relation to appeals against conservation area enforcement notices, see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1197 post.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(2) (as substituted: see note 4 supra).

6 Ibid s 41(2A) (as added: see note 4 supra). By virtue of the Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 9, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41 (as amended) had effect, until a day to be appointed by the Secretary of State, with the addition of the following subsection:

347 '(8) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a Minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250.'

The day so appointed was 2 January 1991: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

7 He fails to comply with the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(4): see PARA 1193 ante.

- 8 For the meaning of 'prescribed' see PARA 1077 note 4 ante.
- 9 Is any requirement imposed by regulations made by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 40(1)(a), (b) or (d): see PARA 1192 ante at heads (1), (2), (4) in the text.
- 10 Ibid s 41(3).
- 11 Is the Secretary of State or the Assembly need not comply with ibid s 40(2): see PARA 1192 ante.
- 12 Ibid s 41(4).
- 13 Ibid s 41(5). As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.
- 14 For the meaning of 'listed building consent' see PARA 1109 ante.
- 15 Is under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.
- 16 Is the list compiled or approved under ibid s 1: see PARA 1092 ante.
- 17 For the meaning of 'building' see PARA 1073 note 8 ante.
- 18 Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(6).
- 19 Is under ibid s 10 (as amended): see PARAS 1111-1112 ante.
- 20 Ibid s 41(7).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(B) Appeals to the High Court/1195. Right of appeal to the High Court.

(B) APPEALS TO THE HIGH COURT

1195. Right of appeal to the High Court.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² gives a decision³ in proceedings on an appeal against a listed building enforcement notice⁴, the appellant or the local planning authority⁵ or any other person having an interest in the land⁶ to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State or the Assembly to state and sign a case for the opinion of the High Court⁷. An appeal lies to the High Court on a point of law against a decision of the Secretary of State or of the Assembly under the above provision at the instance of any person or authority so entitled to appeal⁸.

At any stage of the proceedings on any appeal to the Secretary of State or to the Assembly against a listed building enforcement notice, he or the Assembly may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court⁹; and a decision of the High Court on a case so stated is deemed to be a judgment¹⁰ of the court¹¹.

In proceedings so brought the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the court thinks fit, which may include terms requiring the local planning authority to give an undertaking as to damages or any other matter, order that the listed building enforcement notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any rehearing and determination by the Secretary of State or the Assembly¹².

In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of these provisions the power to make rules of court includes power to make rules:

- 4387 (1) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for rehearing and determination by the Secretary of State or the Assembly; and
- 4388 (2) providing for the Secretary of State or the Assembly, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly¹³.

No proceedings in the High Court may, however, be brought by virtue of the above provisions except with the leave of that court; and no appeal to the Court of Appeal may be so brought except with the leave of the Court of Appeal or of the High Court¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 39, 65 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 19 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 For these purposes, 'decision' includes a direction or order; and references to the giving of a decision are to be construed accordingly: Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(6).

4 I.e. an appeal under *ibid* s 39 (as amended): see PARA 1191 ante. For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

5 For the meaning of 'local planning authority' see PARA 1073 ante.

6 For the meaning of 'land' see PARA 1077 note 1 ante.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(1). The Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides the only method of appeal against a decision under s 39 (as amended) and the court has no jurisdiction to hear such an appeal which has been brought, erroneously, under the Town and Country Planning Act 1990 s 288 (as amended) (see PARA 47 ante): see *O'Brien v Secretary of State for the Environment and Fenland District Council* (1993) 68 P & CR 314.

In the case of a listed building enforcement notice issued by the Historic Buildings and Monuments Commission for England ('English Heritage'), the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(1) applies as if the reference to the local planning authority were a reference to the Commission: s 65(7). As to English Heritage see PARA 1058 ante.

As to the application of s 65 (as amended) to appeals against conservation area enforcement notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARA 1174 note 5 ante, PARA 1198 post.

8 CPR Sch 1 RSC Ord 94 r 13(1), (2).

9 Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(2).

10 It is deemed to be a judgment of the court within the meaning of the Supreme Court Act 1981 s 16 (as amended): see COURTS vol 10 (Reissue) PARA 639. As from a day to be appointed, the Supreme Court Act 1981 s 16 (as amended) is to be cited as the Senior Courts Act 1981 s 16 (as amended): see the Constitutional Reform Act 2005 s 148(1), Sch 11 para 1.

11 Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(3).

12 Ibid s 65(3A) (s 65(3A) added, and s 65(5) substituted, by the Planning and Compensation Act 1991 s 25, Sch 3 para 8(1), (2)).

13 Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(4).

14 Ibid s 65(5) (as substituted: see note 12 supra). As to appeals to the High Court and the Court of Appeal generally see CIVIL PROCEDURE vol 12 (2009) PARA 1657 et seq.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1195 Right of appeal to the High Court

TEXT AND NOTES--Where the Secretary of State has given a decision in proceedings on an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 against a listed building enforcement notice (1) the appellant; (2) the local planning authority; or (3) any other person having an interest in the land to which the notice relates, may appeal to the High Court against the decision on a point of law: CPR 52.20(3) (CPR 52.20 added by SI 2007/2204). In such a statutory appeal, any person may apply for permission to file evidence; or to make representations at the appeal hearing: CPR 52.12A(1) (CPR 52.12A added by SI 2007/2204). Such an application must be made promptly: CPR 52.12A(2) (CPR 52.12A as so added).

NOTE 10--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/C. APPEALS AGAINST LISTED BUILDING ENFORCEMENT NOTICES/(B) Appeals to the High Court/1196. Applications for permission to appeal and procedure on appeal.

1196. Applications for permission to appeal and procedure on appeal.

An application for permission to appeal to the High Court against a decision in proceedings on an appeal against a listed building enforcement notice¹ must be made within 28 days after the date on which notice of the decision was given to the applicant². The procedure on such an application³, and the procedure on the appeal⁴, is the same as the procedure on an appeal

under the specified provisions of the Town and Country Planning Act 1990⁵, and has been discussed in that context⁶.

1 le an application for permission to appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65 (as amended): see PARA 1195 ante. For the meaning of 'listed building enforcement notice' see PARA 1146 ante. The provisions set out in the text and notes 2-6 infra also apply in the case of permission to appeal against a decision in proceedings on an appeal against a conservation area enforcement notice: see PARA 1198 post.

2 CPR Sch 1 RSC Ord 94 r 12(1). Application must be made using the Part 8 claim form: see *Practice Direction--Part 8 (How to make Claims in Schedule Rules and other Claims)* PD8B para B.1, Table 2, PARA B.8(2). As to claims under CPR Pt 8 see generally CIVIL PROCEDURE vol 11 (2009) PARA 127 et seq.

3 le CPR Sch 1 RSC Ord 94 r 12: see PARA 649 ante.

4 le CPR Sch 1 RSC Ord 94 r 13: para 649 ante.

5 le under the Town and Country Planning Act 1990 s 289 (as amended): see PARA 648 ante.

6 See PARA 649 ante. That procedure also applies on an appeal against a conservation area enforcement notice: see PARA 1198 post.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/D. APPEALS AGAINST CONSERVATION AREA ENFORCEMENT NOTICES/1197. Right of appeal to the Secretary of State or to the Assembly.

D. APPEALS AGAINST CONSERVATION AREA ENFORCEMENT NOTICES

1197. Right of appeal to the Secretary of State or to the Assembly.

A person having an interest in the building¹ to which a conservation area enforcement notice² relates or a relevant occupier³ may appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ against the notice on the grounds, inter alia, that retention of the building is not necessary in the interests of preserving or enhancing the character or appearance of the conservation area in which it is situated⁶. Other grounds of appeal are:

- 4389 (1) that the matters alleged to constitute a contravention of the statutory controls⁷ on works affecting such buildings have not occurred;
- 4390 (2) that those matters, if they occurred, do not constitute such a contravention;
- 4391 (3) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to

- secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;
- 4392 (4) that conservation area consent⁸ ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;
- 4393 (5) that copies of the notice were not duly served⁹;
- 4394 (6) that, subject to certain exceptions¹⁰, the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;
- 4395 (7) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;
- 4396 (8) that steps required to be taken¹¹ exceed what is necessary to alleviate the effect of the works executed to the building; or
- 4397 (9) that steps required to be taken¹² exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the conservation area consent had been complied with¹³.

Except for the provision regarding removal of a building from the statutory lists¹⁴, the procedure for making such appeals¹⁵ and the Secretary of State's or the Assembly's powers on the determination of such appeals¹⁶ are the same as those with regard to appeals against listed building enforcement notices, with the appropriate modifications in terminology¹⁷.

The procedure on the determination of such appeals is discussed below¹⁸.

1 For the meaning of 'building' see PARA 1073 note 8 ante.

2 For the meaning of 'conservation area enforcement notice' see PARA 1180 ante.

3 For these purposes, 'relevant occupier' means a person who (1) on the date on which the conservation area enforcement notice is issued occupies the building to which the notice relates by virtue of a licence; and (2) continues so to occupy the building when the appeal is brought: Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(7) (amended by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 para 20, Sch 19 Pt I; the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 applied with modifications in relation to conservation area enforcement notices by the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(1)(a) (substituted for these purposes by the Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3).

7 I.e a contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990 s 9(1) or (2): see PARAS 1110, 1175 ante.

8 For the meaning of 'conservation area consent' see PARA 1174 ante.

9 I.e as required by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 38(4) (as amended): see PARAS 1146, 1180 ante.

10 I.e except in relation to such a requirement as is mentioned in *ibid* s 38(2)(b) or (c) (as amended): see PARA 1146 ante at heads (b)-(c) in the text. See also PARA 1180 ante.

11 I.e by virtue of *ibid* s 38(2)(b)(as amended).

12 Ie by virtue of *ibid* s 38(2)(c) (as amended).

13 Ibid s 39(1)(b)-(h), (j)-(k) (as modified and applied: see notes 3, 6 *supra*; s 39(1)(b), (c) substituted by the Planning and Compensation Act 1991 s 25, Sch 3 para 3(1), (2)). For these purposes, the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(1)(i) (see *PARA* 1191 *ante* at head (9) in the text) is omitted: Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12(b), Sch 3.

14 Ie except for the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41(6)(c): see *PARA* 1194 *ante*.

15 Ie *ibid* s 39(2)-(6) (as amended) (see *PARA* 1193 *ante*); s 40 (see *PARA* 1192 *ante*); the Town and Country Planning (Enforcement Notices and Appeals) (England) Regulations 2002, SI 2002/2682, regs 6-11 (as amended); and the Town and Country Planning (Enforcement Notices and Appeals) (Wales) Regulations 2003, SI 2003/394, regs 5-10 (as amended) (see *PARA* 1193 *ante*).

16 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 41 (as amended): see *PARA* 1194 *ante*.

17 See the Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see *PARA* 1174 note 5 *ante*.

18 See *PARA* 1199 *et seq post*.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see *ADMINISTRATIVE LAW* vol 1(1) (2001 Reissue) *PARA* 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(i) Rights of Appeal/D. APPEALS AGAINST CONSERVATION AREA ENFORCEMENT NOTICES/1198. Appeals to the High Court; in general.

1198. Appeals to the High Court; in general.

The statutory provisions with regard to the right of appeal to the High Court against a decision in proceedings on an appeal against a listed building enforcement notice¹ and the power of the Secretary of State² or, in relation to Wales, of the National Assembly for Wales³ to state a special case for the High Court⁴ apply with regard to proceedings on an appeal against a conservation area enforcement notice⁵, with the appropriate modifications in terminology⁶. The procedure for applying for permission to appeal⁷ and the High Court procedure on such an appeal⁸ are the same in both cases.

1 Ie the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65 (as amended): see *PARA* 1195 *ante*. For the meaning of 'listed building enforcement notice' see *PARA* 1146 *ante*.

2 As to the Secretary of State see *PARA* 19 *ante*.

3 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the

Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 See the Planning (Listed Buildings and Conservation Areas) Act 1990 s 65(2); and PARA 1195 ante.

5 For the meaning of 'conservation area enforcement notice' see PARA 1180 ante.

6 See the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3. As to the appropriate modifications in terminology prescribed by reg 12(a) see PARA 1174 note 5 ante.

7 See CPR Sch 1 RSC Ord 94 r 12; and PARA 1196 ante.

8 See CPR Sch 1 RSC Ord 94 r 13; and PARA 1196 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1199. In general.

(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly

A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON

1199. In general.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe the classes of appeals³ which are to be determined by a person appointed by the Secretary of State or by the Assembly ('an appointed person') for the purpose instead of being determined by the Secretary of State or the Assembly⁴. Such appeals are known as 'transferred appeals'⁵. Appeals of a prescribed class must be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State or by the Assembly⁶.

Regulations made for these purposes may provide for the giving of publicity to any directions so given by the Secretary of State or the Assembly⁷.

The above provisions do not, however, affect any provisions in the Planning (Listed Buildings and Conservation Areas) Act 1990 or any instrument made thereunder that an appeal is to lie to, or a notice of appeal is to be served on, the Secretary of State or the Assembly⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

3 le appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARAS 1186, 1190 ante) and s 39 (as amended) (see PARAS 1191, 1197 ante).

4 Ibid ss 22(4), 40(3), Sch 3 para 1(1), (5). As to the application of ss 22(4), 40(3) (and thus of Sch 3 (as amended)) in relation to appeals with regard to conservation area consents and conservation area enforcement notices see the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 12, Sch 3; and PARAS 1174 note 5, 1190, 1197 ante. As to the exercise of this power by the Secretary of State, prior to the transfer of planning functions in Wales to the Assembly, see the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420; the text and note 6 infra; and PARA 1200 post. As to the making of regulations generally see PARA 1074 ante.

Where an appointed person is an officer of the Department of the Deputy Prime Minister, the functions of determining an appeal and doing anything in connection therewith conferred on him by the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1200 et seq post) are treated for the purposes of the Parliamentary Commissioner Act 1967 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq), if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department: Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 7(2)(a) (amended by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 16). Where an appointed person is an officer of the Welsh Assembly Government, the functions so conferred are treated for the purposes of the Government of Wales Act 1998 s 111, Sch 9 (as amended; prospectively repealed by the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 65, 69, as from a day to be appointed under s 40; at the date at which this title states the law, those repeals were not in force) (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45), if he was appointed by the Welsh Cabinet Minister for the time being having general responsibility in planning matters in relation to Wales, as functions of that minister, by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 7(2)(b) and the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

5 See PARA 621 the text and note 5 ante.

6 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 1(2).

7 Ibid Sch 3 para 1(3). As to publicity for such directions see the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 5; and PARA 621 note 6 ante.

8 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 1(4).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1199 In general

NOTE 4--Repeal of Government of Wales Act 1998 s 111, Sch 9 now in force: SI 2005/2800. For 'Department of the Deputy Prime Minister' read 'Department for Communities and Local Government': 1990 Act Sch 3 para 7(2) (amended by the Secretary of State for Communities and Local Government Order 2006, SI 2006/1926).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1200. Jurisdiction.

1200. Jurisdiction.

Subject to certain exceptions¹, the following classes of appeal are prescribed² as appeals to be determined by a person appointed by the Secretary of State³ or by the National Assembly for Wales⁴ for the purpose instead of by the Secretary of State or the Assembly:

- 4398 (1) appeals relating to listed building consent⁵ and conservation area consent⁶;
- 4399 (2) appeals against listed building enforcement notices⁷ and conservation area enforcement notices⁸.

The following classes of case are, however, reserved for determination by the Secretary of State or the Assembly:

- 4400 (a) appeals relating to listed building consent⁹ concerned with Grade I and Grade II (starred) listed buildings¹⁰;
- 4401 (b) appeals against listed building enforcement notices¹¹ concerned with Grade I and Grade II (starred) listed buildings¹²;
- 4402 (c) appeals relating to buildings for which grants have been made¹³ under the Historic Buildings and Ancient Monuments Act 1953¹⁴.

¹ ie subject to the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4: see heads (a)-(c) in the text.

² ie for the purposes of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 22(4), 40(3), Sch 3 para 1(1): see PARA 1199 ante.

³ As to the Secretary of State see PARA 19 ante.

⁴ As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

⁵ ie appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended): see PARA 1186 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

⁶ ie appeals under ibid s 20 (as amended) as s 20 has effect by virtue of s 74: see PARAS 1174 note 5, 1190 ante. For the meaning of 'conservation area consent' see PARA 1174 ante.

⁷ ie appeals under s 39 (as amended): see PARA 1191 ante. For the meaning of 'listed building enforcement notice' see PARA 1146 ante.

⁸ Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 3(2). The appeals referred to in head (2) in the text against conservation area enforcement notices are appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) as s 39 (as amended) has effect by virtue of s 74: see PARAS 1174 note 5, 1197 ante. For the meaning of 'conservation area enforcement notice' see PARA 1180 ante.

⁹ See note 5 supra.

10 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4(d). For the meaning of 'listed building' see PARA 1091 ante; and as to grading of listed buildings see PARA 1092 ante.

11 See note 7 supra.

12 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4(e).

13 lie under the Historic Buildings and Ancient Monuments Act 1953 s 3A (as added) (see PARA 1060 ante) or s 4 (as amended) (see PARA 1061 ante).

14 Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, SI 1997/420, reg 4(f).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1200 Jurisdiction

TEXT AND NOTES--Head (C) omitted, SI 1997/420 reg 4(f) revoked: SI 2008/595.

NOTE 8--See also SI 1997/420 reg 3(3) (added by SI 2008/595).

TEXT AND NOTES 9-14--SI 1997/420 reg 4 amended: SI 2006/2227 (England), SI 2009/380 (England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1201. Powers and duties of appointed persons.

1201. Powers and duties of appointed persons.

An appointed person¹ has the same powers and duties² as the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ has in relation to appeals⁵ with respect to listed buildings and conservation areas⁶.

If both the parties express a wish not to appear and be heard, the appeal may be determined without their being heard⁷; but, if either of the parties expresses a wish to appear and be heard, the appointed person must give them both an opportunity of doing so⁸.

Where an appeal has been determined by an appointed person, his decision is treated as that of the Secretary of State or, as the case may be, as that of the Assembly⁹; and the validity of that decision may not, except as provided by statute¹⁰, be questioned in any proceedings whatsoever¹¹.

Where in any enactment¹² there is a reference to the Secretary of State or the Assembly in a context relating to or capable of relating to:

- 4403 (1) an appeal in respect of listed buildings or conservation areas¹³; or
- 4404 (2) anything done or authorised or required to be done by, to or before the Secretary of State or the Assembly on or in connection with any such appeal,

then, so far as the context permits, it is to be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him¹⁴.

1 For the meaning of 'an appointed person' see PARA 1199 ante.

2 Ie (1) in relation to an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARAS 1186, 1190 ante), as the Secretary of State or the National Assembly for Wales has under s 22(1) (see PARAS 1189, 1190 ante) and s 1(6), Sch 1 para 2 (see PARA 1096 ante); and (2) in relation to an appeal under s 39 (as amended) (see PARAS 1191, 1197 ante), as he or it has under s 41(1), (2), (2A), (5) or (6) (as amended) (see PARAS 1194, 1197 ante) and Sch 1 para 2 (see PARA 1096 ante).

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 Ie in relation to an appeal (1) under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 ante) or s 20 (as amended) as applied by s 74 (see PARAS 1174 note 5, 1190 ante); (2) under s 39 (as amended) (see PARAS 1176, 1193 ante) or s 39 (as amended) as applied by s 74 (see PARAS 1174 note 5, 1197 ante).

6 Ibid ss 22(4), 40(3), Sch 3 para 2(1) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 28). As to the application of these provisions in relation to conservation areas see PARA 1199 note 4 ante. The Planning (Listed Buildings and Conservation Areas) Act 1990 s 22(2) (see PARAS 1189, 1190 ante) and s 40(2) (see PARAS 1192, 1197 ante) do not apply to an appeal which falls to be determined by an appointed person; but, before the appeal is determined, the Secretary of State or the Assembly must ask the appellant and the local planning authority whether they wish to appear before, and be heard by, the appointed person: Sch 3 para 2(2). For the meaning of 'local planning authority' see PARA 1073 ante.

7 Ibid Sch 3 para 2(3).

8 Ibid Sch 3 para 2(4).

9 Ibid Sch 3 para 2(5) (as modified: see note 6 supra).

10 Ie except as provided by ibid ss 62-65 (as amended): see PARAS 1088-1090, 1195, 1198 ante. It is not, however, a ground of application to the High Court under s 63 (as amended), or of appeal under s 65 (as amended), that an appeal ought to have been determined by the Secretary of State or by the Assembly and not by an appointed person, unless the appellant or the local planning authority challenges the appointed person's power to determine the appeal before his decision on the appeal is given: Sch 3 para 2(7).

11 Ibid Sch 3 para 2(6).

12 Ie including the Planning (Listed Buildings and Conservation Areas) Act 1990. For the meaning of 'enactment' see PARA 1121 note 6 ante.

13 Ie an appeal under ibid s 20 (as amended) or s 39 (as amended), or under those provisions as applied by s 74.

14 Ibid Sch 3 para 2(8).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1202. Determination of appeals by the Secretary of State or the Assembly instead of by an inspector.

1202. Determination of appeals by the Secretary of State or the Assembly instead of by an inspector.

If he or it thinks fit, the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may direct that an appeal which would otherwise fall to be determined by an appointed person³ shall instead be determined by the Secretary of State or by the Assembly⁴.

Such a direction must state the reasons for which it is given and must be served⁵ on the appellant, the local planning authority⁶, any person who made representations relating to the subject matter of the appeal which the authority was required to take into account⁷ and, if any person has been appointed⁸ to determine the appeal, on him⁹.

The Secretary of State or the Assembly must give the appellant, the local planning authority and any person who has made representations¹⁰ an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for that purpose if:

- 4405 (1) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
- 4406 (2) in the case of the appellant and the local planning authority, either of them was not asked¹¹ whether he or it wished to appear before, and be heard by, the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so¹².

In determining the appeal, the Secretary of State or the Assembly may take into account any report made to him or to the Assembly by any person previously appointed to determine it¹³.

The Secretary of State or the Assembly may by a further direction revoke a direction so given¹⁴ at any time before the determination of the appeal¹⁵. Such a further direction must state the reasons for which it is given and must be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who made representations relating to the subject matter of the appeal which the authority was required¹⁶ to take into account¹⁷.

Anything done by or on behalf of the Secretary of State or the Assembly in connection with the appeal which might have been done by the appointed person, including any arrangements made for the holding of a hearing or local inquiry, is treated, unless that person directs otherwise, as having been done by him¹⁸.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.
- 3 For the meaning of 'an appointed person' see PARA 1199 ante.
- 4 Planning (Listed Buildings and Conservation Areas) Act 1990 ss 22(4), 40(3), Sch 3 para 3(1). As to the application of Sch 3 (as amended) in relation to conservation areas see PARA 1199 note 4 ante.
- 5 As to service see PARA 1072 ante at head (6) in the text.
- 6 For the meaning of 'local planning authority' see PARA 1073 ante.
- 7 Ie by regulations made under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 11(4): see PARA 1113 ante.
- 8 Ie under ibid Sch 3 para 1: see PARA 1199 ante.
- 9 Ibid Sch 3 para 3(2). Where in consequence of such a direction an appeal under s 20 (as amended) (see PARAS 1186, 1190 ante) or s 39 (as amended) (see PARAS 1191, 1197 ante) falls to be determined by the Secretary of State or by the Assembly, the provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 which are relevant to the appeal apply to the appeal, subject to Sch 3 para 3(4)-(6) (see the text and notes 10-13 infra), as if Sch 3 (as amended) had never applied to it: Sch 3 para 3(3).
- 10 Ie any such representations as are mentioned in ibid Sch 3 para 3(2): see the text and notes 5-9 supra.
- 11 Ie in pursuance of ibid Sch 3 para 2(2): see PARA 1201 ante.
- 12 Ibid Sch 3 para 3(4). Except as provided by Sch 3 para 3(4), the Secretary of State or the Assembly need not give any person an opportunity of appearing before, and being heard by, a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made: Sch 3 para 3(5).
- 13 Ibid Sch 3 para 3(6).
- 14 Ie under ibid Sch 3 para 3: see note 9 supra.
- 15 Ibid Sch 3 para 4(1).
- 16 See note 6 supra.
- 17 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 4(2). Where such a further direction has been given, the provisions of Sch 3 (as amended) relevant to the appeal apply, subject to Sch 3 para 4(4) (see the text and note 18 infra), as if no direction under Sch 3 para 3 had been given: Sch 3 para 4(3).
- 18 Ibid Sch 3 para 4(4).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1203. Appointment of another person to determine appeal.

1203. Appointment of another person to determine appeal.

At any time before the appointed person¹ has determined the appeal the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may revoke that person's appointment and appoint another person⁴ to determine the appeal instead⁵.

Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing⁶ in connection with it must be begun afresh⁷.

1 For the meaning of 'an appointed person' see PARA 1199 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 22(4), 40(3), Sch 3 para 1: see PARA 1199 ante.

5 Ibid Sch 3 para 5(1).

6 As to inquiries and hearings see PARA 1204 post.

7 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 5(2). Nothing in Sch 3 para 5(2) requires (1) the question referred to in Sch 3 para 2(2) (see PARA 1201 ante) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person, any answers being treated as given with reference to the new appointed person; or (2) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made: Sch 3 para 5(3).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination

of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/1204. Local inquiries and hearings.

1204. Local inquiries and hearings.

Whether or not the parties to an appeal have asked for an opportunity to appear and to be heard, an appointed person¹ may hold a local inquiry in connection with the appeal². He must hold a local inquiry if the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ so directs⁵. Where an appointed person holds a hearing by virtue of the provisions previously discussed⁶ or holds an inquiry by virtue of these provisions⁷, an assessor may be appointed by the Secretary of State or the Assembly to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal⁸. The costs of any hearing and of any inquiry are to be paid⁹ by the Secretary of State or the Assembly¹⁰.

Subject to the following provisions, at any such inquiry oral evidence must be heard in public and documentary evidence must be open to public inspection¹¹. If, however, the Secretary of State in relation to England, or the Secretary of State exercising these functions concurrently with the Assembly in relation to Wales, is satisfied in the case of any such inquiry that:

- 4407 (1) giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to national security or the measures taken or to be taken to ensure the security of any premises or property; and
- 4408 (2) the public disclosure of that information would be contrary to the national interest,

he or they may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, be open to inspection at that inquiry by such persons or persons of such descriptions as he or they may specify in that direction¹². In relation to England, if the Secretary of State is considering giving such a direction the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given¹³; and if before the Secretary of State gives such a direction no person is so appointed, the Attorney General may at any time so appoint a person for the purposes of the inquiry¹⁴. The Lord Chancellor may by rules make provision:

- 4409 (a) as to the procedure to be followed by the Secretary of State before he gives such a direction in a case where a person has been so appointed¹⁵;
- 4410 (b) as to the functions¹⁶ of a person appointed¹⁷ as described above¹⁸.

If the matter in respect of which a local inquiry to which the above provisions apply¹⁹ is to be held relates to Wales, the above references²⁰ to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales²¹. The Assembly may by regulations²² make provision²³ in connection with such a local inquiry²⁴; and if it acts under this power, rules made by the Lord Chancellor under the provisions set out above²⁵ do not have effect in relation to the inquiry²⁶.

If a person is appointed as described above²⁷ ('the appointed representative') the Secretary of State or the Assembly may direct any person who he or it thinks is interested in the inquiry in relation to a matter mentioned in heads (1) and (2) above ('the responsible person') to pay the fees and expenses of the appointed representative²⁸. If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State or the Assembly²⁹. He or it must cause the amount

agreed between the appointed representative and the responsible person or determined by him or by the Assembly to be certified³⁰. An amount so certified is recoverable from the responsible person as a civil debt³¹. If, however, a person is so appointed, but no inquiry is held³², then the above provisions³³ apply in respect of the fees and expenses of the person appointed as if the inquiry had been held³⁴.

1 For the meaning of 'an appointed person' see PARA 1199 ante.

2 Planning (Listed Buildings and Conservation Areas) Act 1990 ss 22(4), 40(3), Sch 3 para 6(1)(a). The Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held in pursuance of the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 et seq ante) as it applies to a statutory inquiry held by the Secretary of State or by the Assembly, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State or by the Assembly were a reference to a decision taken by an appointed person: Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 7(1) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 32). As to the application of the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) in relation to conservation areas see PARA 1199 note 4 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6(1)(b).

6 Ie by virtue of ibid Sch 3 para 2(4): see PARA 1201 ante.

7 Ie by virtue of ibid Sch 3 para 6.

8 Ibid Sch 3 para 6(2).

9 Ie subject to ibid Sch 3 para 6(4): see note 10 infra.

10 Ibid Sch 3 para 6(3). The Local Government Act 1972 s 250(2)-(5) (as amended) (evidence at and costs of local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held by virtue of the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6 with the following adaptations: (1) for the references in the Local Government Act 1972 s 250(4) (recovery of costs of holding inquiry) to the minister causing the inquiry to be held there must be substituted references to the Secretary of State or the Assembly; and (2) for the reference in s 250(5) (orders as to costs of the parties) to the minister causing the inquiry to be held there must be substituted a reference to the appointed person or the Secretary of State or the Assembly: Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6(4).

The appointed person or the Secretary of State or the Assembly has the same power to make orders under the Local Government Act 1972 s 250(5) in relation to proceedings under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended) (see PARA 1199 et seq ante) which do not give rise to an inquiry as he or it has in relation to such an inquiry: Sch 3 para 6(8). The Planning (Listed Buildings and Conservation Areas) Act 1990 had effect with the omission of Sch 3 para 6(8) until a day to be appointed by the Secretary of State: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 12. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

11 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6(5).

12 Ibid Sch 3 para 6(6), (7).

13 Ibid Sch 3 para 6A(1) (Sch 3 paras 6A(1)-(12), 8(1)-(6) added by the Planning and Compulsory Purchase Act 2004 s 80(3), 81(2) respectively, partly as from a day to be appointed under s 121; at the date at which this title states the law, ss 80, 81 were not fully in force (see PARA 4 ante)).

14 Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6A(2) (as added: see note 13 supra).

15 Ie where a person has been appointed under ibid Sch 3 para 6A(1) (as added): see the text to note 13 supra.

16 For the meaning of 'functions' see PARA 1073 note 3 ante.

17 Ie appointed under the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 para 6A(1) or (2) (as added): see the text to notes 13-14 supra.

18 Ibid Sch 3 para 6A(3) (as added: see note 13 supra). Rules made under Sch 3 para 6A(3) (as so added) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Sch 3 para 6A(8) (as so added). As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 1990 Act see the Constitutional Reform Act 2005 s 19.

19 Ie a local inquiry held in pursuance of the Planning (Listed Buildings and Conservation Areas) Act 1990 Sch 3 (as amended).

20 Ie the references in ibid Sch 3 para 6A(1), (2) (as added): see the text to notes 13-14 supra.

21 Ibid Sch 3 para 8(1), (2) (as added: see note 13 supra). The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title): Sch 3 para 8(5) (as so added).

22 Ibid s 93(3) (see PARA 1074 ante) does not apply to regulations so made: Sch 3 para 8(6) (as added: see note 13 supra).

23 Ie provision as mentioned in ibid Sch 3 para 6A(3) (as added): see heads (a)-(b) in the text.

24 Ibid Sch 3 para 8(3) (as added: see note 13 supra).

25 Ie under ibid Sch 3 para 6A(3) (as added): see heads (a)-(b) in the text.

26 Ibid Sch 3 para 8(4) (as added: see note 13 supra). See also note 18 supra.

27 Ie under ibid Sch 3 para 6A(1) or (2) (as added): see the text to notes 13-14 supra.

28 Ibid Sch 3 para 6A(4) (as added: see note 13 supra).

29 Ibid Sch 3 para 6A(5) (as added: see note 13 supra).

30 Ibid Sch 3 para 6A(6) (as added: see note 13 supra).

31 Ibid Sch 3 para 6A(7) (as added: see note 13 supra).

32 Ie no inquiry is held as mentioned in ibid Sch 3 para 6(1): see the text to notes 1-5 supra.

33 Ie ibid Sch 3 para 6A(4)-(7) (as added); see the text to notes 28-31 supra.

34 Ibid Sch 3 para 6A(9), (10) (as added: see note 13 supra). For these purposes, the responsible person is the person to whom the Secretary of State or the Assembly thinks he or it would have given a direction under Sch 3 para 6A(4) (as added) if an inquiry had been held: Sch 3 para 6A(11) (as so added). Schedule 3 para 6A(9)-(11) does not affect Sch 3 para 6(8) (see note 10 supra): Sch 3 para 6A(12) (as so added).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1204 Local inquiries and hearings

NOTE 13--2004 Act ss 80, 81 now fully in force: SI 2006/1281.

NOTES 18, 24--See the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006, SI 2006/1387.

NOTE 18--See the Planning (National Security Directions and Appointed Representatives) (England) Regulations 2006, SI 2006/1284.

TEXT AND NOTE 21--Reference to National Assembly for Wales is now to Welsh Assembly Government: 1990 Act Sch 3 para 8(2) (amended by the Government of Wales Act 2006 Sch 10 para 36(a)). 1990 Act Sch 3 para 8(5) repealed: 2006 Act Sch 10 para 36(b), Sch 12.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/B. DETERMINATION OF CERTAIN APPEALS BY WRITTEN REPRESENTATIONS/1205. Determination of enforcement appeals by written representations.

B. DETERMINATION OF CERTAIN APPEALS BY WRITTEN REPRESENTATIONS

1205. Determination of enforcement appeals by written representations.

In relation to England, the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002¹ apply where an appellant² informs the Secretary of State³ in the notice of appeal against a listed building or conservation area enforcement notice⁴ that he wishes the appeal to be disposed of on the basis of written representations⁵. Where such an appeal⁶ is not being disposed of on the basis of written representations and the appellant and the local planning authority⁷ inform the Secretary of State that they wish it to be disposed of on that basis, those 2002 Regulations apply to the proceedings to such extent as the Secretary of State may specify having regard to any steps already taken in relation to those proceedings⁸.

Similarly, in relation to Wales, the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003⁹ apply where an appellant¹⁰ informs the National Assembly for Wales¹¹ in the notice of appeal of a wish for the appeal to be disposed of on the basis of written representations¹². Where an appeal against a listed building or conservation area enforcement notice¹³ is not being disposed of on the basis of written representations and the appellant and the local planning authority inform the Assembly that they wish it to be disposed of on that basis, those 2003 Regulations apply to the proceedings to such extent as the Assembly may specify having regard to any steps already taken in relation to those proceedings¹⁴.

The procedure on such appeals is the same as that applying to enforcement appeals under the Town and Country Planning Act 1990 which are determined by written representations, and has already been discussed in that context¹⁵.

1 Ie the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended): see PARAS 631-633 ante.

2 For the meaning of 'the appellant' see PARA 631 note 2 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Ie the notice of appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39(2) (as substituted and amended) (see PARAS 1193, 1197 ante): see PARA 631 note 4 ante.

5 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(1). See further PARA 631 note 5 ante; and as to the use of electronic communications see PARA 631 the text and notes 16-19 ante.

6 Ie an 'enforcement appeal': see PARA 631 note 6 ante.

7 For the meaning of 'local planning authority' for these purposes see PARA 631 note 7 ante.

8 Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683, reg 3(2).

9 Ie the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended): see PARAS 631-633 ante.

10 For the meaning of 'the appellant' see PARA 631 note 10 ante.

11 As to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(1).

13 Ie an appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended): see PARAS 1193, 1197 ante.

14 Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395, reg 3(2).

15 See PARAS 631-633 ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/B. DETERMINATION OF CERTAIN APPEALS

BY WRITTEN REPRESENTATIONS/1206. Determination of other appeals by written representations.

1206. Determination of other appeals by written representations.

Regulations have been made prescribing the procedure in relation to various applications and appeals¹ in Wales which are to be determined by written representations². The prescribed procedure, which applies, inter alia, to appeals to the National Assembly for Wales³ regarding listed building consents and conservation area consents⁴, has already been discussed in the context of certain appeals under the Town and Country Planning Act 1990⁵.

At the date at which this title states the law, the equivalent regulations applying in relation to England did not prescribe a procedure for the determination by written representations of appeals to the Secretary of State⁶ regarding listed building consents and conservation area consents⁷.

1 In the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended), 'appeal' means, in relation to, inter alia: (1) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARAS 1115, 1176 ante) or s 19 (as amended) (see PARA 1131 ante), the determination of an application which has been referred to the National Assembly for Wales, but does not include an application which is deemed to have been referred to the Assembly by virtue of the Planning (Listed Buildings and Conservation Areas) Regulations 1990, SI 1990/1519, reg 13(3) (see PARA 1078 ante); and (2) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARAS 1186, 1197 ante), an appeal made under s 20 (as amended): see the Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390, reg 2(1) (renumbered by SI 2004/3157).

2 See *ibid* regs 3-12 (as amended); and PARAS 628-630 ante.

3 As to the transfer of functions under the Planning (Listed Buildings and Conservation Areas) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

4 I.e. appeals under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARAS 1186, 1197 ante): see note 1 *supra*.

5 See PARAS 628-630 ante.

6 As to the Secretary of State see PARA 19 ante.

7 The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended) (see PARAS 628-630 ante), apply to appeals under the Town and Country Planning Act 1990 s 78 (as amended) (see the Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628, regs 2, 3 (as amended)) but make no mention of appeals or applications under the Planning (Listed Buildings and Conservation Areas) Act 1990. See, however, *R (on the application of Hutton) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 625 (Admin) at [12], [2002] All ER (D) 318 (Mar) (appeal under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) relating to listed building in Cornwall; the parties exchanged written representations and then had the opportunity, if they wished to do so, to point out any particular features referred to in their representations to the inspector on a site visit).

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning

of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1206 Determination of other appeals by written representations

NOTE 7--SI 2000/1628 replaced: Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/C. HEARINGS AND INQUIRIES/1207. Appeals regarding listed building consent and conservation area consent.

C. HEARINGS AND INQUIRIES

1207. Appeals regarding listed building consent and conservation area consent.

The Town and Country Planning (Hearings Procedure) (England) Rules 2000¹ apply in relation to any hearing² held in England for the purposes of a non-transferred or a transferred appeal³ made on or after 1 August 2000 against a planning decision or failure to take such a decision under, inter alia, the specified provisions⁴ of the Planning (Listed Buildings and Conservation Areas) Act 1990⁵.

Similarly, the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003⁶ apply in relation to any hearing⁷ caused by the National Assembly for Wales⁸ to be held in Wales for the purposes of a non-transferred or transferred appeal⁹ made on or after 1 June 2003 before it determines, inter alia:

- 4411 (1) an application for listed building consent referred to it¹⁰, or for the variation or discharge of conditions referred to it¹¹, or an appeal to it¹² under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990¹³; or
- 4412 (2) an application for conservation area consent referred to it¹⁴ or an appeal to it¹⁵ under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990 as those provisions are applied¹⁶ in relation to such consent¹⁷.

The procedure prescribed by those rules has already been discussed in the context of appeals under the Town and Country Planning Act 1990¹⁸.

Rules have also been made which apply, inter alia, in relation to any local inquiry¹⁹:

- 4413 (a) caused to be held by the Secretary of State²⁰ in England before he determines:
- 330 98. (i) an application for listed building consent referred to him²¹, or for variation or discharge of conditions referred to him²², or an appeal to him²³ under specified provisions of the Planning (Listed Buildings and Conservation Areas) Act 1990²⁴;
- 99. (ii) an application for conservation area consent referred to him²⁵, or an appeal to him²⁶ under the relevant provisions²⁷ of that Act²⁸;
- 331

4414 (b) caused to be held by the National Assembly for Wales before it determines an application under the statutory provisions mentioned in heads (i) and (ii) above referred to it, or an appeal to it under the statutory provisions mentioned in those heads²⁹;

4415 (c) held by an inspector³⁰ before he determines such an appeal to the Secretary of State or the Assembly³¹.

The procedure prescribed by those rules has also been discussed above in the context of enforcement appeals under the Town and Country Planning Act 1990³².

1 le the Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626 (as amended): see PARA 634 et seq ante.

2 For the meaning of 'hearing' for these purposes see PARA 634 note 2 ante.

3 For the meanings of 'non-transferred appeal' and 'transferred appeal' for these purposes see PARA 634 note 3 ante.

4 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 20 (as amended) (see PARA 1186 ante) or under s 20 (as amended) as applied by s 74(3) (see PARAS 1174 note 5, 1190 ante).

5 Town and Country Planning (Hearings Procedure) (England) Rules 2000, SI 2000/1626, r 3(1). For transitional provisions see r 3(2).

6 le the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271 (as amended): see PARA 634 et seq ante.

7 For the meaning of 'hearing' for these purposes see PARA 634 note 10 ante.

8 As to the Assembly see PARA 20 ante.

9 For the meanings of 'non-transferred appeal' and 'transferred appeal' for these purposes see PARA 634 note 12 ante.

10 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended): see PARA 1115 ante. For the meaning of 'listed building consent' see PARA 1109 ante.

11 le under ibid s 12 (as amended) as applied by s 19 (as amended): see PARA 1131 ante.

12 le under ibid s 20 (as amended): see PARA 1186 ante.

13 See notes 10-12 supra.

14 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARAS 1115, 1176 ante) including s 12 (as amended) as applied by s 19 (as amended) (see PARAS 1131, 1178 ante). For the meaning of 'conservation area consent' see PARA 1174 ante.

15 See note 12 supra.

16 le applied by the Planning (Listed Buildings and Conservation Areas) Act 1990 s 74(3): see PARAS 1174 note 5, 1176, 1178, 1190 ante.

17 See the Town and Country Planning (Hearings Procedure) (Wales) Rules 2003, SI 2003/1271, r 3(1). For transitional provisions see r 3(2).

18 See PARA 634 et seq ante.

19 As to local inquiries see generally para 651 et seq ante.

20 As to the Secretary of State see PARA 19 ante.

21 See note 10 supra.

22 See note 11 supra.

23 See note 12 supra.

24 See notes 10-12 supra.

25 See note 14 supra.

26 See under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 12 (as amended) (see PARA 1115 ante) as s 20 (as amended) is applied by s 74(3) (see PARA 1190 ante).

27 See notes 25-26 supra.

28 See the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended); and PARA 677 et seq ante. See also the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223 (revoked with savings); the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115; and PARA 659 et seq ante.

29 See the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended); and PARA 677 et seq ante.

30 For the meaning of 'inspector' see PARA 686 notes 2, 15 ante. As to the adequacy of an inspector's inspection of the relevant buildings on a site visit see eg *R (on the application of Hutton) v Secretary of State for Transport, Local Government and the Regions* [2002] EWHC 625 (Admin), [2002] All ER (D) 318 (Mar).

31 See the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, SI 2000/1625 (as amended); the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1267 (as amended); and PARA 686 et seq ante.

32 See PARAS 677 et seq, 686 et seq ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1207 Appeals regarding listed building consent and conservation area consent

NOTE 5--See also SI 2000/1626 r 3A (added by SI 2009/455).

NOTE 17--See also SI 2007/1271 r 3A (added by SI 2007/2285).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/C. HEARINGS AND INQUIRIES/1208. Enforcement appeals.

1208. Enforcement appeals.

The Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002¹ apply in relation to any hearing² held in England for the purposes of a non-transferred or a

transferred appeal³ made on or after 23 December 2002 under, inter alia, the specified provisions⁴ of the Planning (Listed Buildings and Conservation Areas) Act 1990 regarding appeals against listed building enforcement notices⁵ or conservation area enforcement notices⁶.

Similarly, the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003⁷ apply in relation to any hearing⁸ held in Wales for the purposes of such a non-transferred or transferred appeal⁹ made on or after 1 June 2003¹⁰.

The procedure prescribed by those rules has already been discussed in the context of enforcement appeals under the Town and Country Planning Act 1990¹¹.

Rules have also been made which apply in relation to any local inquiry¹²:

- 4416 (1) caused to be held by the Secretary of State¹³ in England before he determines an appeal against a listed building or conservation area enforcement notice¹⁴;
- 4417 (2) caused to be held by the National Assembly for Wales¹⁵ before it determines such an appeal¹⁶;
- 4418 (3) held by an inspector¹⁷ before he determines such an appeal to the Secretary of State or the Assembly¹⁸.

The procedure prescribed by those rules has also been discussed above in the context of enforcement appeals under the Town and Country Planning Act 1990¹⁹.

1 le the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684 (as amended): see PARA 641 et seq ante.

2 For the meaning of 'hearing' for these purposes see PARA 641 note 2 ante.

3 For the meanings of 'non-transferred appeal' and 'transferred appeal' for these purposes see PARA 641 note 3 ante.

4 le under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 39 (as amended) (see PARA 1191 ante), or under s 39 (as amended) as applied by s 74(3) (see PARAS 1174 note 5, 1197 ante).

5 For the meaning of 'listed building enforcement notices' see PARA 1146 ante.

6 Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 3(1). For transitional provisions see r 3(2). For the meaning of 'conservation area enforcement notice' see PARA 1180 ante.

7 le the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268 (as amended): see PARA 641 et seq ante.

8 For the meaning of 'hearing' for these purposes see PARA 641 note 13 ante.

9 For the meanings of 'non-transferred appeal' and 'transferred appeal' for these purposes see PARA 641 note 14 ante.

10 Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 3(1). For transitional provisions see r 3(2).

11 See PARA 641 et seq ante.

12 As to local inquiries see generally para 651 et seq ante.

13 As to the Secretary of State see PARA 19 ante.

14 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended); and PARA 669 et seq ante.

15 As to the Assembly see PARA 20 ante.

16 See the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended); and PARA 669 et seq ante.

17 For the meaning of 'inspector' for these purposes see PARA 695 notes 2, 12 ante.

18 See the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended); the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended); and PARA 695 et seq ante.

19 See PARAS 669 et seq, 695 et seq ante.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/15. LISTED BUILDINGS AND CONSERVATION AREAS/(4) APPEALS ETC RELATING TO LISTED BUILDINGS AND CONSERVATION AREAS/(iii) Judicial Review; Maladministration/1209. In general.

(iii) Judicial Review; Maladministration

1209. In general.

Judicial review may be available as a means of challenging decisions relating to listed buildings and conservation areas¹. The availability of, and procedure on, judicial review is discussed in detail elsewhere in this work².

Decisions of local authorities, the Secretary of State³ or the National Assembly for Wales⁴ in relation to such matters are also susceptible to review by the appropriate ombudsman⁵.

1 See eg *R (on the application of Regent Inns plc) v Secretary of State for Transport and the Regions* [2002] All ER (D) 299 (Oct) (inspector deciding appeal failing to consider material factor); *R v Woking Borough Council, ex p Adam* (1995) 28 HLR 513 (unsuccessful application for judicial review of decision to making closing order with regard to listed building under housing legislation); *R v Canterbury City Council, ex p Halford* [1992] JPL 851 (judicial review of decision to designate conservation area); *R (on the application of Prokopp) v London Underground Ltd* [2003] EWHC 960 (Admin), [2003] All ER (D) 26 (May) (developer about to take steps to demolish viaduct which objector argued should be listed); revsd [2003] EWCA Civ 961, [2004] 1 P & CR 479, [2003] All ER (D) 112 (Jul)). As to judicial review in relation to planning decisions see further PARA 650 ante.

2 See JUDICIAL REVIEW. As to time limits for making applications in cases involving planning matters see eg *R (on the application of Young) v Oxford City Council* [2003] JPL 232, [2002] All ER (D) 226 (Jun), CA (a potential applicant for judicial review is entitled to seek information from a local planning authority as to the procedures it has followed; he cannot know if he has an arguable case unless he does so, and it is undesirable to set in motion the process of litigation before an effort has been made to resolve the issue through pre-trial correspondence. However, the obligation to apply promptly remains a feature of the law and should not be ignored by applicants in the expectation that the word 'promptly' is a dead letter).

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante. The administrative functions of the National Assembly for Wales with regard to listed buildings and conservation areas are exercised by Cadw: Welsh Historic Monuments which is an executive agency operating within the Welsh Assembly Government. As to Cadw see PARA 70 note 9 ante.

5 See PARAS 23, 41 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

UPDATE

1072-1209 Listed Buildings and Conservation Areas

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(1) INTRODUCTION/1210. Planning, environmental and health and safety legislation; in general.

16. HAZARDOUS SUBSTANCES

(1) INTRODUCTION

1210. Planning, environmental and health and safety legislation; in general.

The presence of hazardous substances on, over or under land is subject to planning control under the Planning (Hazardous Substances) Act 1990¹. The provisions of the 1990 Act are considered below². The storage and use of such substances is, however, also subject to control under environmental³ and health and safety legislation⁴ which is considered elsewhere in this work⁵.

Nuclear installations and radioactive substances are subject to a separate system of statutory controls⁶. For the purposes of the operation of the 1990 Act, and for the purposes of the exercise or performance of any power or duty conferred or imposed by, or for the enforcement of, any of its provisions, no account is to be taken of any radioactivity possessed by any substance or article or by any part of any premises⁷.

The inter-relationship between hazardous substances consent⁸ under the 1990 Act and other statutory controls is discussed below⁹.

1 See the Planning (Hazardous Substances) Act 1990 s 4 (as amended); and PARA 1234 post.

2 See PARA 1212 et seq post.

3 See eg the Pollution Prevention and Control Act 1999; and ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 186 et seq.

4 See eg the Notification of Installations Handling Hazardous Substances Regulations 1982, SI 1982/1357, reg 3 (as amended); and HEALTH AND SAFETY AT WORK vol 53 (2009) PARA 628. As to health and safety requirements see also the Planning (Hazardous Substances) Act 1990 s 29 (as amended); and PARA 1224 post.

5 See generally HEALTH AND SAFETY AT WORK; ENVIRONMENTAL QUALITY AND PUBLIC HEALTH. As to fire precautions see FIRE SERVICES vol 18(2) (Reissue) PARA 81 et seq.

- 6 See FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1340 et seq.
- 7 See the Radioactive Substances Act 1993 s 40(1), (2)(a), Sch 3 para 6; and FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1463.
- 8 For the meaning of 'hazardous substances consent' see PARA 1234 post.
- 9 See PARA 1224 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(1) INTRODUCTION/1211. European Union legislation; the 'SEVESO II' Directive.

1211. European Union legislation; the 'SEVESO II' Directive.

Under the 1996 European Council Directive on the control of major-accident hazards involving dangerous substances, known as the 'SEVESO II Directive'¹, member states must ensure that the objectives of preventing major accidents² and limiting the consequences of such accidents are taken into account in their land-use policies and/or other relevant policies and the procedures for implementing those policies³. They must pursue those objectives through controls on:

- 4419 (1) the siting of new establishments;
- 4420 (2) modifications to existing establishments where these could have significant repercussions on major-accident hazards⁴;
- 4421 (3) new developments such as transport links, locations frequented by the public and residential areas in the vicinity of existing establishments, where the siting or developments are such as to increase the risk⁵ or consequences of a major accident⁶.

Member states must ensure that their land-use and/or other relevant policies and the procedures for implementing those policies take account of the need, in the long term, to maintain appropriate distances between establishments covered by the SEVESO II Directive and residential areas, buildings and areas of public use, major transport routes as far as possible, recreational areas and areas of particular natural sensitivity or interest and, in the case of existing establishments, of the need for additional technical measures⁷ so as not to increase the risks to people⁸.

Member states must ensure that all competent authorities and planning authorities responsible for decisions in this area set up appropriate consultation procedures to facilitate implementation of the policies so established. The procedures must be designed to ensure that technical advice on the risks arising from the establishment is available, either on a case-by-case or on a generic basis, when decisions are taken⁹.

The directive does not apply to the following:

- 4422 (a) military establishments, installations or storage¹⁰ facilities;
- 4423 (b) hazards created by ionising radiation;
- 4424 (c) the transport of dangerous substances and intermediate temporary storage by road, rail, internal waterways, sea or air, outside the establishments covered by the directive, including loading and unloading and transport to and from another means of transport at docks, wharves or marshalling yards;

- 4425 (d) the transport of dangerous substances in pipelines, including pumping stations, outside establishments covered by the directive;
- 4426 (e) the exploitation (exploration, extraction and processing) of minerals in mines, quarries, or by means of boreholes, with the exception of chemical and thermal processing operations and storage related to those operations which involve dangerous substances, as defined in Annex I to the directive;
- 4427 (f) the offshore exploration and exploitation of minerals, including hydrocarbons;
- 4428 (g) waste land-fill sites, with the exception of operational tailings disposal facilities, including tailing ponds or dams, containing dangerous substances defined as mentioned in head (e) above, in particular when used in connection with the chemical and thermal processing of minerals¹¹.

In England and Wales, the land-use requirements of the SEVESO II Directive have been implemented by the Planning (Control of Major-Accident Hazards) Regulations 1999¹². Additionally, regional planning bodies¹³ and local planning authorities¹⁴ in England must take those requirements into account when preparing:

- 4429 (i) in the case of a regional planning body, a draft revision of its regional spatial strategy¹⁵;
- 4430 (ii) in the case of a local planning authority, a local development document¹⁶.

1 Ie EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (amended by European Parliament and EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 01) and European Parliament and EC Council Directive 2003/105 (OJ L345, 31.12.2003, p 97). For these purposes, 'hazard' means the intrinsic property of a dangerous substance or physical situation, with a potential for creating damage to human health and/or the environment: EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) art 3(6).

2 For these purposes, 'major accident' means an occurrence such as a major emission, fire, or explosion resulting from uncontrolled developments in the course of the operation of any establishment covered by EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) (as amended), and leading to serious danger to human health and/or the environment, immediate or delayed, inside or outside the establishment, and involving one or more dangerous substances (art 3(5)); 'establishment' means the whole area under the control of an operator where dangerous substances are present in one or more installations, including common or related infrastructures or activities (art 3(1)); 'installation' means a technical unit within an establishment in which dangerous substances are produced, used, handled or stored, and includes all the equipment, structures, pipework, machinery, tools, private railway sidings, docks, unloading quays serving the installation, jetties, warehouses or similar structures, floating or otherwise, necessary for the operation of the installation (art 3(2)); 'operator' means any individual or corporate body who operates or holds an establishment or installation or, if provided for by national legislation, has been given decisive economic power in the technical operation thereof (art 3(3)); and 'dangerous substance' means a substance, mixture or preparation listed in Annex I Pt 1 (as amended), or fulfilling the criteria laid down in Annex I Pt 2 (as amended), and present as a raw material, product, by-product, residue or intermediate, including those substances which it is reasonable to suppose may be generated in the event of accident (art 3(4)).

As to the substances included in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3(1), Sch 1 Pts A, B (as substituted) (see PARAS 1231-1232 post) and the rationale for their inclusion in the relevant Parts of Sch 1 see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 23-24; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 21-22.

3 See EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) art 12(1) (art 12(1) amended, and art 12(1A) added, by European Parliament and EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 01) art 7).

4 Ie establishments covered by EC Council Directive 96/82 (OJ L10, 14.01.97, p 13) art 10.

5 'Risk' means the likelihood of a specific effect occurring within a specified period or in specified circumstances: *ibid* art 3(7).

6 *Ibid* art 12(1)(a)-(c).

7 Ie in accordance with *ibid* art 5.

8 Ibid art 12(1) (as amended: see note 3 supra). The European Commission is invited by 31 December 2006, in close co-operation with the member states, to draw up guidelines defining a technical database including risk data and risk scenarios, to be used for assessing the compatibility between the establishments covered by the directive and the areas described in art 12(1) (as so amended). The definition of that database must as far as possible take account of the evaluations made by the competent authorities, the information obtained from operators and all other relevant information such as the socio-economic benefits of development and the mitigating effects of emergency plans: art 12(1A) (as added: see note 3 supra).

9 Ibid art 12(2).

10 'Storage' means the presence of a quantity of dangerous substances for the purposes of warehousing, depositing in safe custody or keeping in stock: ibid art 3(8).

11 Ibid art 4 (amended by European Parliament and EC Council Regulation 1882/2003 (OJ L284, 31.10.2003, p 01) art 1).

12 See the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, which came into force on 20 April 1999 (reg 1(1)) and which amend (1) the Planning (Hazardous Substances) Act 1990 s 4 (see PARA 1234 post); (2) the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (see PARA 1230 et seq post); (3) the Town and Country Planning (General Development Procedure) Order 1995, SI 1995/419 (see PARA 450 et seq ante).

13 For the meaning of 'regional planning body' see PARA 24 ante.

14 See the Town and Country Planning (Regional Planning) (England) Regulations 2004, SI 2004/2203, reg 10; and PARA 74 note 17 ante.

15 As to local planning authorities see PARA 28 et seq ante.

16 See the Town and Country Planning (Local Development) (England) Regulations 2004, SI 2004/2204, reg 15; and PARA 104 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(1) INTRODUCTION/1212. Application of general provisions of planning legislation.

1212. Application of general provisions of planning legislation.

The provisions of the Town and Country Planning Act 1990 relating to:

- 4431 (1) local inquiries¹;
- 4432 (2) orders as to costs of the parties where no inquiry is held²;
- 4433 (3) orders as to costs where an inquiry or a hearing does not take place³;
- 4434 (4) the procedure on certain appeals and applications⁴;
- 4435 (5) the service of notices⁵;
- 4436 (6) the power to require information as to interests in land⁶;
- 4437 (7) offences by corporations⁷,

and, as from a day to be appointed⁸, the provisions of that Act relating to:

- 4438 (a) service of notices on the Crown⁹; and
- 4439 (b) information as to interests in Crown land¹⁰,

apply for the purposes of the Planning (Hazardous Substances) Act 1990 as they apply for the purposes of the Town and Country Planning Act 1990¹¹.

- 1 le the Town and Country Planning Act 1990 s 320: see PARA 651 ante.
- 2 le ibid s 322: see PARA 655 ante.
- 3 le ibid s 322A (as added): see PARA 656 ante.
- 4 le ibid s 323 (as amended): see PARA 627 ante.
- 5 le ibid s 329 (as amended): see PARA 54 ante.
- 6 le ibid s 330 (as amended): see PARA 53 ante.
- 7 le ibid s 331: see PARA 55 ante.
- 8 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.
- 9 le the Town and Country Planning Act 1990 s 329A(1), (2) (as prospectively added): see PARA 54 ante.
- 10 le ibid s 330A(1)-(4) (as prospectively added): see PARA 53 ante.
- 11 Planning (Hazardous Substances) Act 1990 s 37(1), (2) (amended by the Planning and Compensation Act 1991 s 30(2); and by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 21(1)-(3), as from a day to be appointed: see note 9 supra). The Planning (Hazardous Substances) Act 1990 s 37 (as amended) had effect with the omission of the words from 'section 322' to 'held' until a day to be appointed by the Secretary of State: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 14. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4). As to the Secretary of State see PARA 20 ante.

UPDATE

1212 Application of general provisions of planning legislation

TEXT AND NOTE 8--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(1) INTRODUCTION/1213. Power to make regulations.

1213. Power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may make regulations under the Planning (Hazardous Substances) Act 1990 for any purpose for which regulations are authorised or required to be made thereunder, not being a purpose for which regulations are authorised or required to be made by another minister³.

Any power conferred by that Act to make regulations is exercisable by statutory instrument⁴; and any statutory instrument containing regulations so made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament⁵. Regulations may make different provision for different purposes⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990A s 40 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Planning (Hazardous Substances) Act 1990 s 40(1). For these purposes, except in so far as the context otherwise requires, 'minister' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 3 note 5 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

4 Ibid s 40(2).

5 Ibid s 40(3). As to parliamentary procedure in relation to regulations made by the Assembly see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; STATUTES.

6 Ibid s 40(4) (added by the Planning and Compulsory Purchase Act 2004 s 118(1), Sch 6 para 27).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(2) APPLICATION OF LEGISLATION TO THE CROWN/1214. Exercise of powers in relation to Crown land; the original position.

(2) APPLICATION OF LEGISLATION TO THE CROWN

1214. Exercise of powers in relation to Crown land; the original position.

At the date at which this title states the law, the following provisions apply. Notwithstanding any interest of the Crown¹ in Crown land², any restrictions imposed or powers conferred by specified provisions³ of the Planning (Hazardous Substances) Act 1990 apply and are exercisable in relation to Crown land to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown⁴.

Except with the consent of the appropriate authority⁵, no order or notice may be made, issued or served under specified provisions⁶ of that Act in relation to land which for the time being is Crown land⁷.

As from a day to be appointed, however⁸, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004⁹.

1 For these purposes, 'Crown interest' means an interest belonging to Her Majesty in right of the Crown, or belonging to a government or held in trust for Her Majesty for the purposes of a government department: Planning (Hazardous Substances) Act 1990 s 31(3). Except in so far as the context otherwise requires, 'government department' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 3 note 5 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2). Any interest of a contractor in designated premises as defined in the Atomic Weapons Establishment Act 1991 s 3(1), Schedule para 1 is treated for the purposes of the Planning (Hazardous Substances) Act 1990 as a Crown interest in those premises: Atomic Weapons Establishment Act 1991 Schedule para 10.

2 For these purposes, 'Crown land' means land in which there is a Crown interest or a Duchy interest; and 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall: Planning (Hazardous Substances) Act 1990 s 31(3) (as originally enacted). For the meaning of 'land' para 1216 note 6 post.

The Planning (Hazardous Substances) Act 1990 applies to land in which an interest is held by or on behalf of a visiting force or headquarters and which is used for the purposes of that force or headquarters to the extent that it applies to Crown land: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 11(1). In its application to such land, the Planning (Hazardous Substances) Act 1990 has effect as if any reference in that Act to: (1) 'Crown land' included a reference to such land; (2) 'the Crown' included a reference to the visiting force or headquarters; and (3) 'the appropriate authority' was a reference to the Ministry of Defence: Visiting Forces and International Headquarters (Application of Law) Order 1999, SI 1999/1736, art 11(2).

3 le the Planning (Hazardous Substances) Act 1990 ss 4-29 (as amended) (see PARA 1221 et seq post) except s 22 (as amended) (see PARA 1286 post).

4 Ibid s 31(1). Section 31(1) assumes that the Crown is already exempt in respect of its own interests in Crown land and preserves the Crown exemption in respect of those interests: *Ministry of Agriculture, Fisheries and Food v Jenkins* [1963] 2 QB 317, [1963] 2 All ER 147, CA. Where a Crown body wishes to keep or use a hazardous substance in circumstances which would otherwise have required hazardous substances consent, similar procedures to those pertaining to a hazardous substances consent application should be followed, but on a non-statutory basis: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 97; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 95. As to the status of such guidance see PARA 9 ante.

A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for the purposes of the Planning (Hazardous Substances) Act 1990 s 31(1) as having an interest in land: s 31(4). As to the application of s 31 to land which is ecclesiastical property see PARA 1217 post; and as to the power of the council of a county to direct that any expenses incurred by it under s 31 shall be treated as special expenses see PARA 1225 post.

5 For these purposes, 'the appropriate authority', in relation to any land (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (2) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (3) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (4) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department: *ibid* s 31(5) (as originally enacted). If any question arises as to what authority is the appropriate authority in relation to any land, that question must be referred to the Treasury, whose decision is final: s 31(6). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

6 le under *ibid* s 14 (see PARA 1260 post), s 15 (as amended) (see PARA 1261 post), s 24 (as amended) (see PARAS 1270-1274 post) or s 26AA (as added) (see PARA 1283 post).

7 Ibid s 31(2) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 31). In relation to Wales, the functions under the Planning (Hazardous Substances) Act 1990 31(2) (as so amended) are exercisable by the National Assembly for Wales concurrently with any Minister of the Crown by whom they are exercisable: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the service of notices see PARA 1212 ante at head (5) in the text.

8 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante.

9 See *ibid* ss 79(4), 120, Sch 3 para 8(1), (2), Sch 9. At the date at which this title states the law, those repeals were not in force.

UPDATE

1214 Exercise of powers in relation to Crown land; the original position

TEXT AND NOTES 8, 9--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(2) APPLICATION OF LEGISLATION TO THE CROWN/1215. Crown land etc; the new position after the ending of general Crown immunity.

1215. Crown land etc; the new position after the ending of general Crown immunity.

As from a day to be appointed¹, and subject to the specified exceptions², the Planning (Hazardous Substances) Act 1990 binds the Crown³. Particular provision is made with regard to:

- 4440 (1) transitional arrangements⁴;
- 4441 (2) enforcement in relation to the Crown⁵;
- 4442 (3) references to an interest in land⁶;
- 4443 (4) applications for hazardous substances consent by the Crown⁷;
- 4444 (5) rights of entry on Crown land⁸.

For the purposes, of that Act, Crown land is land in which there is a Crown interest⁹ or a Duchy interest¹⁰. If any question arises as to what authority is the appropriate authority¹¹ in relation to any land it must be referred to the Treasury, whose decision is final¹².

1 le as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 2 infra.

2 The excepted provisions are: (1) the Planning (Hazardous Substances) Act 1990 s 8(6) (offences relating to certificates: see PARA 1241 post); (2) s 23 (as amended) (offences: see PARA 1269 post); (3) s 26AA (as added) (injunctions: see PARA 1283 post); (4) s 36A (as added) (warrants to enter land: see PARA 1228 post); and (5) s 36B(2) (as added) (offences relating to rights of entry: see PARA 1229 post): s 30A(2) (s 30A(1), (2) added by the Planning and Compulsory Purchase Act 2004 s 79(3), partly as from a day to be appointed under s 121; at the date at which this title states the law, s 79(3) was in force for limited purposes only: see PARA 13 note 8 ante).

3 Planning (Hazardous Substances) Act 1990 s 30A(1) (as added: see note 2 supra).

4 See *ibid* s 30B (as prospectively added); and PARA 1257 post.

5 See *ibid* s 30C (as prospectively added); and PARA 1284 post.

6 See *ibid* s 30D (as prospectively added); and PARA 1284 note 14 post.

7 See *ibid* s 31A (as prospectively added); and PARA 1256 post.

8 See *ibid* s 36C (as prospectively added); and PARA 1227 post.

9 For these purposes, 'Crown interest' means any of the following: (1) an interest belonging to Her Majesty in right of the Crown or in right of Her private estates; (2) an interest belonging to a government department or held in trust for Her Majesty for the purposes of a government department; (3) such other interest as the Secretary of State specifies by order: *ibid* s 31(3) (definition substituted by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 8(1), (3), partly as from a day to be appointed under s 121; at the date at which this title states the law, s 79(4), Sch 3 were in force for limited purposes only: see PARA 13 note 8 ante). The reference to Her Majesty's private estates must be construed in accordance with the Crown Private Estates Act 1862 s 1 (as amended) (see CROWN PROPERTY vol 12(1) (Reissue) PARA 358): Planning (Hazardous Substances) Act 1990 s 31(7) (s 31(5)(aa), (e), (f), (7)-(9) added by the Planning and Compulsory Purchase Act 2004 Sch 3 para 8(1), (2), (4)-(6), partly as from a day to be so appointed). An order made for the purposes of head (3) supra must be made by statutory instrument; but no such order may be made unless a draft of it has been laid before and approved by resolution of each House of Parliament: Planning (Hazardous Substances) Act 1990 s 31(8), (9) (as so added). As to the Secretary of State see PARA 19 ante.

10 *Ibid* s 31(3). 'Duchy interest' means an interest belonging to Her Majesty in right of the Duchy of Lancaster, or belonging to the Duchy of Cornwall: s 31(3).

11 For these purposes, 'the appropriate authority', in relation to any land: (1) in the case of land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners, and, in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land; (2) in relation to land belonging to Her Majesty in right of Her private estates means a person appointed by Her Majesty in writing under the Royal Sign Manual or, if no such appointment is made, the Secretary of State; (3) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy; (4) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall, or the possessor for the time being of the Duchy of Cornwall, appoints; (5) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department; (6) in relation to Westminster Hall and the Chapel of St Mary Undercroft, means the Lord Great Chamberlain and the Speakers of the House of Lords and the House of Commons acting jointly; (7) in relation to Her Majesty's Robing Room in the Palace of Westminster, the adjoining staircase and ante-room and the Royal Gallery, means the Lord Great Chamberlain: *ibid* s 31(5) (as amended: see note 9 supra). As to the Crown Estate see CROWN PROPERTY vol 12(1) (Reissue) PARA 278 et seq; and as to the Crown Estate Commissioners see CROWN PROPERTY vol 12(1) (Reissue) PARA 280.

12 Ibid s 31(6).

UPDATE

1215 Crown land etc; the new position after the ending of general Crown immunity

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

TEXT AND NOTES 9, 11--See the Planning (Application to the Houses of Parliament) Order 2006, SI 2006/1469; and PARA 14.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(3) OTHER SPECIAL CASES/1216. Application of statutory provisions to certain authorities and persons.

(3) OTHER SPECIAL CASES

1216. Application of statutory provisions to certain authorities and persons.

The provisions of the Planning (Hazardous Substances) Act 1990 have effect, subject to such exceptions and modifications as may be prescribed¹, in relation to granting hazardous substances consent² for authorities which are hazardous substances authorities³.

Subject to certain provisions relating to deemed consent⁴, any such regulations may in particular provide for securing that:

- 4445 (1) any application by such an authority for hazardous substances consent in respect of the presence of a hazardous substance⁵ on, over or under land⁶ shall be made to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ and not to the hazardous substances authority⁹;
- 4446 (2) any order or notice authorised to be made, issued or served under those provisions shall be made, issued or served by the Secretary of State or by the Assembly and not by the hazardous substances authority¹⁰.

1 For these purposes, except in so far as the context otherwise requires, 'prescribed' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 16 note 5 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

2 For these purposes, except in so far as the context otherwise requires, 'hazardous substances consent' means consent required by the Planning (Hazardous Substances) Act 1990 s 4 (as amended) (see PARA 1234 post): s 39(1), (2).

3 Ibid s 30(1) (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt VII). For these purposes, except in so far as the context otherwise requires, 'hazardous substances authority' is to be construed in accordance with the Planning (Hazardous Substances) Act 1990 s 1 (as amended) (see PARA 1219 post) and s 3 (as amended) (see PARA 1220 post): s 39(1), (2) (amended by Environmental Protection Act 1990 s 144, Sch 13 paras 1, 2(7)). Where a National Park authority is the local planning authority for any National Park, it is the hazardous substances authority for that Park: see the Environment Act 1995 s 70, Sch 9 para 14; and PARAS 1219-1220 post. As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

4 Ie subject to the Planning (Hazardous Substances) Act 1990 s 12 (as amended): see PARA 1254 post.

5 As to the prescribed hazardous substances see PARA 1230 et seq post.

6 For these purposes, except in so far as the context otherwise requires, 'land' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 10 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 30 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Planning (Hazardous Substances) Act 1990 s 30(2)(a). Any application by a hazardous substances authority for hazardous substances consent must be made to the Secretary of State or to the Assembly (Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 26(1)); and regs 5-8 (see PARAS 1238-1240, 1242, 1258, 1264 post) apply to the making of such applications as they apply to applications made to a hazardous substances authority (reg 26(2)).

For the purpose of reg 23 (see PARA 1222 post), an application made to the Secretary of State or to the Assembly by a hazardous substances authority is treated as an application made to the hazardous substances authority and referred to the Secretary of State or to the Assembly under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) (see PARA 1248 post): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 26(3).

The Planning (Hazardous Substances) Act 1990 s 9 (as amended) (see PARA 1244 post), other than s 9(2)(e) (as amended), applies in relation to an application made to the Secretary of State or to the Assembly by a hazardous substances authority as it applies in relation to an application made to a hazardous substances authority: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 26(4).

For the purpose of the Planning (Hazardous Substances) Act 1990 s 22 (as amended) (see PARA 1286 post), a decision of the Secretary of State or of the Assembly on an application made to him or to it by a hazardous substances authority is treated as a decision under s 20 (as amended): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 26(5).

10 Planning (Hazardous Substances) Act 1990 s 30(2)(b). As to the service of notices see PARA 1212 ante at head (5) in the text.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(3) OTHER SPECIAL CASES/1217. Ecclesiastical property.

1217. Ecclesiastical property.

Where, under any provisions of the Planning (Hazardous Substances) Act 1990, a notice or copy of a notice is required to be served on an owner¹ of land² and the land is ecclesiastical property³, a similar notice or copy of a notice must be served on the Church Commissioners⁴.

Where the fee simple of any ecclesiastical property is in abeyance and the property is situated in England, the fee simple is treated⁵ as being vested in the Church Commissioners⁶.

Any compensation payable⁷ in respect of land which is ecclesiastical property where a hazardous substances consent⁸ is revoked or modified must:

4447 (1) in the case of land which is not diocesan glebe land, be paid to the Church Commissioners; and

4448 (2) in the case of diocesan glebe land, be paid to the Diocesan Board of Finance⁹ in which the land is vested,

and must, in either case, be applied by them for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment¹⁰ or Measure authorising or disposing of the proceeds of such a sale¹¹.

1 For these purposes, except in so far as the context otherwise requires, 'owner' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 17 note 1 ante); Planning (Hazardous Substances) Act 1990 s 39(1), (2). Section 39(2) does not, however, affect the meaning of 'owner' in s 8 (see PARA 1241 post): s 39(2).

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 For these purposes, 'ecclesiastical property' means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction or being diocesan glebe land; and 'diocesan glebe land' has the same meaning as in the Endowments and Glebe Measure 1976 (see ECCLESIASTICAL LAW): Planning (Hazardous Substances) Act 1990 s 34(4) (amended by the Planning and Compensation Act 1991 s 70(b), Sch 15 para 32(2)).

4 Planning (Hazardous Substances) Act 1990 s 34(1). As to the Church Commissioners see ECCLESIASTICAL LAW; as to the service of notices see PARA 1212 ante at head (5) in the text; and as to the power of the council of a county to direct that any expenses incurred by it under s 34 (as amended) shall be treated as special expenses see PARA 1225 post.

5 Ie for the purposes of *ibid* s 8 (see PARA 1241 post), s 22 (as amended) (see PARA 1286 post), s 31(1) (prospectively repealed; see PARA 1214 ante), so far as it applies to s 8, and s 34 (as amended), and any other provisions of the planning Acts so far as they apply, or have effect for the purposes of, any of those provisions. For the meaning of 'the planning Acts' see PARA 2 ante.

6 Planning (Hazardous Substances) Act 1990 s 34(2).

7 Ie under *ibid* s 16: see PARA 1262 post.

8 For the meaning of 'hazardous substances consent' see PARA 1234 post.

9 For these purposes, 'Diocesan Board of Finance' has the same meaning as in the Endowments and Glebe Measure 1976 (see ECCLESIASTICAL LAW): Planning (Hazardous Substances) Act 1990 s 34(4) (as amended: see note 3 *supra*).

10 For these purposes, except in so far as the context otherwise requires, 'enactment' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 11 ante): *ibid* s 39(1), (2).

11 *Ibid* s 34(3) (amended by the Planning and Compensation Act 1991 Sch 15 para 32(1)).

UPDATE

1217 Ecclesiastical property

TEXT AND NOTES--Planning (Hazardous Substances) Act 1990 s 34 further amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 28.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(3) OTHER SPECIAL CASES/1218. Statutory undertakers.

1218. Statutory undertakers.

For the purposes of the Planning (Hazardous Substances) Act 1990, 'statutory undertakers' generally has the same meaning as in the Town and Country Planning Act 1990¹. However, for

the purposes of certain provisions relating to deemed hazardous substances consent², a gas transporter³, the Environment Agency⁴ and every water or sewerage undertaker⁵ is deemed to be a statutory undertaker⁶. Those bodies are also deemed to be statutory undertakers for the purposes of the provision⁷ allowing statutory undertakers to contribute to expenses incurred by a hazardous substances authority⁸, as are:

- 4449 (1) a universal service provider⁹ in connection with the provision of a universal postal service¹⁰;
- 4450 (2) the Civil Aviation Authority¹¹;
- 4451 (3) a person who holds a licence authorising the provision of air traffic services¹², to the extent that the person is carrying out activities authorised by the licence; and
- 4452 (4) an electricity supplier¹³.

1 Planning (Hazardous Substances) Act 1990 s 39(1), (2). For the meaning of 'statutory undertakers' for the purposes of the Town and Country Planning Act 1990 see PARA 1009 ante.

2 Ie for the purposes of the Planning (Hazardous Substances) Act 1990 s 12 (as amended): see PARA 1254 post.

3 Ie a public gas supplier: see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 805. References to a public gas supplier have effect as if they were references to a public gas transporter, by virtue of the Gas Act 1995 s 16(1), Sch 4 para 2(2)(j); and a reference to a public gas transporter now has effect as a reference to a gas transporter: see the Utilities Act 2000 s 76(7).

4 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

5 As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

6 Planning (Hazardous Substances) Act 1990 s 39(4), (5) (amended by the Environmental Protection Act 1990 s 162, Sch 16, Pt VII; the Planning (Hazardous Substances) Act 1990 s 39(5) amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 2, Sch 1).

7 Ie for the purposes of the Planning (Hazardous Substances) Act 1990 s 38(2) (as amended): see PARA 1225 post.

8 See note 6 supra.

9 Ie within the meaning of the Postal Services Act 2000: see POST OFFICE.

10 See note 9 supra.

11 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

12 Ie a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

13 Planning (Hazardous Substances) Act 1990 s 39(6) (amended by the Environmental Protection Act 1990 s 162, Sch 16 Pt VII; the Transport Act 2000 s 37, Sch 5 para 9; and by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 85). The reference in the text to an electricity supplier is substituted by virtue of the Utilities Act 2000 s 31(3). See generally FUEL AND ENERGY.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(4) HAZARDOUS SUBSTANCES AUTHORITIES/1219. In general.

(4) HAZARDOUS SUBSTANCES AUTHORITIES

1219. In general.

Subject to certain exceptions¹, the council of the district, Welsh county, county borough or London borough² in which land³ is situated is the hazardous substances authority in relation to the land⁴.

Where, however, the National Park authority is the local planning authority⁵ for any National Park, that authority, and no other authority, is the hazardous substances authority for land in the relevant Park⁶.

1 le except in cases where the Planning (Hazardous Substances) Act 1990 s 3 (as amended) applies: see PARA 1220 post.

2 For these purposes, except in so far as the context otherwise requires, 'London borough' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 28 note 7 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

3 For the meaning of 'land' para 1216 note 6 ante.

4 Planning (Hazardous Substances) Act 1990 s 1 (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt VII; the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 26(1)). As to district councils see PARA 28 ante; as to the prescribed hazardous substances see PARA 1230 post; and as to the power of the council of a county to direct that any expenses incurred by it under s 1 (as so amended) shall be treated as special expenses see PARA 1225 post.

The provisions of the Planning (Hazardous Substances) Act 1990 ss 1, 3 (as amended) (see the text and notes 1-4 supra; and PARA 1220 post) are designed to ensure that the hazardous substances authority will usually be the same council or other body that would act as the local planning authority in dealing with any associated application for planning permission. This will help ensure consistency in the handling of any linked applications: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 15. See also National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 11-13, 15. As to the status of such guidance see PARA 9 ante.

5 As to local planning authorities see PARA 28 et seq ante.

6 Environment Act 1995 s 70, Sch 9 para 14(1). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(4) HAZARDOUS SUBSTANCES AUTHORITIES/1220. Special cases.

1220. Special cases.

The county council¹ is the hazardous substances authority for land² which is in a non-metropolitan county³ in England and:

- 4453 (1) is used for the winning and working of minerals⁴, including their extraction from a mineral-working deposit⁵; or
- 4454 (2) is situated in England and used for the disposal of refuse or waste materials⁶.

Where, however, the National Park authority is the local planning authority⁷ for any National Park, that authority, and no other authority, is the hazardous substances authority for land in the relevant Park⁸.

Unless the above provisions apply:

- 4455 (a) the Broads Authority⁹ is the hazardous substances authority for the Broads¹⁰;
- 4456 (b) if the land is in an area for which an urban development corporation¹¹ is the local planning authority in relation to all kinds of development¹², the corporation is the hazardous substances authority for the land¹³;
- 4457 (c) if the land is in an area for which a housing action trust¹⁴ is the local planning authority in relation to all kinds of development, the trust is the hazardous substances authority for the land¹⁵;
- 4458 (d) if the land is in an area for which the Urban Regeneration Agency ('English Partnerships')¹⁶ is the local planning authority in relation to all kinds of development, the Agency is the hazardous substances authority for the land¹⁷.

1 As to the counties in England and their councils see PARA 28 note 1 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 For the meaning of 'non-metropolitan county' see PARA 28 note 1 ante.

4 For these purposes, except in so far as the context otherwise requires, 'minerals' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 16 note 2 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

5 For these purposes, except in so far as the context otherwise requires, 'mineral-working deposit' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 16 note 2 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

6 Ibid s 3(1) (amended by the Local Government (Wales) Act 1994 s 20(4), Sch 6 para 26(2); the Planning (Hazardous Substances) Act 1990 s 3(1), (3)-(5A) amended by the Environment Act 1995 s 120, Sch 24). As to the power of the council of a county to direct that any expenses incurred by it under s 3 (as amended) shall be treated as special expenses see PARA 1225 post; and as to prescribed hazardous substances see PARAS 1230-1233 post.

7 As to local planning authorities see PARA 28 et seq ante.

8 Environment Act 1995 s 70, Sch 9 para 14(1).

9 As to the Broads Authority see WATER AND WATERWAYS vol 101 (2009) PARA 734.

10 Planning (Hazardous Substances) Act 1990 s 3(3) (as amended: see note 6 supra).

11 For these purposes, except in so far as the context otherwise requires, 'urban development corporation' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 35 note 2 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2). As to urban development corporations see PARA 1428 et seq post.

12 For these purposes, except in so far as the context otherwise requires, 'development' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 217 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

13 Ibid s 3(4) (as amended: see note 6 supra).

14 Ie a housing action trust established under the Housing Act 1988 Pt III (ss 60-92) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 320 et seq.

15 Planning (Hazardous Substances) Act 1990 s 3(5) (as amended: see note 6 supra).

16 As to English Partnerships see PARA 1306 et seq post.

17 Planning (Hazardous Substances) Act 1990 s 3(5A) (added by the Leasehold Reform, Housing and Urban Development Act 1993 s 187(1), Sch 21 para 32; and as amended (see note 6 supra)).

The provisions of the Planning (Hazardous Substances) Act 1990 ss 1, 3 (as amended) (see the text and notes 1-16 supra; and PARA 1219 ante) are designed to ensure that the hazardous substances authority will usually be

the same council or other body that would act as the local planning authority in dealing with any associated application for planning permission: see PARA 1219 note 4 ante.

UPDATE

1220 Special cases

TEXT AND NOTE 17--Planning (Hazardous Substances) Act 1990 s 3(5A) substituted: Housing and Regeneration Act 2008 Sch 8 para 54. For transitional provision see SI 2008/3068.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1221. Maintenance of registers etc.

(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS

1221. Maintenance of registers etc.

Every hazardous substances authority¹ must keep, in such manner as may be prescribed², a register containing such information as may be prescribed with respect to:

- 4459 (1) applications for hazardous substances consent³ made to that authority;
- 4460 (2) applications for the continuation of a hazardous substances consent⁴ made to that authority;
- 4461 (3) deemed hazardous substances consent⁵ with respect to land⁶ for which that authority is the hazardous substances authority;
- 4462 (4) revocations or modifications of hazardous substances consent⁷ granted with respect to such land; and
- 4463 (5) temporary exemption directions⁸ sent to the authority by the Secretary of State⁹ or, in relation to Wales, by the National Assembly for Wales¹⁰;

and every such register must also contain such information as may be prescribed as to the manner in which applications for hazardous substances consent have been dealt with¹¹.

Every register so kept must be available for inspection by the public at all reasonable hours¹².

Every hazardous substances authority must also keep an enforcement register¹³.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'prescribed' see PARA 1216 note 1 ante.

3 As to hazardous substances consent see PARA 1234 post.

4 I.e. applications under the Planning (Hazardous Substances) Act 1990 s 17(1): see PARA 1263 post.

5 I.e. hazardous substances consent having effect by virtue of *ibid* s 11 (as amended) (see PARA 1250 et seq post) or s 12 (as amended) (see PARA 1254 post).

6 For the meaning of 'land' see PARA 1216 note 6 ante.

7 As to revocation or modification of hazardous substances consent see PARA 1260 post.

8 le directions under the Planning (Hazardous Substances) Act 1990 s 27 (as amended): see PARA 1236 post.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 Planning (Hazardous Substances) Act 1990 s 28(1) (amended by the Environmental Protection Act 1990 ss 144, 162(2), Sch 13 paras 1, 2(4), Sch 16 Pt VII). In exercise of the power so conferred, and prior to the transfer of planning functions in Wales to the Assembly (see note 10 supra), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23: see PARA 1222 post. As to the making of regulations generally see PARA 1213 ante; and as to the application of the Planning (Hazardous Substances) Act 1990 s 28 (as amended) to Crown land see PARAS 1214-1215 ante.

12 Ibid s 28(3).

13 See the Town and Country Planning Act 1990 s 188 (as amended, applied and modified for these purposes); and PARA 1275 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1222. Contents of consents register.

1222. Contents of consents register.

The register required to be kept¹ by the hazardous substances authority² must be kept in six parts:

- 4464 (1) Part 1 must contain a copy of every application for hazardous substances consent³ made to the hazardous substances authority and not finally determined⁴;
- 4465 (2) Part 2 must contain, in respect of every application for hazardous substances consent made to the hazardous substances authority:
 - 332 100. (a) a copy of the application;
 - 101. (b) particulars of any direction to refer the application given⁵ by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷;
 - 102. (c) the decision, if any, of the authority, including details of any conditions subject to which consent was granted, and the date of the decision;
 - 103. (d) the reference number, date and effect of any decision⁸ of the Secretary of State or the Assembly⁹;
 - 333
- 4466 (3) Part 3 must contain a copy of every order revoking or modifying hazardous substances consent made by the hazardous substances authority and the date and effect of any confirmation¹⁰ by the Secretary of State or by the Assembly¹¹;
- 4467 (4) Part 4 must contain, in respect of every hazardous substances consent deemed to be granted in respect of the established presence of a hazardous substance¹², a copy of the relevant claim form¹³;
- 4468 (5) Part 5 must contain a copy of every hazardous substances consent deemed to have been granted by virtue of a direction given¹⁴ by a government department¹⁵;
- 4469 (6) Part 6 must contain a copy of any temporary exemption direction¹⁶ sent to the authority by the Secretary of State or by the Assembly¹⁷.

Where the Secretary of State or the Assembly grants hazardous substances consent¹⁸ on the determination of an appeal against a hazardous substances contravention notice¹⁹, the hazardous substances authority for the land covered by the consent must enter the date and effect of that decision in Part 2 of the register²⁰.

Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority²¹.

The register must include an index to enable any person to trace an entry in the register²²; and the register must be kept at the principal office of the hazardous substances authority²³.

1 Ie by the Planning (Hazardous Substances) Act 1990 s 28(1) (as amended): see PARA 1221 ante.

2 As to hazardous substances authorities see PARAS 1219-1220 ante.

3 As to hazardous substances consent see PARA 1234 post.

4 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(1)(a). For these purposes, an application is not treated as finally determined unless (1) it has been decided by the hazardous substances authority, or the period specified in reg 11(3) (see PARA 1247 post) has expired without its giving a decision, and the period specified in reg 13(1) (see PARA 1288 post) has expired without any appeal having been made to the Secretary of State or, as the case may be, to the National Assembly for Wales; (2) it has been referred to the Secretary of State or to the Assembly under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) (see PARA 1248 post) or an appeal has been made to the Secretary of State or to the Assembly under s 21 (as amended) (see PARA 1287 et seq post), the Secretary of State or the Assembly has issued his or its decision and the period of six weeks specified in s 22(1) (see PARA 1286 post) has expired without any application having been made to the High Court under s 22 (as amended); (3) an application has been made to the High Court under s 22 (as amended) and the matter has been determined, either by final dismissal of the application by a court or by the quashing of the Secretary of State's or the Assembly's decision and the issue of a fresh decision, without a further application under s 22 (as amended) being duly made; or (4) it has been withdrawn by the applicant before being determined or an appeal has been withdrawn by the applicant before the Secretary of State or the Assembly has issued his or its decision: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2), 23(6).

5 Ie any direction given under the Planning (Hazardous Substances) Act 1990 s 20 (as amended): see PARA 1248 post.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Ie whether on a reference under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) or on an appeal under s 21 (as amended).

9 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(1)(b).

10 Ie in accordance with the Planning (Hazardous Substances) Act 1990 s 15 (as amended): see PARA 1261 post.

11 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(1)(c).

12 Ie consent deemed to be granted under the Planning (Hazardous Substances) Act 1990 s 11(3): see PARA 1252 post.

13 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(1)(d).

14 Ie under the Planning (Hazardous Substances) Act 1990 s 12 (as amended): see PARA 1254 post.

15 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(1)(e).

16 Ie a direction under the Planning (Hazardous Substances) Act 1990 s 27 (as amended): see PARA 1236 post.

17 Planning (Hazardous Substances) Regulations 1992 reg 23(1)(f).

- 18 le under the Town and Country Planning Act 1990 s 177 (as applied and amended): see PARA 1293 post.
- 19 For the meaning of 'hazardous substances contravention notice' see PARA 1270 post.
- 20 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 23(2).
- 21 Ibid reg 23(4).
- 22 Ibid reg 23(3).
- 23 Ibid reg 23(5). In England, an annual bulletin is published of the numbers of applications received and determined, and the nature of the decisions given. This is compiled from information supplied by hazardous substances authorities to the Health and Safety Executive ('HSE') when they consult on applications for consent, and notify the Executive of subsequent decisions. It is important therefore that hazardous substances authorities notify decisions to HSE as quickly as possible after they are taken. Hazardous substances authorities should also notify HSE of every claim made for a deemed hazardous substances consent: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 78. For arrangements in Wales see National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 76. As to the status of this guidance see PARA 9 ante; and as to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1223. Receipt of applications by hazardous substances authority.

1223. Receipt of applications by hazardous substances authority.

When the hazardous substances authority¹ receives an application for hazardous substances consent² or an application for any consent, agreement or approval required by a condition imposed on a grant of hazardous substances consent, it must, as soon as practicable, acknowledge receipt in writing³.

Where, in the opinion of the hazardous substances authority, the application is invalid, the authority must, as soon as practicable, notify the applicant of its opinion, giving its reasons⁴.

For these purposes⁵, an application for hazardous substances consent is taken to have been received when each of the following events has occurred:

- 4470 (1) the application form⁶ has been served on the hazardous substances authority;
- 4471 (2) any certificate or documents required⁷ have been served on that authority; and
- 4472 (3) any fee required to be paid⁸ in respect of the application has been paid to that authority and, for this purpose, lodging a cheque for the amount of a fee is to be taken as payment⁹.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 As to hazardous substances consent see PARA 1234 post.

3 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 9(1).

4 Ibid reg 9(2).

5 le and for the purposes of ibid reg 10 (as amended) (see PARA 1243 post) and reg 11 (see PARAS 1244, 1247 post).

6 As to the form of application see PARA 1238 post.

7 le by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 6 (see PARA 1240 post) and reg 7 (see PARA 1242 post).

8 As to the fee payable see PARA 1239 post.

9 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 9(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1224. Health and safety requirements.

1224. Health and safety requirements.

Nothing in: (1) any hazardous substances consent¹ granted or deemed to be granted or having effect by virtue of the Planning (Hazardous Substances) Act 1990; or (2) any hazardous substances contravention notice² issued³, may require or allow anything to be done in contravention of any of the relevant statutory provisions relating to health and safety⁴ or any prohibition notice⁵ or improvement notice⁶ served under or by virtue of any of those provisions⁷.

To the extent that such a consent or notice purports to require or allow any such thing to be done, it is void⁸. Where it appears to a hazardous substances authority⁹ which has granted, or is deemed to have granted, a hazardous substances consent or which has issued a hazardous substances contravention notice that the consent or notice or part of it is so rendered void, the authority must, as soon as is reasonably practicable, consult¹⁰ the Health and Safety Executive¹¹ with regard to the matter¹². If the Health and Safety Executive advises the authority that the consent or notice is rendered wholly void, the authority must revoke the consent or notice¹³; and, if the Executive advises that part of the consent or notice is rendered void, the authority must so modify the consent or notice as to render it wholly operative¹⁴.

1 As to hazardous substances consent see PARA 1234 post.

2 For these purposes, except in so far as the context otherwise requires, 'hazardous substances contravention notice' means such a notice as is mentioned in the Planning (Hazardous Substances) Act 1990 s 24(1) (as amended) (see PARA 1270 post): s 39(1), (2).

3 le under *ibid* s 24 (as amended): see PARAS 1270-1274 post.

4 For these purposes, 'relevant statutory provisions' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (ie the provisions of Pt I (as amended) and of any health and safety regulations and the provisions of the Acts mentioned in Sch 1 (as amended) which are specified in the third column of that Schedule and of the regulations, orders or other instruments of a legislative character made or having effect under any provision so specified, while and to the extent that they remain in force: see s 53(1) (as amended); and HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 302 note 24): Planning (Hazardous Substances) Act 1990 s 29(6).

5 For these purposes, 'prohibition notice' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (ie a notice under s 22 (as amended): see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 378): Planning (Hazardous Substances) Act 1990 s 29(6).

6 For these purposes, 'improvement notice' has the same meaning as in the Health and Safety at Work etc Act 1974 Pt I (ss 1-54) (as amended) (ie a notice under s 21: see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 377): Planning (Hazardous Substances) Act 1990 s 29(6).

7 *Ibid* s 29(1). As to the application of s 29 (as amended) to Crown land see PARAS 1214-1215 ante.

8 *Ibid* s 29(2).

- 9 As to hazardous substances authorities see PARAS 1219-1220 ante.
- 10 For the meaning of 'consult' para 2 note 1 ante.
- 11 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 12 Planning (Hazardous Substances) Act 1990 s 29(3) (s 29(3), (4) amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 2(5)).
- 13 Planning (Hazardous Substances) Act 1990 s 29(4) (as amended: see note 12 supra).
- 14 Ibid s 29(5). For guidance as to the Health and Safety Executive's ('HSE's') advisory role see further ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* Annex A; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* Annex A; and as to the status of such guidance see PARA 9 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1225. Financial provisions; in general.

1225. Financial provisions; in general.

Where: (1) compensation is payable by a local authority¹ under the Planning (Hazardous Substances) Act 1990 in consequence of any decision or order given or made² thereunder; and (2) that decision or order was given or made wholly or partly in the interest of a service which is provided by a government department³ and the cost of which is defrayed out of money provided by Parliament, the minister⁴ responsible for the administration of that service may pay to that authority a contribution of such amount as he may with the consent of the Treasury determine⁵. In relation to Wales, this function is exercisable by the National Assembly for Wales⁶ concurrently with any Minister of the Crown by whom it is exercisable and the Assembly does not require Treasury consent⁷.

Any local authority and any statutory undertakers⁸ may contribute towards any expenses incurred by a hazardous substances authority⁹ in or in connection with the performance of any of its statutory¹⁰ functions¹¹.

Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under the relevant statutory provisions¹², the Secretary of State¹³ or, in relation to Wales, the National Assembly for Wales may, if it appears to him or to it to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him or to the Assembly to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation¹⁴.

The council of a county¹⁵ may direct that any expenses incurred by it under the specified statutory provisions¹⁶ are to be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions¹⁷.

There must be paid out of money provided by Parliament any expenses of the Secretary of State or the Assembly or any government department under the Planning (Hazardous Substances) Act 1990¹⁸.

Any sums received by the Secretary of State or the Assembly under that Act must be paid into the Consolidated Fund¹⁹, except that sums received by the Assembly under any statutory provision for the making of payments or loans to the Assembly by a Minister of the Crown or a government department are not required to be paid into the Consolidated Fund²⁰.

1 For these purposes, except in so far as the context otherwise requires, 'local authority' has the same meaning as in the Town and Country Planning Act 1990 (para 3 note 3 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2). References in s 38(1)-(4) (as amended) (see the text and notes 2-14 infra) are deemed to include references to a National Park authority: Environment Act 1990 s 70, Sch 9 para 14(2). As to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.

2 Ie any decision or order made under the Planning (Hazardous Substances) Act 1990 ss 4-21 (as amended) or s 21(8), Schedule (as amended): see PARA 1230 et seq post.

3 For the meaning of 'government department' see PARA 1214 note 1 ante.

4 For the meaning of 'minister' see PARA 1213 note 3 ante.

5 Planning (Hazardous Substances) Act 1990 s 38(1). As to compensation for revocation or modification of hazardous substances consent see PARAS 1262, 1267 post; and as to contributions by the Secretary of State towards compensation payable in respect of land acquired in connection with the Channel tunnel see PARA 913 note 4 ante.

6 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 38 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 See note 6 supra.

8 For the meaning of 'statutory undertakers' see PARA 1218 ante.

9 As to hazardous substances authorities see PARAS 1219-1220 ante.

10 Ie its functions under the Planning (Hazardous Substances) Act 1990 ss 4-29 (as amended): see PARAS 1221, 1224 ante, PARA 1230 et seq post. For these purposes, except in so far as the context otherwise requires, 'functions' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 2 note 1 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

11 Ibid s 38(2) (amended by the Environmental Protection Act 1990 Sch 16 Pt VII). For the purposes of the Planning (Hazardous Substances) Act 1990 s 38(2) (as so amended) and s 38(3) (see the text and notes 12-14 infra), contributions made by an authority towards the expenditure of a joint advisory committee are deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee: s 38(4).

12 Ie compensation payable in consequence of anything done under *ibid* ss 4-21 (as amended).

13 As to the Secretary of State see PARA 19 ante.

14 Planning (Hazardous Substances) Act 1990 s 38(3). See also note 11 supra.

15 As to county councils see PARA 28 ante.

16 Ie under the Planning (Hazardous Substances) Act 1990 s 1 (as amended) (see PARA 1219 ante), s 3 (as amended) (see PARA 1220 ante), s 16 (see PARA 1262 post), s 20 (as amended) (see PARA 1248 post), s 21 (as amended) (see PARAS 1287, 1289 post), s 31 (as amended) (see PARA 1214 ante), s 34 (as amended) (see PARA 1217 ante), s 36 (as amended) (see PARA 1227 post), s 38(1)-(4) (as amended) (see the text and notes 1-14 supra) or s 21(8), Schedule (as amended) (see PARAS 1297-1301 post).

17 Ibid s 38(5) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 2 (6)). As to the special expenses of county councils see **LOCAL GOVERNMENT** vol 29(1) (Reissue) PARA 550.

The Planning (Hazardous Substances) Act 1990 s 38(5) (as so amended) had effect with the insertion after '21' of '25(5)' until a day to be appointed by the Secretary of State: Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 15. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

18 Planning (Hazardous Substances) Act 1990 s 38(6).

19 Ibid s 38(7). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

20 See the Government of Wales Act 1998 s 84(2)(b); para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(5) ADMINISTRATIVE AND FINANCIAL PROVISIONS/1226. Fees for consent applications; power to make regulations.

1226. Fees for consent applications; power to make regulations.

Provision may be made by regulations for the payment of a fee of the prescribed amount to a hazardous substances authority¹ in respect of an application for, or for the continuation of, hazardous substances consent².

Such regulations may:

4473 (1) provide for the payment to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴ of a fee of the prescribed amount in respect of any application which is deemed⁵ to have been made for hazardous substances consent⁶;

4474 (2) provide:

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104. (a) for the transfer of prescribed fees received by a hazardous substances authority in respect of any application which is referred⁷ to the Secretary of State or to the Assembly;

105. (b) for the remission or refunding of a prescribed fee, in whole or in part, in prescribed circumstances or in pursuance of a direction given by the Secretary of State or by the Assembly;

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and the regulations may make different provision for different areas or for different cases or descriptions of cases⁸.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 Planning (Hazardous Substances) Act 1990 s 26A(1) (s 26A added by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 9). As to hazardous substances consent see PARA 1234 post.

In exercise of the power so conferred, and prior to the transfer of functions in Wales to the National Assembly for Wales (see note 4 infra), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 24, 25: see PARAS 1239, 1294 post.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 26A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 I.e. by virtue of regulations under the Planning (Hazardous Substances) Act 1990 s 25 (as amended): see PARA 1272 post.

6 Ibid s 26A(2) (as added (see note 2 supra).

7 I.e. under ibid s 20 (as amended): see PARA 1248 post.

8 Ibid s 26A(3) (as added: see note 2 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(6) RIGHTS OF ENTRY/1227. Right of entry without warrant.

(6) RIGHTS OF ENTRY

1227. Right of entry without warrant.

Any person duly authorised in writing by a hazardous substances authority¹ or by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ may at any reasonable time enter any land⁴:

- 4475 (1) for the purpose of surveying⁵ it in connection with:
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- 106. (a) any application for hazardous substances consent⁶;
- 107. (b) any proposal to issue a hazardous substances contravention notice⁷;
- 337
- 4476 (2) for the purpose of ascertaining whether an offence in connection with hazardous substances control⁸ appears to have been committed⁹;

and may so enter any land in respect of which a hazardous substances contravention notice or a stop notice¹⁰ has been issued for the purpose of ascertaining whether the notice has been complied with¹¹.

Any person who is an officer of the Valuation Office¹² or a person authorised in writing by a hazardous substances authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation made by virtue of the specified statutory provisions¹³ in respect of that land or any other land¹⁴.

The authority of the appropriate minister¹⁵ is required for the carrying out of works in the exercise of a power under the above provisions if (i) the land in question is held by statutory undertakers¹⁶; and (ii) they object to the proposed works on the ground that the execution of the works would be seriously detrimental to the carrying on of their undertaking¹⁷. In relation to Wales, this function of the appropriate minister is transferred to the Assembly only to the extent of its operation in cases where the Environment Agency¹⁸ and water and sewerage undertakers¹⁹ are deemed to be the statutory undertakers²⁰.

As from a day to be appointed²¹, the above rights of entry²² apply to Crown land²³ subject to the following modifications²⁴. A person must not enter Crown land unless he has the relevant permission²⁵; and relevant permission is the permission of (A) a person appearing to the person seeking entry to the land to be entitled to give it; or (B) the appropriate authority²⁶.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 36 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' para 1216 note 6 ante.

5 For these purposes, any power so conferred to survey land is to be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it: Planning (Hazardous Substances) Act 1990 s 36(5) (s 36(4), (5) amended by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 para 32, Sch 19 Pt I). For the meaning of 'minerals' see PARA 1220 note 4 ante.

6 As to hazardous substances consent see PARA 1234 post.

7 Planning (Hazardous Substances) Act 1990 s 36(1). For the meaning of 'hazardous substances contravention notice' see PARA 1270 post. As to the power of the council of a county to direct that any expenses incurred by it under s 36 (as amended) shall be treated as special expenses see PARA 1225 ante.

8 Ie an offence under *ibid* s 23 (as amended): see PARA 1269 post.

9 *Ibid* s 36(2).

10 Ie a notice under the Town and Country Planning Act 1990 s 183 (as amended) (see PARA 577 ante) as applied by regulations made by virtue of the Planning (Hazardous Substances) Act 1990 s 25 (as amended) (see PARA 1272 post). At the date at which this title states the law, no such regulations applying the Town and Country Planning Act 1990 s 183 (as amended) for these purposes had been made.

11 Planning (Hazardous Substances) Act 1990 s 36(4) (as amended: see note 5 supra).

12 For these purposes, except in so far as the context otherwise requires, 'Valuation Office' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 57 note 20 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

13 Ie any claim made by virtue of *ibid* s 16 (see PARA 1262 post) or s 19 (see PARA 1267 post).

14 *Ibid* s 36(3).

15 The Town and Country Planning Act 1990 s 265(1), (3) (as amended) (meaning of 'the appropriate minister': see PARA 1012 ante) applies for these purposes as it applies for the purposes of s 325(9) (see PARA 57 ante): Planning (Hazardous Substances) Act 1990 s 36B(8) (s 36B(7), (8) added by the Planning and Compensation Act 1991 Sch 3 para 16 (1), (3)). See also the text and notes 18-20 *infra*.

16 For the meaning of 'statutory undertakers' see PARA 1218 ante.

17 Planning (Hazardous Substances) Act 1990 s 36B(7) (as added: see note 15 supra).

18 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

19 As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

20 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

21 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

22 Ie the Planning (Hazardous Substances) Act 1990 s 36 (as amended): see the text and notes 1-14 supra. Section 36B (as substituted) (see the text to notes 16-17 supra; and PARA 1229 post) does not, however, apply to anything done by virtue of the Planning (Hazardous Substances) Act 1990 s 36C (as prospectively added): s 36C(4) (s 36C prospectively added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 15, as from a day to be appointed: see note 21 supra).

23 For the meaning of 'Crown land' for these purposes see PARA 1215 ante.

24 Planning (Hazardous Substances) Act 1990 s 36C(1) (as added: see note 22 supra).

25 *Ibid* s 36C(2) (as added: see note 22 supra).

26 *Ibid* s 36C(3) (as added: see note 22 supra). 'Appropriate authority' must be construed in accordance with s 31(5) (as amended) (see PARA 1215 note 11 ante): s 36C(5) (as so added).

UPDATE

1227 Right of entry without warrant

TEXT AND NOTE 21--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(6) RIGHTS OF ENTRY/1228. Right of entry under warrant.

1228. Right of entry under warrant.

If it is shown to the satisfaction of a justice of the peace on sworn information in writing:

- 4477 (1) that there are reasonable grounds for entering any land¹ for any of the statutory purposes²; and
- 4478 (2) that admission to the land has been refused³ or a refusal is reasonably apprehended, or the case is one of urgency,

the justice may issue a warrant authorising any person duly authorised in writing by a hazardous substances authority⁴ to enter the land⁵.

A warrant authorises entry on one occasion only and that entry must be:

- 4479 (a) within one month from the date of the issue of the warrant; and
- 4480 (b) at a reasonable hour, unless the case is one of urgency⁶.

1 For the meaning of 'land' see PARA 1216 note 6 ante.

2 Ie for any of the purposes mentioned in the Planning (Hazardous Substances) Act 1990 s 36 (as amended): see PARA 1227 ante.

3 For these purposes, admission is regarded as having been refused if no reply is received to a request for admission within a reasonable period: *ibid* s 36A(2) (s 36A added by the Planning and Compensation Act 1991 s 25, Sch 3 para 16(1), (3)).

4 As to hazardous substances authorities see PARAS 1219-1220 ante.

5 Planning (Hazardous Substances) Act 1990 s 36A(1) (as added: see note 3 supra).

6 *Ibid* s 36A(3) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(6) RIGHTS OF ENTRY/1229. Additional rights and duties on exercise of power of entry.

1229. Additional rights and duties on exercise of power of entry.

A person authorised to enter land¹ in pursuance of a right of entry conferred under or by virtue of the relevant statutory provisions²:

- 4481 (1) must, if so required, produce evidence of his authority and state the purpose of his entry before so entering;
- 4482 (2) may take with him such other persons as may be necessary; and
- 4483 (3) on leaving the land must, if the owner³ or occupier is not then present, leave it as effectively secured against trespassers as he found it⁴.

Any person who wilfully obstructs a person acting in the exercise of such a right of entry is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁵.

If any person who enters any land, in exercise of such a right of entry, discloses to any person any information obtained by him while on the land as to any manufacturing process or trade secret, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum⁶; but this provision does not apply if the disclosure is made by a person in the course of performing his duty in connection with the purpose for which he was authorised to enter the land⁷.

If any damage is caused to land or chattels in the exercise of a right of entry or a power conferred⁸ in connection with such a right, compensation may be recovered by any person suffering the damage from the authority which gave the written authority for the entry or, as the case may be, from the Secretary of State⁹ or, in relation to Wales, from the National Assembly for Wales¹⁰.

1 For the meaning of 'land' see PARA 1216 note 6 ante.

2 I.e. a right of entry conferred under the Planning (Hazardous Substances) Act 1990 s 36 (as amended) (see PARA 1227 ante) or s 36A (as added) (see PARA 1228 ante).

3 For the meaning of 'owner' see PARA 1217 note 1 ante.

4 Planning (Hazardous Substances) Act 1990 s 36B(1) (s 36B added by the Planning and Compensation Act 1991 s 25, Sch 3 para 16(1), (3)).

5 Planning (Hazardous Substances) Act 1990 s 36B(2) (as added: see note 4 supra). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1212 ante at head (7) in the text.

6 Ibid s 36B(3), (5) (as added: see note 4 supra). For the meaning of 'the statutory maximum' see PARA 53 note 11 ante.

7 Ibid s 36B(4) (as added: see note 4 supra).

8 I.e. power conferred by virtue of ibid s 36(5) (as amended): see PARA 1227 ante.

9 As to the Secretary of State see PARA 19 ante.

10 Planning (Hazardous Substances) Act 1990 s 36B(6) (as added: see note 4 supra). As to the transfer of functions under s 36B (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 1227 the text and notes 15-20 ante.

The Town and Country Planning Act 1990 s 118 (see PARA 931 ante) applies in relation to compensation under the Planning (Hazardous Substances) Act 1990 s 36B (as so added and modified) as it applies in relation to compensation under the Town and Country Planning Act 1990 Pt IV (ss 107-118) (as amended) (see PARA 914 et seq ante): Planning (Hazardous Substances) Act 1990 s 36B(6) (as so added).

PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(7) HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES/1230. Power to prescribe hazardous substances.

(7) HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES

1230. Power to prescribe hazardous substances.

For the purposes of the Planning (Hazardous Substances) Act 1990, the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales²:

- 4484 (1) must by regulations specify:
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108. (a) the substances that are hazardous substances; and
109. (b) the quantity which is to be the controlled quantity of any such substance;
and
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4485 (2) may by regulations provide that, except in such circumstances as may be prescribed, all hazardous substances falling within a group specified in the regulations are to be treated as a single substance³.

Regulations which are made by virtue of head (1)(a) above, or which are made by virtue of head (1)(b) above and reduce the controlled quantity of a substance, may make such transitional provision as appears to the Secretary of State or to the Assembly to be appropriate⁴.

Any such regulations may make different provision for different cases or descriptions of cases⁵.

In the exercise of these powers, and prior to the transfer of functions in relation to Wales to the Assembly⁶, the Secretary of State has made regulations prescribing hazardous substances and controlled quantities, Schedule 1 to which classifies them under three headings:

- 4486 (i) named substances (Part A)⁷;
4487 (ii) categories of substances and preparations not specifically named (Part B)⁸;
and
4488 (iii) substances used in an industrial chemical process (Part C)⁹.

Substances, mixtures and preparations specified in column 1 of Part A, falling within a category in column 1 of Part B or meeting the description in column 1 of Part C of that Schedule and present as raw materials, by-products, residues or intermediates are hazardous substances for the purposes of the 1990 Act¹⁰. The quantity specified in column 2 of that Schedule is the controlled quantity of the corresponding hazardous substance in column 1 of that Schedule for the statutory purposes¹¹.

¹ As to the Secretary of State see PARA 19 ante.

² As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 5, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

³ Planning (Hazardous Substances) Act 1990 s 5(1). As to the making of regulations generally see PARA 1213 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 5 see PARA 1234 note 5 post.

⁴ Ibid s 5(2). The power to make such transitional provision includes, without prejudice to its generality, power to apply ss 11 and 26 (as amended) (see PARAS 1250, 1282 post) subject to such modifications as appear to the Secretary of State or to the Assembly to be appropriate: s 5(3).

- 5 Ibid s 5(4).
- 6 See note 2 *supra*.
- 7 See the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3, Sch 1 Pt A (reg 3(1), Sch 1 as substituted and amended); and PARA 1231 post.
- 8 See *ibid* Sch 1 Pt B (as substituted and amended); and PARA 1232 post.
- 9 See *ibid* Sch 1 Pt C (as substituted); and PARA 1233 post.
- 10 *Ibid* reg 3(1) (substituted by SI 1999/981).
- 11 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3(3).

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1231. Part A; named substances.

At the date at which this title states the law, 63 named substances are prescribed in Part A of Schedule 1 to the relevant regulations¹, together with their controlled quantity in tonnes² and the quantity for the purposes of determining the controlled quantity where hazardous substances are added together³. For these purposes, and for the purposes of the categories of substances and preparations not specifically named and prescribed in Part B of that Schedule⁴, mixtures and preparations are to be treated in the same way as pure substances provided they remain within the concentration limits set according to their properties⁵, unless a percentage composition or other description is specifically given⁶. In the case of substances and preparations with properties giving rise to more than one classification the lowest thresholds apply⁷.

Where a substance or group of substances listed in Part A also falls within a category of Part B, the controlled quantities set out in Part A must be used⁸.

1 See the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3, Sch 1 Pt A col 1 (reg 3(1), Sch 1 substituted by SI 1999/981; amended by SI 2005/1082); and note 3 *infra*.

2 See the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1 Pt A col 2 (as substituted: see note 1 *supra*); and note 3 *infra*. The controlled quantity is referred to as 'Q': see Sch 1 Pt A col 2 (as so substituted).

3 See *ibid* Sch 1 Pt A col 3 (as substituted: see note 1 *supra*). The quantity for these purposes is referred to as 'Q starred': see Sch 1 Pt A col 3 (as so substituted). The addition of hazardous substances to determine the controlled quantity must be carried out according to the prescribed addition rule: see Sch 1 notes to Pts A and B, note 4 (as so substituted). The addition rule in note 4 (as so substituted) applies for the following circumstances: (1) for substances and preparations appearing in Pt A at quantities less than their individual controlled quantity present with substances having the same classification from Pt B, and the addition of substances and preparations with the same classification from Pt B; (2) for the addition of categories 1, 2 and 10 from Pt B present together; (3) for the addition of categories 3, 4, 5, 6, 7, 8 and 9 from Pt B present together: Sch 1 notes to Pts A and B, note 5 (as so substituted). For guidance on these rules regarding aggregate quantities see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 30-33; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 28-31. As to the status of such guidance see PARA 9 *ante*.

The named substances and the controlled quantities (Q) or controlled quantities for the purposes of the addition rules (Q starred) in tonnes prescribed by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1 Pt A (as so substituted and amended) in relation to them are as follows:

- 348 (1) ammonium nitrate and ammonium nitrate compounds in which the nitrogen content as a result of the ammonium nitrate is more than 28% per cent by weight and aqueous ammonium nitrate solutions in which the concentration of ammonium nitrate is more than 90% by weight (see Sch 1 Pt A note 1 (as substituted)), 350 (Q);
- 349 (2) simple ammonium nitrate based fertilisers which conform with the requirements of the Fertilisers Regulations 1991, SI 1991/2197 (as amended) and composite fertilisers in which the nitrogen content as a result of the ammonium nitrate is more than 28% in weight (a composite fertiliser contains ammonium nitrate with phosphate or potash, or phosphate and potash) (see Sch 1 Pt A note 2 (as substituted)), 1,000 (Q), 1,250 (Q starred);
- 350 (3) arsenic pentoxide, arsenic (V) acid and/or salts, 1 (Q);
- 351 (4) arsenic trioxide, arsenious (III) acid and/or salts, 0.10 (Q);
- 352 (5) bromine, 20 (Q)
- 353 (6) chlorine, 10 (Q);
- 354 (7) nickel compounds in inhalable powder form (nickel monoxide, nickel dioxide, nickel sulphide, trinickel disulphide, dinickel trioxide), 1 (Q);
- 355 (8) ethyleneimine, 10 (Q);
- 356 (9) fluorine, 10(Q);
- 357 (10) formaldehyde (concentration =>90%), 5 (Q);
- 358 (11) hydrogen, 2 (Q), 5 (Q starred);
- 359 (12) hydrogen chloride (liquefied gas), 25 (Q);
- 360 (13) lead alkyls, 5 (Q);
- 361 (14) liquefied petroleum gas ('LPG'), including commercial propane and commercial butane, and any mixture thereof, when held at a pressure greater than 1.4 bar absolute, 25 (Q), 50 (Q starred);
- 362 (15) liquefied extremely flammable gases excluding pressurised LPG (under head 14 supra), 50 (Q);
- 363 (16) natural gas, 15 (Q), 50 (Q starred);
- 364 (17) acetylene, 5 (Q);
- 365 (18) ethylene oxide, 5 (Q);
- 366 (19) propylene oxide, 5(Q);
- 367 (20) methanol, 500 (Q);
- 368 (21) 4, 4-Methylenebis (2-chloraniline) and/or salts, in powder form, 0.01 (Q);
- 369 (22) methylisocyanate, 0.15 (Q);
- 370 (23) oxygen, 200 (Q);
- 371 (24) toluene diisocyanate, 10 (Q);
- 372 (25) carbonyl dichloride (phosgene), 0.30 (Q);
- 373 (26) arsenic trihydride (arsine), 0.20 (Q);
- 374 (27) phosphorus trihydride (phosphine), 0.20 (Q);
- 375 (28) sulphur dichloride, 1 (Q);

- 376 (29) sulphur trioxide (including sulphur trioxide dissolved in sulphuric acid to form Oleum), 15 (Q);
- 377 (30) polychlorodibenzofurans and polychlorodibenzodioxins (including TCDD), calculated in TCDD equivalent (see Sch 1 Pt A note 3 (as substituted)), 0.001 (Q);
- 378 (31) the following carcinogens: (a) 4-Aminobiphenyl and/or its salts; (b) Benzidine and/or salts; (c) Bis(chloromethyl)ether; (d) Chloromethyl methyl ether; (e) Dimethylcarbamoyl chloride; (f) Dimethylnitrosomine; (g) Hexamethylphosphoric triamide; (h) 2-Naphthylamine and/or salts; (i) 1,3-Propanesultone; (j) 4-Nitrodiphenyl, 0.001 (Q);
- 379 (32) automotive petrol and other petroleum spirits, 5,000 (Q);
- 380 (33) acrylonitrile, 20 (Q), 50 (Q starred);
- 381 (34) carbon disulphide, 20 (Q), 50 (Q starred);
- 382 (35) hydrogen selenide, 1 (Q), 50 (Q starred);
- 383 (36) nickel tetracarbonyl, 1 (Q), 5 (Q starred);
- 384 (37) oxygen difluoride, 1 (Q), 5 (Q starred);
- 385 (38) entaborane, 1 (Q), 5 (Q starred);
- 386 (39) aelenium hexafluoride, 1 (Q), 50 (Q starred);
- 387 (40) stibine (antimony hydride), 1 (Q), 5 (Q starred);
- 388 (41) sulphur dioxide, 20 (Q), 50 (Q starred);
- 389 (42) tellurium hexafluoride, 1 (Q), 5 (Q starred);
- 390 (43) 2,2-Bis(tert-butylperoxy) butane (>70%), 5 (Q), 50 (Q starred);
- 391 (44) 1,1-Bis(tert-butylperoxy) cyclohexane (>80%), 5 (Q), 50 (Q starred);
- 392 (45) tert-Butyl peroxyacetate (>70%), 5 (Q), 50 (Q starred);
- 393 (46) tert-Butyl peroxyisobutyrate (>80%), 5 (Q), 50 (Q starred);
- 394 (47) tert-Butyl peroxyisopropylcarbonate (>80%), 5 (Q), 50 (Q starred);
- 395 (48) tert-Butyl peroxy maleate (>80%), 5 (Q), 50 (Q starred);
- 396 (49) tert-Butyl peroxy pivalate (>77%), 5 (Q), 50 (Q starred);
- 397 (50) cellulose nitrate other than (a) cellulose nitrate for which a licence, granted by the Health and Safety Executive under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (where that Executive is the licensing authority by virtue of reg 2(1), Sch 1 para 1(c)) is required; or (b) cellulose nitrate where the nitrogen content of the cellulose nitrate does not exceed 12.3% by weight and contains not more than 55 parts of cellulose nitrate per 100 parts by weight of solution, 50 (Q);
- 398 (51) dibenzyl peroxydicarbonate (>90%), 5 (Q), 50 (Q starred);
- 399 (52) diethyl peroxydicarbonate (>30%), 5 (Q), 50 (Q starred);
- 400 (53) 2,2-Dihydroperoxypropane (>30%), 5 (Q), 50 (Q starred);
- 401 (54) di-isobutyl peroxide (>50%), 5 (Q), 50 (Q starred);
- 402 (55) di-n-propyl peroxydicarbonate (>80%), 5 (Q), 50 (Q starred);
- 403 (56) di-sec-butyl peroxydicarbonate (>80%), 5 (Q), 50 (Q starred);
- 404 (57) 3,3,6,6,9,9-Hexamethyl-1,2,4,5-tetroxacyclononane (>75%), 5 (Q), 50 (Q starred);

- 405 (58) methyl ethyl ketone peroxide (>60%), 5 (Q), 50 (Q starred);
- 406 (59) methyl isobutyl ketone peroxide (>60%), 5 (Q), 50 (Q starred);
- 407 (60) peracetic acid (>60%), 5 (Q), 50 (Q starred);
- 408 (61) sodium chlorate, 25 (Q), 50 (Q starred);
- 409 (62) gas or any mixture of gases (not covered by head (16 supra) which is flammable in air, when held as a gas, 15 (Q);
- 410 (63) a substance or any mixture of substances which is flammable in air when held above its boiling point (measured at 1 bar absolute) as a liquid or as a mixture of liquid and gas at a pressure of more than 1.4 bar absolute (see Sch 1 Pt A note 4 (as substituted)), 25 (Q).

In relation to polychlorodibenzofurans and polychlorodibenzodioxins, the quantities of polychlorodibenzofurans and polychlorodibenzodioxins are calculated using prescribed factors: see Sch 1 Pt A note 3 (as so substituted). The controlled quantity of 25 tonnes in head (63) supra refers, in the case of a mixture of substances, to the quantity of substances within that mixture held above their boiling point (measured at 1 bar absolute): Sch 1 Pt A note 4 (as so substituted).

4 See PARA 1232 post.

5 le under the relevant provisions specified in the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689 (as amended).

6 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1, notes to Pts A and B, note 1 (as substituted: see note 1 supra); Interpretation Act 1978 s 17(2).

7 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1, notes to Pts A and B, note 2 (as substituted: see note 1 supra).

8 Ibid Sch 1, notes to Pts A and B, note 3 (as substituted: see note 1 supra).

As to the relationship between the substances included in Part A and the substances included in EC Council Directive 96/82 on the control of major-accident hazards involving dangerous substances (OJ L10, 14.10.97, p 13) ('the SEVESO II Directive') Annex 1 (as amended) see PARA 1211 note 2 ante.

UPDATE

1231 Part A; named substances

TEXT AND NOTES--SI 1992/656 Sch 1 substituted in relation to England: SI 2009/1901.

NOTE 5--SI 2002/1689 now replaced by Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 571, 572.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(7) HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES/1232. Part B; categories of substances and preparations not specifically named in Part A.

1232. Part B; categories of substances and preparations not specifically named in Part A.

At the date at which this title states the law, eleven categories of substances and preparations are prescribed in Part B of Schedule 1 to the relevant regulations¹, together with their controlled quantity in tonnes², as follows:

- 4489 (1) very toxic, 5 tonnes;
 4490 (2) toxic, 50 tonnes;
 4491 (3) oxidising, 50 tonnes;
 4492 (4) explosive, where the substance or preparation falls within the first prescribed definition³ excluding those for which a licence granted by the Health and Safety Executive under the Manufacture and Storage of Explosives Regulations 2005 is required⁴ or those licensed under the Dangerous Substances in Harbour Areas Regulations 1987⁵, 50 tonnes;
 4493 (5) explosive, where the substance or preparation falls within the second prescribed definition⁶, and with the same exclusions as under head (4) above, 10 tonnes;
 4494 (6) flammable⁷, 5,000 tonnes;
 4495 (7) highly flammable⁸, 50 tonnes;
 4496 (8) highly flammable liquids⁹, 5,000 tonnes;
 4497 (9) extremely flammable¹⁰, 10 tonnes;
 4498 (10) dangerous for the environment in combination with risk phrases:
 340
 110. (a) R50: 'very toxic to aquatic organisms', 200 tonnes;
 111. (b) R51: 'toxic to aquatic organisms' and R53: 'may cause long term adverse effects in the aquatic environment', 500 tonnes;
 341
 4499 (11) any classification not covered by those given above in combination with risk phrases:
 342
 112. (a) R14: 'reacts violently with water' (including R14/R15), 100 tonnes;
 113. (b) R29: 'in contact with water, liberates toxic gas', 50 tonnes¹¹.
 343

Where a substance or group of substances listed in Part A also falls within a category of Part B, the controlled quantities set out in Part A must be used¹².

1 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3, Sch 1 Pt B col 1 (reg 3(1), Sch 1 substituted by SI 1999/981; amended by SI 2005/1082).

2 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1 Pt B col 2 (as substituted: see note 1 supra). The quantity in tonnes is referred to as 'Q': see Sch 1 Pt B col 2 (as so substituted and amended). Substances and preparations are to be classified for the purpose of Sch 1 (as so substituted and amended) according to the Chemicals (Hazard Information and Packaging for Supply) Regulations 2002, SI 2002/1689, reg 4 whether or not the substance or preparation is required to be classified for the purposes of those regulations, or, in the case of a pesticide approved under the Food and Environment Protection Act 1985 in accordance with the classification assigned to it by that approval: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1, notes to Pt B, note 1 (as so substituted); Interpretation Act 1978 s 17(2). As to the treatment of mixtures or preparations, the thresholds applying where substances and preparations have properties giving rise to more than one classification, and the addition of substances see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1, notes to Pts A and B, notes 1, 2, 4, 5; and PARA 1231 notes 3, 6-7 ante.

3 For these purposes, an 'explosive' means: (1) a substance or preparation which creates the risk of an explosion by shock, friction, fire or other sources of ignition (risk phrase R2); (2) a pyrotechnic substance ie a substance (or mixture of substances) designed to produce heat, light, sound, gas or smoke or a combination of such effects through non-detonating self-sustained exothermic chemical reactions; or (3) an explosive or pyrotechnic substance or preparation contained in objects: *ibid* Sch 1, notes to Pt B, note 2(a) (as substituted: see note 1 supra).

4 Ie a licence under the Manufacture and Storage of Explosives Regulations 2005, SI 2005/1082 (where that Executive is the licensing authority by virtue of reg 2(1), Sch 1 para 1(c)): see further EXPLOSIVES.

5 Ie under the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37: see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 700 et seq.

6 For these purposes, an 'explosive' means a substance or preparation which creates extreme risks of explosion by shock, friction, fire or other sources of ignition (risk phrase R3): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1, notes to Pt B, note 2(b) (as substituted: see note 1 supra).

7 Ie where the substance or preparation falls within the definition given in ibid Sch 1, notes to Pt B, note 3(a) (as substituted): see head (1) infra. 'Flammable', 'highly flammable' and 'extremely flammable' in categories 6, 7, 8 and 9 mean: (1) flammable liquids: substances and preparations having a flash point equal to or greater than 21 degrees C and less than or equal to 55 degrees C (risk phrase R10), supporting combustion; (2) highly flammable liquids: (a) substances and preparations which may become hot and finally catch fire in contact with air at ambient temperature without any input of energy (risk phrase R17)--substances which have a flash point lower than 55 degrees C and which remain liquid under pressure, where particular processing conditions, such as high pressure or high temperature, may create major-accident hazards; (b) substances and preparations having a flash point lower than 21 degrees C and which are not extremely flammable (risk phrase R11, second indent); (3) extremely flammable gases and liquids: (a) liquid substances and preparations which have a flash point lower than 0 degrees C and the boiling point (or, in the case of a boiling range, the initial boiling point) of which at normal pressure is less than or equal to 35 degrees C (risk phrase R12, first indent), and (b) gaseous substances and preparations which are flammable in contact with air at ambient temperature and pressure (risk phrase R12, second indent), whether or not kept in the gaseous or liquid state under pressure, excluding liquefied extremely flammable gases (including liquefied petroleum gas) and natural gas referred to in Sch 1 Pt A (as substituted) (see PARA 1231 ante), and (c) flammable liquid substances and preparations maintained at a temperature above their boiling point: Sch 1, notes to Pt B, note 3 (as substituted: see note 1 supra).

8 Ie where the substance or preparation falls within the definition given in ibid Sch 1, notes to Pt B, note 3(b) (i) (as substituted): see note 7 head (2)(a) supra.

9 Ie where the substance or preparation falls within the definition given in ibid Sch 1, notes to Pt B, note 3(b) (ii) (as substituted): see note 7 head (2)(b) supra.

10 Ie where the substance or preparation falls within the definition given in ibid Sch 1, notes to Pt B, note 3(c) (as substituted): see note 7 head (3) supra.

11 Ibid Sch 1 Pt B cols 1, 2 (as substituted and amended: see note 1 supra). As to the relationship between the substances included in Part B and the substances included in EC Council Directive 96/82 on the control of major-accident hazards involving dangerous substances (OJ L10, 14.10.97, p 13) ('the SEVESO II Directive') Annex 1 (as amended) see PARA 1211 note 2 ante.

12 See PARA 1231 the text and note 8 ante.

UPDATE

1232 Part B; categories of substances and preparations not specifically named in Part A

TEXT AND NOTES--SI 1992/656 Sch 1 substituted in relation to England: SI 2009/1901.

NOTE 2--SI 2002/1689 now replaced by Chemicals (Hazard Information and Packaging for Supply) Regulations 2009, SI 2009/716: see HEALTH AND SAFETY AT WORK vol 53 (2009) PARAS 571, 572.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(7) HAZARDOUS SUBSTANCES AND CONTROLLED QUANTITIES/1233. Part C; substances used in an industrial chemical process.

1233. Part C; substances used in an industrial chemical process.

Where it is believed that a substance ('HS'), which is within Part A or Part B of Schedule 1 to the relevant regulations¹, may be generated during loss of control of an industrial chemical process², any substance ('S') which is used in that process is prescribed by Part C of that

Schedule as a hazardous substance for the purposes of the Planning (Hazardous Substances) Act 1990³. The controlled quantity so prescribed in relation to that substance is the amount of S which it is believed may generate, on its own or in combination with other substances used in the relevant industrial chemical process, the controlled quantity of the HS in question⁴.

Where a substance falling within Part A or B of Schedule 1 to the regulations also falls within Part C, the classification with the lowest controlled quantity will apply⁵.

1 le within the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3(1), Sch 1 Pt A or Pt B (as substituted and amended): see PARAS 1231-1232 ante.

2 For these purposes, the expression 'which it is believed may be generated during loss of control of an industrial chemical process' has the same meaning as in EC Council Directive 96/82 on the control of major-accident hazards involving dangerous substances ('the SEVESO II directive') (OJ L10, 14.10.97, p 13) (as amended) (see PARA 1211 ante): see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 1 Pt C note 1 (Sch 1 substituted by SI 1999/981).

3 Ibid Sch 1 Pt C col 1 (as substituted: see note 2 supra).

4 Ibid Sch 1 Pt C col 2 (as substituted: see note 2 supra). For guidance on the application of Sch 1 Pt C (as so substituted) see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 28-29; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 25-27; and as to the status of such guidance see PARA 9 ante.

5 Ibid Sch 1 Pt C note 2 (as substituted: see note 2 supra). This is subject to Sch 1, notes to Pts A and B, note 3 (as so substituted) (see PARA 1231 the text and note 8 ante): Sch 1 Pt C note 2 (as so substituted).

UPDATE

1233 Part C; substances used in an industrial chemical process

TEXT AND NOTES--SI 1992/656 Sch 1 substituted in relation to England: SI 2009/1901.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(i) Requirement of Consent and Exemptions/1234. Requirement of hazardous substances consent.

(8) HAZARDOUS SUBSTANCES CONSENT

(i) Requirement of Consent and Exemptions

1234. Requirement of hazardous substances consent.

Subject to the provisions of the Planning (Hazardous Substances) Act 1990, the presence of a hazardous substance¹ on, over or under land² requires the consent of the hazardous substances authority³ ('hazardous substances consent')⁴; but this does not apply if the aggregate quantity of the substance:

4500 (1) on, over or under the land;

4501 (2) on, over or under other land which is controlled by the same person⁵ and which, in all the circumstances, including in particular the purposes for which the land and the land mentioned in head (1) above is used, forms with the land so mentioned a single establishment⁶;

- 4502 (3) on, over or under other land which is within 500 metres of the land mentioned in head (1) above and controlled by the same person; or
- 4503 (4) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in head (1) above,

is less than the quantity prescribed⁷ as the controlled quantity for that substance⁸.

For these purposes, a quantity of a substance which falls within more than one of heads (1) to (4) above must only be counted once⁹; and the temporary presence of a hazardous substance while it is being transported from one place to another is not to be taken into account unless:

- 4504 (a) it is unloaded; or
- 4505 (b) it is present on, over or under land in respect of which there is a hazardous substances consent for any substance, or in respect of which, not taking into account the quantity of the substance being transported, there is required to be such a consent for any substance¹⁰.

The Secretary of State¹¹ or, in relation to Wales, the National Assembly for Wales¹² may by regulations provide that hazardous substances consent is not required or is only required:

- 4506 (i) in relation to land of prescribed descriptions;
- 4507 (ii) by reason of the presence of hazardous substances in prescribed circumstances¹³.

Any such regulations may make different provision for different cases or descriptions of cases¹⁴.

Hazardous substances consent may be granted on an application¹⁵ or may be deemed¹⁶ to have been granted¹⁷.

1 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante. For the meaning of 'prescribed' see PARA 1216 note 1 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 Planning (Hazardous Substances) Act 1990 ss 4(1), 39(1).

5 For the purposes of the Planning (Hazardous Substances) Act 1990 ss 4-21, 23-26 (as amended) (see PARA 1230 ante; the text and notes 6-17 infra; and PARA 1237 et seq post), any two bodies corporate are to be treated as being one person if (1) one of them is a body corporate of which the other is a subsidiary, within the meaning of the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25); or (2) both of them are subsidiaries, within the meaning of that Act, of one and the same body corporate: Planning (Hazardous Substances) Act 1990 s 39(3).

6 There is no precise limit to the distance that may exist between areas of land that may be considered to constitute a single 'establishment' by virtue of *ibid* s 4(2)(aa) (as added) (see head (2) in the text); in most cases it should be clear what constitutes the 'establishment' having regard to all the circumstances but, eg, in cases where facilities shared by other establishments are involved, this may be more difficult to establish: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 19; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 17. As to the status of such guidance see PARA 9 ante.

7 As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.

8 Planning (Hazardous Substances) Act 1990 s 4(2) (s 4(2) amended, s 4(2A) added and s 4(3) substituted by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 2). As to the application of the Planning (Hazardous Substances) Act 1990 s 4 (as amended) to Crown land see PARAS 1214-1215 ante.

9 Ibid s 4(2A) (as added: see note 8 supra).

10 Ibid s 4(3) (as substituted: see note 8 supra). For guidance as to whether a vehicle's presence is temporary or not see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 86; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 84.

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 4 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

13 Planning (Hazardous Substances) Act 1990 s 4(4). In exercise of the power so conferred, and prior to the transfer of planning functions in Wales to the Assembly (see note 12 supra), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4 (as substituted): see PARA 1235 post. As to the making of regulations generally see PARA 1213 ante.

14 Planning (Hazardous Substances) Act 1990 s 4(5).

15 Ie under the Planning (Hazardous Substances) Act 1990. As to such applications see PARA 1237 et seq post.

16 Ie by virtue of ibid s 11 (as amended) (see PARA 1250 et seq post) or s 12 (as amended) (see PARA 1254 post).

17 Ibid s 6(1). The requirement for hazardous substances consent does not override the need for planning permission to be obtained where development of land is also involved: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 11-12; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 12.

UPDATE

1234 Requirement of hazardous substances consent

NOTE 5--Reference to Companies Act 1985 s 736 now to Companies Act 2006 s 1159: Planning (Hazardous Substances) Act 1990 s 39(3) (amended by SI 2009/1941).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(i) Requirement of Consent and Exemptions/1235. Exemptions.

1235. Exemptions.

Hazardous substances consent¹ is not required:

4508 (1) for the temporary presence of a hazardous substance² during the period between its being unloaded from one means of transport and loaded onto another while it is being transported from one place to another unless it is present on, over or under land³ in respect of which there is a hazardous substances consent for any substance, or in respect of which, not taking into account the quantity of the substance being transported, there is required to be such a consent for any substance⁴;

4509 (2) for the presence of a hazardous substance contained in an exempt pipeline⁵ or a service pipe⁶;

- 4510 (3) for the presence of a hazardous substance which has been unloaded from a ship or other sea going craft in an emergency⁷ until the expiry of the period of 14 days beginning with the day on which it was so unloaded⁸;
- 4511 (4) for the presence of a hazardous substance on, over or under land at a waste land-fill site⁹;
- 4512 (5) for the presence of a hazardous substance which creates a hazard from ionising radiation¹⁰ if present on, over or under land in respect of which a nuclear site licence has been granted or is required for the purposes¹¹ of the Nuclear Installations Act 1965¹².

The presence of a substance to which heads (1) to (5) above apply is not be taken into account when calculating the quantity of a hazardous substance present on, over or under land for any of the statutory¹³ purposes¹⁴.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante

3 The presence of a quantity of a hazardous substance (other than that of a substance numbered 6, 14, 35 and 39 in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3(1), Sch 1 Pt A col 1 (as substituted) (see PARA 1231 ante) (1) in a location where it cannot act as an initiator of a major accident elsewhere on the relevant site; and (2) which is equal to or less than 2% of the relevant controlled quantity for that substance, is not to be taken into account when calculating the quantity of a hazardous substance present, on, over or under land for any purpose of the Planning (Hazardous Substances) Act 1990 or the Planning (Hazardous Substances) Regulations 1992, SI 1992/656: reg 4(6) (reg 4 substituted by SI 1999/981). For the meaning of 'land' see PARA 1216 note 6 ante. For these purposes, 'major accident' means an occurrence (including in particular, a major emission, fire or explosion) resulting from uncontrolled developments in the course of any operation carried out on, over or under land in respect of which there is or is required to be a hazardous substances consent and leading to serious danger to human health or the environment, immediate or delayed, and involving one or more hazardous substances; and the expressions 'initiator', 'major emission, fire or explosion', 'resulting from uncontrolled developments' and 'leading to serious danger to human health or the environment, immediate or delayed' have the same meaning as in EC Council Directive 96/82 on the control of major-accident hazards involving dangerous substances (OJ L10, 14.10.97, p 13) (as amended) (the 'SEVESO II' Directive) (see PARA 1211 ante): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2, 4(8) (c), (d) (as so substituted).

For guidance on the exemption in reg 4(6) (as so substituted) ('the 2% rule') see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 92-93; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 90-91. As to the status of such guidance see PARA 9 ante.

4 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(1).

5 For these purposes, 'exempt pipeline' means a pipeline used to convey a hazardous substance to or from a site, but does not include (1) that part of the pipeline on, over, or under a site to which it has an outlet or inlet; (2) a service pipe; and 'service pipe' means a pipeline used by a gas transporter (within the meaning of the Gas Act 1986 s 7(1) (as substituted and amended)) to convey gas to an individual consumer from a main of that transporter: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(8)(a), (b) (as substituted (see note 3 supra); amended by virtue of the Utilities Act 2000 s 76(7)). The hazardous substances consent system does not apply to controlling the presence of substances in local or cross-country pipelines, to which the Pipelines Act 1962 and the relevant regulations continue to apply: see generally RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES vol 39(1A) (Reissue) PARA 554 et seq.

6 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(2) (as substituted: see note 3 supra).

7 For these purposes a substance is to be treated as having been unloaded from a craft in an emergency if (1) it was unloaded from a craft to which a direction under the Dangerous Vessels Act 1985 s 3(1) (directions by Secretary of State to harbour master: see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 698) applied; or (2) it was unloaded from a craft after having been brought into a harbour or harbour area, within the meaning of the Dangerous Substances in Harbour Areas Regulations 1987, SI 1987/37, reg 2, without requiring notification under reg 6(1) by virtue of an exemption under reg 6(5) (see PORTS AND HARBOURS vol 36(1) (2007 Reissue) PARA 701): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(3) (as substituted: see note 3 supra).

8 Ibid reg 4(3) (as substituted: see note 3 supra).

9 Ibid reg 4(4) (as substituted: see note 3 supra). For these purposes, 'waste land-fill site' has the same meaning as in EC Council Directive 96/82 (OJ L10, 14.10.97, p 13) (as amended): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(8)(d) (as substituted: see note 3 supra). The presence of hazardous substances at such sites may be subject to controls exercised through the waste management licence issued by the Environment Agency: see generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH.

10 For these purposes, 'ionising radiation' has the same meaning as in EC Council Directive 96/82 (OJ L10, 14.10.97, p 13) (as amended): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(8)(d) (as substituted: see note 3 supra).

11 Ie for the purposes of the Nuclear Installations Act 1965 s 1 (as amended): see FUEL AND ENERGY vol 19(3) (2007 Reissue) PARA 1487.

12 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 4(5) (as substituted: see note 3 supra).

13 Ie for any of the purposes of the Planning (Hazardous Substances) Act 1990 or the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended): reg 4(7) (as substituted: see note 3 supra).

14 Ibid reg 4(7) (as substituted: see note 3 supra).

UPDATE

1235 Exemptions

NOTE 3--SI 1992/656 amended in relation to England: SI 2009/1901.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(i) Requirement of Consent and Exemptions/1236. Temporary exemption directions.

1236. Temporary exemption directions.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales²:

4513 (1) either:

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114. (a) that the community or part of it is being or is likely to be deprived of an essential service or commodity; or

115. (b) that there is or is likely to be a shortage of such a service or commodity affecting the community or part of it; and

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4514 (2) that the presence of a hazardous substance³ on, over or under land⁴ specified in the direction in circumstances such that hazardous substances consent⁵ would be required, is necessary for the effective provision of that service or commodity,

he or the Assembly may direct that, subject to such conditions or exceptions as he or it thinks fit, the presence of the substance on, over or under the land is not to constitute a contravention of hazardous substances control⁶ so long as the direction remains in force⁷.

Such a direction may be withdrawn at any time⁸ and ceases in any event to have effect at the end of the period of three months beginning with the day on which it was given, but without prejudice to the Secretary of State's or the Assembly's power to give a further direction⁹.

The Secretary of State or the Assembly must send a copy of any such direction to the authority which is the hazardous substances authority¹⁰ for the land¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 27 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

4 For the meaning of 'land' see PARA 1216 note 6 ante. See also PARA 1235 the text and notes 3, 13-14 ante.

5 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

6 For the meaning of 'contravention of hazardous substances control' see PARA 1270 note 2 post.

7 Planning (Hazardous Substances) Act 1990 s 27(1). As to the application of the Planning (Hazardous Substances) Act 1990 s 27 (as amended and modified) to Crown land see PARA 1214 ante. The Health and Safety Executive will normally be consulted before these powers are used: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 96; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 94. As to the status of this guidance see PARA 9 ante; and as to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

8 Planning (Hazardous Substances) Act 1990 s 27(2)(a).

9 Ibid s 27(2)(b).

10 As to hazardous substances authorities see PARAS 1219-1220 ante.

11 Planning (Hazardous Substances) Act 1990 s 27(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1237. Applications for hazardous substances consent; power to make regulations.

(ii) Express Consent

1237. Applications for hazardous substances consent; power to make regulations.

Provision may be made by regulations with respect to:

- 4515 (1) the form and manner in which applications for hazardous substances consent¹ are to be made;
- 4516 (2) the particulars which they are to contain and the evidence by which they are to be verified;
- 4517 (3) the manner in which they are to be advertised; and
- 4518 (4) the time within which they are to be dealt with².

Regulations may:

- 4519 (a) require an applicant for hazardous substances consent or the hazardous substances authority³ or both to give publicity to an application for hazardous substances consent in such manner as may be prescribed;
- 4520 (b) require hazardous substances authorities to conduct appropriate consultations⁴ before determining applications for hazardous substances consent;
- 4521 (c) provide for the manner in which such a consultation is to be carried out and the time within which such a consultation or any stage in such a consultation is to be completed;
- 4522 (d) require hazardous substances authorities to determine applications for hazardous substances consent within such time as may be prescribed;
- 4523 (e) require hazardous substances authorities to give prescribed persons or bodies prescribed information about applications for hazardous substances consent, including information as to the manner in which such applications have been dealt with⁵.

Any such regulations may make different provision for different cases or descriptions of cases⁶.

1 le applications for hazardous substances consent under the Planning (Hazardous Substances) Act 1990. For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 Ibid s 7(1) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 3). In exercise of the power so conferred, and prior to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 7 (as amended), so far as exercisable in relation to Wales, to the Assembly (see PARA 20 ante), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended): see PARA 1238 et seq post. As to the making of regulations generally see PARA 1213 ante; as to when two or more bodies corporate are treated as one person for the purposes of the Planning (Hazardous Substances) Act 1990 s 7 (as amended) see PARA 1234 note 5 ante; and as to the application of s 7 (as amended) to Crown land see PARAS 1214-1215 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 For these purposes, 'appropriate consultations' means consultations with the Health and Safety Executive and with such persons or bodies as may be prescribed: Planning (Hazardous Substances) Act 1990 s 7(3) (amended by the Environmental Protection Act 1990 Sch 13 paras 1, 2(2)). As to such consultations see the Planning (Hazardous Substances) Act 1990 s 9(2)(e) (as amended); and PARA 1244 post at head (e) in the text; and as to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 Ibid s 7(2).

6 Ibid s 7(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1238. Applications for hazardous substances consent; procedure.

1238. Applications for hazardous substances consent; procedure.

An application for hazardous substances consent¹ must²:

- 4524 (1) be made to the hazardous substances authority³ in the prescribed form⁴;
- 4525 (2) include the information specified in that form, a site map⁵ and a substance location plan⁶;

4526 (3) be accompanied by three copies of the form, the map and plan submitted with it and the required⁷ notices and certificates⁸.

The applicant must make a copy of the application available for inspection at a place within the locality of the application site during the period or periods allowed⁹ for making representations¹⁰.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 le subject to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(2) (see PARA 1258 post) and reg 26 (see PARA 1216 note 9 ante).

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 For the prescribed form of application see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(1), Sch 2, Form 1 (substituted by SI 1999/981). Hazardous substances authorities should ensure they have an adequate supply of all the prescribed forms. It is open to applicants, if they so wish, to apply on forms they have produced themselves, provided that such forms accord with the prescribed format: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 36; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 34. As to the status of such guidance see PARA 9 ante.

5 The site map so required must be a map, reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the application relates and shows National Grid lines and reference numbers: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(4).

6 The substance location plan so required must be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies (1) any area of the site intended to be used for the storage of the substance; (2) where the substance is to be used in a manufacturing, treatment or other industrial process, the location of the major items of plant involved in that process in which the substance will be present; (3) access points to and from the land: *ibid* reg 5(5).

7 le the notices and certificates required by *ibid* reg 6 (see PARA 1240 post) and reg 7 (see PARA 1242 post).

8 *Ibid* reg 5(1).

9 le pursuant to *ibid* reg 6(2) (see PARA 1240 post) and reg 7(2) (see PARA 1242 post).

10 *Ibid* reg 8.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1239. Fees for applications.

1239. Fees for applications.

A fee is payable to a hazardous substances authority¹ on an application for hazardous substances consent² as follows:

- 4527 (1) if the application is for a new consent without previous conditions³, £200;
- 4528 (2) if the application is not for a new consent without previous conditions⁴ and the quantity specified in the application as the maximum quantity proposed to be present exceeds twice the controlled quantity⁵, £400;
- 4529 (3) in all other cases, £250⁶.

Where, however, applications relating to the same site are made to two or more hazardous substances authorities, a fee is payable only to the authority in whose area the largest part of the site is situated; and the amount payable is the amount that would have been payable if application had fallen to be made to one authority in relation to the whole site⁷.

Any fee due in respect of an application must accompany the application when it is made to the hazardous substances authority⁸; and any fee so paid must be refunded if the application is rejected as invalidly made⁹.

- 1 As to hazardous substances authorities see PARAS 1219-1220 ante.
- 2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.
- 3 Ie if the Planning (Hazardous Substances) Act 1990 s 13(1) applies: see PARA 1259 post.
- 4 Ie if ibid s 13(1) does not apply.
- 5 As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.
- 6 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2), 24(1).
- 7 Ibid reg 24(3).
- 8 Ibid reg 24(4).
- 9 Ibid reg 24(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1240. Publication of notices of applications.

1240. Publication of notices of applications.

Before making an application for hazardous substances consent¹ to the hazardous substances authority², the applicant must, during the 21-day period immediately preceding the application:

- 4530 (1) publish in a local newspaper circulating in the locality in which the land to which the application relates is situated a notice of application in the prescribed form³;
- 4531 (2) post that notice on the land⁴ for not less than seven days during that 21-day period, sited and displayed in such a way as to be easily legible without entering onto the land⁵.

The notice so required must invite representations on the application to be made to the hazardous substances authority within 21 days of the publication or posting of the notice, as the case may be⁶.

An applicant is not, however, required to comply with head (2) above if:

- 4532 (a) he has no right of access or other rights in respect of the land which would enable him to post the notice as required; and
- 4533 (b) he has taken all reasonable steps to acquire such rights but has failed⁷.

The applicant is not treated as having failed to comply with head (2) above if the notice is, without any fault or intention of his, removed, obscured or defaced before the seven days referred to in head (2) above have elapsed, so long as he has taken reasonable steps for its protection and, if need be, replacement⁸.

An application for hazardous substances consent may not be entertained by the hazardous substances authority unless it is accompanied by:

- 4534 (i) a copy of the notice⁹ certified by, or on behalf of, the applicant as having been published in a local newspaper in accordance with head (1) above and specifying the name of the newspaper and the date of its publication; and
- 4535 (ii) the appropriate certificate in the prescribed form¹⁰, signed by or on behalf of the applicant¹¹.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 As to hazardous substances authorities see PARAS 1219-1220 ante.

3 For the prescribed form of notice see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 6(1)(a), Sch 2, Form 3.

4 Ie subject to ibid reg 6(3), (4): see the text and notes 7-8 infra.

5 Ibid reg 6(1).

6 Ibid reg 6(2).

7 Ibid reg 6(3).

8 Ibid reg 6(4).

9 Ie the notice referred to in ibid reg 6(1): see the text and notes 1-5 supra.

10 For the prescribed form of certificate see ibid reg 6(5)(b), Sch 2, Form 4.

11 Ibid reg 6(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1241. Certificates as to applicant's status; power to make regulations.

1241. Certificates as to applicant's status; power to make regulations.

Regulations under the Planning (Hazardous Substances) Act 1990 may provide that an application for hazardous substances consent¹ or an appeal against the refusal of such an application² or against the imposition of a condition³ on such a consent shall not be entertained unless it is accompanied by one of the following certificates in the prescribed form and signed by or on behalf of the applicant:

- 4536 (1) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person, other than the applicant, was the owner⁴ of any of the land to which the application relates;

- 4537 (2) a certificate stating that the applicant has given the requisite notice of the application to all the persons, other than himself, who, at the beginning of that period, were owners of any of the land to which the application relates;
- 4538 (3) a certificate stating that:
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116. (a) the applicant is unable to issue a certificate in accordance with head (1) or head (2) above;
117. (b) he has given the requisite notice to such one or more of the persons mentioned in head (2) above as are specified in the certificate;
118. (c) he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
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- 4539 (4) a certificate stating that:
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119. (a) the applicant is unable to issue a certificate in accordance with head (1) above;
120. (b) he has taken such steps as are reasonably open to him, specifying them, to ascertain the names and addresses of the persons mentioned in head (2) above but has been unable to do so⁵.
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Where such provision is made, any such certificate as is mentioned in head (2) or head (3) above must set out the names of those persons to whom the applicant has given the requisite notice of the application, the addresses at which notice was given to them and the date of service of each such notice⁶.

Such regulations may require that any such certificate as is mentioned in head (3) or head (4) above shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in head (1) above) been published in a local newspaper circulating in the locality in which the land in question is situated⁷.

Such regulations may also require that, where an application is accompanied by such a certificate as is mentioned in head (2), head (3) or head (4) above, the hazardous substances authority⁸:

- 4540 (i) is not to determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate or, if later, the date of publication of a notice as so mentioned;
- 4541 (ii) in determining the application, is to take into account any representations relating to it which are made to the authority before the end of that period by any person who satisfies the authority that he is an owner of any land to which the application relates; and
- 4542 (iii) is to give notice of its decision to every person who has made representations which the authority was required to take into account in accordance with head (ii) above⁹.

Such regulations may also make provision as to who is to be treated as the owner of land for the purposes of any provisions of the regulations¹⁰; and they may make different provision for different cases or descriptions of cases¹¹.

If any person:

- 4543 (A) issues a certificate which purports to comply with the requirements of regulations made by virtue of the above provisions and contains a statement which he knows to be false or misleading in a material particular; or
- 4544 (B) recklessly issues a certificate which purports to comply with those requirements and contains such a statement,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹².

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 As to appeals see PARA 1287 et seq post.

3 As to the grant of consent subject to conditions see PARA 1245 post.

4 For these purposes, but subject to the Planning (Hazardous Substances) Act 1990 s 8(5) (see the text and note 10 infra), 'owner' in relation to any land, means a person who is for the time being the estate owner in respect of the fee simple in the land or is entitled to a tenancy of the land granted or extended for a term of years certain, of which not less than seven years remain unexpired: s 8(8). Except in so far as the context otherwise requires, 'tenancy' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 16 note 9 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2). For the meaning of 'land' see PARA 1216 note 6 ante; and for the normal meaning of 'owner' see PARA 1217 note 1 ante.

5 Ibid s 8(1). In exercise of the power so conferred, and prior to the transfer of functions under s 8, so far as exercisable in relation to Wales, to the National Assembly for Wales (see PARA 20 ante), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 7: see PARA 1242 post. As to the making of regulations generally see PARA 1213 ante; as to the application of the Planning (Hazardous Substances) Act 1990 s 8 to Crown land and ecclesiastical property see PARAS 1214-1215, 1217 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 8 see PARA 1234 note 5 ante.

6 Ibid s 8(2). As to the service of notices see PARA 1212 ante at head (5) in the text.

7 Ibid s 8(3).

8 As to hazardous substances authorities see PARAS 1219-1220 ante.

9 Planning (Hazardous Substances) Act 1990 s 8(4).

10 Ibid s 8(5).

11 Ibid s 8(7).

12 Ibid s 8(6). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1212 ante at head (7) in the text.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1242. Notification of applications to owners.

1242. Notification of applications to owners.

An application for hazardous substances consent¹ may not be entertained by the hazardous substances authority² unless the application is accompanied by whichever of the prescribed forms of certificate as to owners³ is appropriate, signed by or on behalf of the applicant⁴.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 As to hazardous substances authorities see PARAS 1219-1220 ante.

3 In which of the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 7(1), Sch 2, Form 5 Certificates A-D is appropriate.

4 Ibid reg 7(1). The required notice referred to in Sch 2, Form 5 Certificates B and C is, in the case of an application for hazardous substances consent, a notice given on Sch 2, Form 6 and must invite any owner on whom the notice is served to make representations on the application to the hazardous substances authority within 21 days of service of the notice: reg 7(2).

As to offences in connection with the issue of such certificates see PARA 1241 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1243. Consultation before grant of consent.

1243. Consultation before grant of consent.

Except where the body or person concerned has notified the hazardous substances authority¹ that it or he does not wish to be consulted, the authority must, before determining an application for hazardous substances consent², consult³:

- 4545 (1) the Health and Safety Executive⁴;
- 4546 (2) the district⁵ or London borough⁶ council or county council⁷ concerned, where that council is not also the hazardous substances authority;
- 4547 (3) the parish⁸ or community⁹ council concerned;
- 4548 (4) the fire and rescue authority and civil defence authority concerned, where that authority is not also the hazardous substances authority;
- 4549 (5) the Environment Agency¹⁰;
- 4550 (6) the gas transporter concerned;
- 4551 (7) the electricity supplier¹¹ concerned;
- 4552 (8) where the land to which the application relates is within two kilometres of a royal palace, park or residence, the Secretary of State¹² or, in relation to Wales, the National Assembly for Wales¹³;
- 4553 (9) where the land to which the application relates is in an area designated as a new town¹⁴, the development corporation¹⁵ for the new town;
- 4554 (10) where the land to which the application relates is situated within 2,000 metres of:
 - 350 121. (a) an adjacent county, district or London borough, the council for that county, district or London borough;
 - 122. (b) the area of an adjacent fire and rescue authority and civil defence authority, that authority;
 - 123. (c) an adjacent new town, the development corporation for the new town;
 - 351 4555 (11) where it appears to the hazardous substances authority dealing with the application that land in the area of any other hazardous substances authority may be affected, that authority;
 - 4556 (12) where the application relates to land in a site of special scientific interest¹⁶ or where it appears to the hazardous substances authority dealing with the application that an area of particular natural sensitivity or interest¹⁷ may be affected, in England, English Nature¹⁸ or, in Wales, the Countryside Council for Wales¹⁹;

4557 (13) where the application relates to land in an area of coal working notified to the hazardous substances authority by the former British Coal Corporation²⁰ or by the Coal Authority²¹, the Coal Authority;

4558 (14) where the application relates to land which is used for disposal or storage of controlled waste²², the waste disposal authority²³ concerned, where that authority is not also the hazardous substances authority²⁴.

Where a hazardous substances authority is required to consult a body under head (1) or head (5) above, or is required to consult a body under head (12) above where it appears to the authority that an area of particular natural sensitivity or interest may be affected, the general exception to these consultation requirements²⁵ does not apply²⁶.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 Where a hazardous substances authority is required so to consult in respect of an application, it must, unless a copy of the application has been served on the consultee by the applicant, serve the consultee with a copy of the application within seven days of its receipt by the authority: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 10(2). For the meaning of 'consult' see PARA 2 note 1 ante; and as to receipt of applications see PARA 1223 ante.

4 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

5 As to district councils see PARA 28 note 2 ante.

6 For the meaning of 'London borough' see PARA 1219 note 2 ante.

7 As to county councils see PARA 28 note 1 ante.

8 As to the parishes in England and their meetings and councils see LOCAL GOVERNMENT vol 69 (2009) PARA 270 et seq.

9 As to the communities in Wales and their meetings and councils see LOCAL GOVERNMENT vol 69 (2009) PARA 41 et seq.

10 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

11 As to electricity suppliers see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1033 et seq.

12 As to the Secretary of State see PARA 19 ante.

13 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

14 As to new towns see PARA 1315 et seq post.

15 As to development corporations see PARA 1322 et seq post.

16 Ie where the application relates to land in an area to which the Wildlife and Countryside Act 1981 s 28(1) (as substituted) relates: see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 674.

17 For these purposes, 'area of particular natural sensitivity or interest' has the same meaning as in EC Council Directive 96/82 on the control of major-accident hazards involving dangerous substances (OJ L10, 14.10.97, p 13) (as amended) (the 'SEVESO II' Directive) (see PARA 1211 ante): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), 10(4) (respectively amended and added by SI 1999/981).

18 As to English Nature see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

19 As to the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523.

20 As to the former British Coal Corporation see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 2.

21 As to the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 52 et seq.

22 For these purposes, 'controlled waste' has the meaning given to that expression by the Environmental Protection Act 1990 s 75(4) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 624): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 10(3).

23 For these purposes, 'waste disposal authority' is to be construed in accordance with the Environmental Protection Act 1990 s 30(2) (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 620): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 10(3).

24 Ibid reg 10(1) (amended by SI 1994/2567; SI 1999/981; and by the Environment Act 1995 s 120, Sch 22 para 233(1); and by virtue of the Electricity Act 1989 s 6 (as amended), s 65; the Utilities Act 2000 ss 31(3), 76(7); the Countryside and Rights of Way Act 2000 s 103(2); and the Fire and Rescue Services Act 2004 Pt I (ss 1-5)).

25 Ie the exception in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 10(1) (as amended): see the text and notes 1-3 supra.

26 Ibid reg 10(5) (added by SI 1999/981).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1244. Consideration of applications.

1244. Consideration of applications.

Where an application is made to a hazardous substances authority¹ for hazardous substances consent², that authority may³:

- 4559 (1) grant hazardous substances consent, either unconditionally or subject to such conditions⁴ as it thinks fit; or
- 4560 (2) refuse hazardous substances consent⁵.

In dealing with such an application, the hazardous substances authority must have regard to any material considerations⁶ and, in particular, but without prejudice to the generality of the above:

- 4561 (a) to any current or contemplated use⁷ of the land⁸ to which the application relates;
- 4562 (b) to the way in which land in the vicinity is being used or is likely to be used;
- 4563 (c) to any planning permission⁹ that has been granted for development¹⁰ of land in the vicinity;
- 4564 (d) to the provisions of the development plan¹¹; and
- 4565 (e) to any advice which the Health and Safety Executive¹² has given¹³ following consultations¹⁴.

If an application relates to more than one hazardous substance, the authority may make different determinations in relation to each¹⁵.

A hazardous substances authority may not, however, so determine an application for hazardous substances consent before the expiry of:

- 4566 (i) the period or periods allowed¹⁶ for making representations; and

4567 (ii) where the authority is required to consult¹⁷, a period of 28 days beginning with the date on which the consultee is served with a copy of the application or, where the authority is required to consult more than one consultee, beginning with the date by which all consultees have been so served¹⁸.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 le subject to the Planning (Hazardous Substances) Act 1990 s 9(2), (3) (as amended) and s 10 (as amended) et seq; see the text and notes 6-15 infra; and PARA 1245 et seq post.

4 As to the grant of consent subject to conditions see PARA 1245 post.

5 Planning (Hazardous Substances) Act 1990 s 9(1). As to the application of s 9 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 9 (as amended) see PARA 1234 note 5 ante.

6 As to what are material considerations see PARAS 484 note 4, 485 ante.

7 For these purposes, except in so far as the context otherwise requires, 'use' has the same meaning as in the Town and Country Planning Act 1990 (see PARA 221 note 4 ante): Planning (Hazardous Substances) Act 1990 s 39(1), (2).

8 For the meaning of 'land' see PARA 1216 note 6 ante.

9 As to planning permission see PARA 213 et seq ante.

10 For the meaning of 'development' see PARA 1220 note 12 ante.

11 For the meaning of 'development plan' see PARA 91 ante.

12 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

13 le given following consultations in pursuance of regulations under the Planning (Hazardous Substances) Act 1990 s 7(2): see PARAS 1237, 1243 ante.

14 Ibid s 9(2) (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt VII). For the meaning of 'consult' see PARA 2 note 1 ante.

The matters specified in the Planning (Hazardous Substances) Act 1990 s 9(2)(a)-(d) (see heads (a)-(d) in the text) are also to be regarded for the purposes of the continuation of a hazardous substances consent under s 17 (as amended): see s 18(2)(a); and PARA 1266 post.

15 Ibid s 9(3).

16 le pursuant to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 6(2) (see PARA 1240 ante) and reg 7(2) (see PARA 1242 ante).

17 le under ibid reg 10 (as amended): see PARA 1243 ante.

18 Ibid reg 11(1).

UPDATE

1244 Consideration of applications

NOTES 13, 14--See *R (on the application of the Health and Safety Executive) v Wolverhampton City Council* [2009] EWHC 2688 (Admin), [2009] All ER (D) 60 (Nov) (officers of local authority failed to put material matters before committee prior to grant of planning permission which meant decision of committee was flawed).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1245. Power to impose conditions.

1245. Power to impose conditions.

A hazardous substances authority¹ may² make the grant of hazardous substances consent³ conditional on the commencement or partial or complete execution of development⁴ on the land⁵ which is authorised by a specified planning permission⁶ or may grant hazardous substances consent subject to conditions with respect to any of the following:

- 4568 (1) how and where any hazardous substance⁷ to which the consent relates is to be kept or used;
- 4569 (2) the times between which any such substance may be present;
- 4570 (3) the permanent removal of any such substance:
- 352 124. (a) on or before a date specified in the consent; or
- 125. (b) before the end of a period specified in it and commencing on the date on which it is granted⁸.
- 353

A hazardous substances authority may only grant consent subject to conditions as to how a hazardous substance is to be kept or used if the conditions are conditions to which the Health and Safety Executive⁹ has advised the authority that any consent it might grant should be subject¹⁰.

It is the duty of a hazardous substances authority, when granting hazardous substances consent, to include in that consent in respect of each hazardous substance to which it relates a statement of all conditions relating to that substance subject to which the consent is granted¹¹.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 Ie without prejudice to the generality of the Planning (Hazardous Substances) Act 1990 s 9(1): see PARA 1244 ante.

3 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

4 For the meaning of 'development' see PARA 1220 note 12 ante.

5 For the meaning of 'land' see PARA 1216 note 6 ante.

6 As to planning permission see PARA 213 et seq ante.

7 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante. Where a hazardous substances authority is considering imposing a condition restricting where a substance may be present within a site, it should try to avoid imposing undue restrictions on the presence of relatively small amounts of that substance elsewhere on the site: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 45; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 43. As to the status of such guidance see PARA 9 ante.

8 Planning (Hazardous Substances) Act 1990 s 10(1). As to the application of s 10 (as amended) to Crown land see PARAS 1214-1215 ante; as to when two or more bodies corporate are treated as one person for the purposes of s 10 (as amended) see PARA 1234 note 5 ante; and as to appeals see PARA 1287 et seq post.

No condition imposed as to the use of a building under the Building Act 1984 s 20 (as amended) may be imposed which conflicts with any condition imposed, or having effect as if imposed, under the Planning

(Hazardous Substances) Act 1990: see the Building Act 1984 s 20(1) (as amended); and BUILDING vol 4(2) (2002 Reissue) PARA 332.

9 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

10 Planning (Hazardous Substances) Act 1990 s 10(2) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 2 (3)).

11 Planning (Hazardous Substances) Act 1990 s 10(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1246. Contents of consent.

1246. Contents of consent.

It is the duty of a hazardous substances authority¹, when granting hazardous substances consent², to include in that consent:

- 4571 (1) a description of the land³ to which the consent relates;
- 4572 (2) a description of the hazardous substance⁴ or substances to which it relates;
- and
- 4573 (3) in respect of each hazardous substance to which it relates, a statement of the maximum quantity⁵ allowed by the consent to be present at any one time⁶.

Except in so far as it otherwise provides, any hazardous substances consent enures for the benefit of the land to which it relates and of all persons for the time being interested in the land⁷.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 For the meaning of 'land' see PARA 1216 note 6 ante.

4 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

5 As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.

6 Planning (Hazardous Substances) Act 1990 s 9(4). As to the application of s 6 (see the text and note 7 infra; and PARA 1234 ante) and s 9 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 6 and s 9 (as amended) see PARA 1234 note 5 ante.

7 Ibid s 6(2). See also note 6 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1247. Notification of decision.

1247. Notification of decision.

A hazardous substances authority¹ must², within the prescribed period³, give the applicant written notice of its decision or notice that the application has been referred⁴ to the Secretary of State⁵ for determination by him or, in relation to Wales, to the National Assembly for Wales⁶ for determination by it⁷; and the period so prescribed is:

- 4574 (1) a period of eight weeks from the date when the application is received by the hazardous substances authority;
- 4575 (2) except where the applicant has already given notice of appeal to the Secretary of State or to the Assembly, such extended period as may be agreed in writing by the applicant and the hazardous substances authority; or
- 4576 (3) where a fee due in respect of an application has been paid by a cheque which is subsequently dishonoured, the appropriate period specified in head (1) or head (2) above calculated without regard to any time between the date when the authority sent the applicant written notice of the dishonouring of the cheque and the date when the authority is satisfied that it has received the full amount of the fee⁸.

When a hazardous substances authority gives notice of a decision on an application, the notice must, where hazardous substances consent⁹ is refused or is granted subject to conditions¹⁰:

- 4577 (a) state, clearly and precisely, its full reasons for the refusal or for any condition imposed;
- 4578 (b) include a statement to the effect that, if the applicant is aggrieved by the decision, he may appeal to the Secretary of State or to the Assembly¹¹ within six months of the date of the notice of the decision, or such longer period as the Secretary of State or the Assembly may at any time allow¹².

The hazardous substances authority must, as soon as is practicable, inform the following persons of the terms of its decision:

- 4579 (i) the Health and Safety Executive¹³;
- 4580 (ii) the district¹⁴ or London borough¹⁵ council or county council¹⁶, where that council is not the hazardous substances authority concerned;
- 4581 (iii) any other consultees who have made representations to the authority on the application; and
- 4582 (iv) any owners who have made representations to the authority on the application¹⁷.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 le subject to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(1): see PARA 1244 ante.

3 le the period specified in ibid reg 11(3): see the text and note 8 infra.

4 As to references to the Secretary of State or the National Assembly for Wales for determination see PARA 1248 post.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(2).

- 8 Ibid reg 11(3).
- 9 For the meaning of 'hazardous substances consent' see PARA 1234 ante.
- 10 As to the power to impose conditions see PARA 1245 ante.
- 11 ie under the Planning (Hazardous Substances) Act 1990 s 21 (as amended): see PARAS 1287-1289 post.
- 12 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2)(a), 11(4).
- 13 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.
- 14 As to district councils in England see PARA 28 note 2 ante.
- 15 For the meaning of 'London borough' see PARA 1219 note 2 ante.
- 16 As to the county councils see PARA 28 note 1 ante.
- 17 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(ii) Express Consent/1248. Reference of applications to the Secretary of State or to the Assembly.

1248. Reference of applications to the Secretary of State or to the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications for hazardous substances consent³ or applications for continuation of hazardous substances consent⁴ to be referred to him or to the Assembly instead of being dealt with by hazardous substances authorities⁵.

Such a direction:

- 4583 (1) may be given either to a particular hazardous substances authority or to hazardous substances authorities generally; and
- 4584 (2) may relate either to a particular application or to applications of a class specified in the direction⁶.

Any application in respect of which such a direction has effect must be referred to the Secretary of State or to the Assembly accordingly⁷. On referring any application to the Secretary of State or to the Assembly pursuant to such a direction, a hazardous substances authority must serve on the applicant a notice:

- 4585 (a) informing the applicant that the application has been referred to the Secretary of State or to the Assembly;
- 4586 (b) setting out the reasons given by the Secretary of State or the Assembly for issuing the direction; and
- 4587 (c) containing a statement that the Secretary of State or the Assembly will, if the applicant so desires, give the applicant an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for that purpose⁸.

Before determining an application so referred to him or to it, the Secretary of State or the Assembly must, if either the applicant or the hazardous substances authority so wishes, give to each of them an opportunity of appearing before, and being heard by, a person appointed by him or by it for the purpose⁹.

The decision of the Secretary of State or of the Assembly on any application so referred to him or to it is final¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 20 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

4 I.e. applications under the Planning (Hazardous Substances) Act 1990 s 17(1): see PARA 1263 post.

5 Ibid s 20(1). As to hazardous substances authorities see PARAS 1219-1220 ante. As to the power of the council of a county to direct that any expenses incurred by it under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) shall be treated as special expenses see PARA 1225 ante; as to the application of s 20 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 20 (as amended) see PARA 1234 note 5 ante.

The use of the power under s 20 (as amended) is exceptional; it may arise where, eg, an associated application for planning permission is being called in; or where a hazardous substances consent application raises matters of exceptional importance in its own right: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 48; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 46. As to the status of such guidance see PARA 9 ante.

6 Planning (Hazardous Substances) Act 1990 s 20(2).

7 Ibid s 20(3).

8 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2)(a), 12.

9 Planning (Hazardous Substances) Act 1990 s 20(4). The Secretary of State is not, however, bound by the views of the person so appointed but is bound to form his own independent view, giving such weight as he thinks proper to the recommendations and finding of the person appointed: see *Nelsovil Ltd v Minister of Housing and Local Government* [1962] 1 All ER 423, [1962] 1 WLR 404. As to whether the calling-in of planning applications etc is compatible with the right to a fair hearing by an independent and impartial tribunal see *R (on the application of Alconbury Developments Ltd) v Secretary of State for the Environment, Transport and the Regions* [2001] UKHL 23, [2003] 2 AC 295, [2001] 2 All ER 929; and PARA 483 note 15 ante.

10 Planning (Hazardous Substances) Act 1990 s 20(5). As to questioning the validity of such decisions by the Secretary of State or the Assembly see PARA 1286 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(iii) Deemed Consent/1249. Introduction.

(iii) Deemed Consent

1249. Introduction.

Where a hazardous substance¹ was present on, over or under any land² at any time within the period of 12 months immediately preceding 1 June 1992³, a claim for deemed hazardous substances consent might be made before the end of a six-month transitional period from that date⁴. A claim was to be made in the prescribed form and to contain the prescribed information⁵

as to the presence of the substance during the 12-month period (referred to as 'the establishment period') and as to how and where it was kept and used while it was so present⁶. If it appeared to the hazardous substances authority⁷ that such a claim did not comply with those provisions, it was the authority's duty, before the end of the period of two weeks from its receipt of the claim, to notify the claimant that in the authority's opinion the claim was invalid and to give its reasons for that opinion⁸. Subject to that, and to certain other conditions⁹, the hazardous substances authority was deemed to have granted any hazardous substances consent which was so claimed¹⁰.

The Planning (Control of Major-Accident Hazards) Regulations 1999¹¹, which came into force on 20 April 1999¹², made a number of amendments to the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992¹³, in particular by prescribing new categories of hazardous substances and their controlled quantities¹⁴. The statutory provisions regarding deemed consent for the established presence of a hazardous substance enabled applications for such consent to be made before the end of a six-month period from 20 April 1999, where such consent would not previously have been required¹⁵, and are set out below in that context, although the time limit for making such applications has now expired¹⁶.

Deemed hazardous substances consent may also be granted where a government department or the National Assembly for Wales authorises certain development¹⁷. Such consent is discussed below¹⁸.

1 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 Ie at any time within the establishment period: Planning (Hazardous Substances) Act 1990 s 11(1). For these purposes, 'establishment period' meant the period of 12 months immediately preceding the relevant date; and 'the relevant date' means the date on which the Housing and Planning Act 1986 Pt IV (ss 30-39) came into force or, if Pt IV (ss 30-39) was not in force immediately before the date on which the Planning (Hazardous Substances) Act 1990, came into force, that date: s 11(8). The Housing and Planning Act 1986 ss 30-34 were repealed, without having been brought into force, by the Planning (Consequential Provisions) Act 1990 s 3, Sch 1 Pt I; the Housing and Planning Act 1986 Pt IV was thus not wholly in force on 1 June 1992 when the Planning (Hazardous Substances) Act 1990 came into force: see s 41(3); and the Planning (Hazardous Substances) Act 1990 (Commencement and Transitional Provisions) Order 1992, SI 1992/725, art 3.

4 See the Planning (Hazardous Substances) Act 1990 s 11(1), (8).

5 See the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 14(1)(a), (b), Sch 3, Form 8 (as originally prescribed).

6 See the Planning (Hazardous Substances) Act 1990 s 11(2) (amended by the Environmental Protection Act 1990 s 144, Sch 13 Pt I para 4(a)).

7 As to hazardous substances authorities see PARAS 1219-1220 ante.

8 See the Planning (Hazardous Substances) Act 1990 s 11(6).

9 See *ibid* s 11(4)-(7).

10 See *ibid* s 11(3).

11 Ie the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981.

12 See *ibid* reg 1(1).

13 Ie the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended): see PARA 1230 et seq ante.

14 See *ibid* reg 3(1), Sch 1 (as substituted and amended); and PARAS 1230-1233 ante.

15 See the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2) (applying the Planning (Hazardous Substances) Act 1990 s 11 (as amended) with modifications); and PARA 1250 et seq post.

16 See PARA 1250 et seq post. For guidance on these transitional provisions see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* paras 51-63; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* paras 49-61.

17 See the Planning (Hazardous Substances) Act 1990 s 12 (as amended); and PARA 1254 post.

18 See PARA 1254 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(iii) Deemed Consent/1250. Established presence of hazardous substance.

1250. Established presence of hazardous substance.

Where a hazardous substance¹ was present on, over or under any land² at any time within the establishment period³ for which hazardous substances consent was not required during that period, hazardous substances consent⁴ might be claimed in respect of its presence⁵.

A claim was be made in the prescribed form⁶ before the end of the transitional period⁷ and to contain the prescribed information⁸ as to the presence of the substance during the establishment period and as to how and where it was kept and used while it was so present⁹. If it appeared to the hazardous substances authority¹⁰ that a claim for hazardous substances consent did not comply with those provisions, it was the authority's duty, before the end of the period of two weeks from its receipt of the claim:

- 4588 (1) to notify the claimant that in the authority's opinion the claim was invalid;
and
- 4589 (2) to give its reasons for that opinion¹¹.

The time limit for making such claims has now expired¹².

1 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 For these purposes, 'establishment period' means the period of 12 months immediately preceding the relevant date; and 'the relevant date' means the date on which the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, came into force (ie 20 April 1999: see art 1(1)): Planning (Hazardous Substances) Act 1990 s 11(8) (substituted for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)).

4 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

5 Planning (Hazardous Substances) Act 1990 s 11(1) (amended for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)).

6 See PARA 1251 post. For the meaning of 'prescribed' see PARA 1216 note 1 ante.

7 For these purposes, 'the transitional period' means the period of six months beginning with the relevant date: Planning (Hazardous Substances) Act 1990 s 11(8) (as substituted: see note 3 supra).

8 See note 6 supra.

9 Planning (Hazardous Substances) Act 1990 s 11(2) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 4(a)). As to claims for deemed consent see PARA 1251 post; as to the application of the Planning (Hazardous Substances) Act 1990 s 11 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 11 (as amended) see PARA 1234 note 5 ante.

10 As to hazardous substances authorities see PARAS 1219-1220 ante.

11 Planning (Hazardous Substances) Act 1990 s 11(6).

12 See the text and notes 3, 6-7 supra.

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1251. Claim for deemed consent.

A claim for deemed consent in respect of the established presence of a hazardous substance¹ was:

- 4590 (1) to be made to the hazardous substances authority² in the prescribed form³;
- 4591 (2) to include the information specified by that form, a site map⁴ and, where applicable, a movable container storage area plan⁵ and a vessel location plan⁶ for each hazardous substance included in the claim;
- 4592 (3) to be accompanied by three copies of the form and the map and any plan submitted with it⁷.

The time limit for making such claims has now expired⁸.

1 Ie under the Planning (Hazardous Substances) Act 1990 s 11 (as amended): see PARA 1250 ante.

2 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

3 For the prescribed form of claim see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 14(1)(a), Sch 2, Form 8 (substituted by SI 1999/981). Schedule 2, Form 8 (as so substituted) includes two Tables, Table A and Table B. Table A contains three columns, one for listing hazardous substances present during the establishment period for which consent was not required during that period; one for the Part and entry number of the substance in reg 3(1), Sch 1 (as substituted) (see PARAS 1231-1233 ante) and one for the established quantity, ie the maximum quantity present during the establishment period: see Sch 2, Form 8 Pt 2, Table A and notes (as so substituted). Table B relates to vessel capacity, temperature and pressure, and contains a total of 11 numbered columns: see Sch 2, Form 8 Pt 4, Table B (as so substituted). As to the information given in Table B see further PARA 1253 the text and notes 2-7 post.

4 The site map so required must be a map, reproduced from, or based upon, an Ordnance Survey map with a scale of not less than 1 to 10,000, which identifies the land to which the claim relates and shows National Grid lines and reference numbers: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 14(2).

5 The movable container storage area plan so required must be a plan of the land to which the claim relates, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where the hazardous substance has been stored in movable containers at any time during the establishment period: *ibid* reg 14(3). For these purposes and for the purposes of the condition set out in reg 15, Sch 3 para 7(1) (see PARA 1253 post), no account is, however, to be taken of the storage of a hazardous substance in movable containers in an area if the quantity of the substance so stored in that area does not exceed 10% of the substance's controlled quantity: regs 2(3), 16(1).

As to the power to prescribe hazardous substances and the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the substances and quantity so prescribed see PARAS 1231-1233 ante.

For these purposes, 'movable container' means any container designed or adapted to contain hazardous substances other than a vessel; and 'vessel' means any container designed or adapted to contain hazardous substances which is affixed to the land, and includes a container which forms part of plant or machinery which is affixed to the land but does not include a pipeline: reg 2(1).

6 The vessel location plan so required must be a plan of the land to which the claim related, drawn to a scale of not less than 1 to 2,500, which identifies any area of the site where the hazardous substance has been present in a vessel at any time during the establishment period; provided that (1) no point on the boundary of the area so identified may be more than 75 metres away from (a) a building which is or was within the area and which at any time during the establishment period contained a vessel in which the substance was present; (b) plant and machinery, other than pipe work, which is or was affixed to land within the area and which, at any time during the establishment period whilst it was affixed, was used for an industrial process involving the substance; or (c) a vessel which is or was located outside a building and within the area and in which, at any time during the establishment period whilst it was so located, the substance was present; (2) no area so identified may overlap with any other area so identified in respect of the same substance: *ibid* reg 14(4). For the meaning of 'establishment period' see PARA 1250 note 3 ante.

For the purposes of the 75-metre limit in head (1) *supra*, where a petroleum-spirit licence under the Petroleum (Consolidation) Act 1928 applying to the site was in force at any time during the establishment period, the reference to a vessel in which the hazardous substance was present includes, in relation to hazardous substances numbered 32 in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 3(1), Sch 1 Pt A col 1 (as substituted) (see PARA 1231 ante), any vessel identified in the licence: regs 2(3), 16(2) (reg 16(2), (3) amended by SI 1999/981).

For the purposes of the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 14(4) and the conditions set out in reg 15, Sch 3 paras 1-6 (as amended) (see PARA 1253 post), and for the purposes of completing reg 14(1)(a), Sch 2, Form 8 Table B (as substituted), no account is to be taken of the presence in a vessel of a hazardous substance if the quantity present in the vessel does not exceed 10% of the substance's controlled quantity: regs 2(3), 16(3) (as so amended).

7 *Ibid* regs 2(1), (2), 14(1).

8 See PARA 1250 the text and notes 3, 6-7 ante.

UPDATE

1251 Claim for deemed consent

NOTE 1--Or under the 1990 Act s 30B (see PARA 1257): SI 1992/656 reg 14(1) (amended by SI 2006/1283 (England), SI 2006/1388 (Wales)).

NOTE 3--SI 1992/656 Sch 2, Form 8 amended: SI 2006/1283 (England), SI 2006/1388 (Wales).

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1252. Deemed consent for established presence.

The hazardous substances authority¹ is deemed² to have granted any hazardous substances consent which was claimed³ in accordance with the statutory provisions⁴. Hazardous substances consent is, however, only to be deemed to be granted if an aggregate quantity of the substance not less than the controlled quantity⁵ was present at any one time within the establishment period⁶.

Hazardous substances consent which is deemed to be granted under these provisions is subject:

4593 (1) to the condition that the maximum aggregate quantity of the substance that may be present:

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126. (a) on, over or under the land⁷ to which the claim for the consent relates;

127. (b) on, over or under other land which is controlled by the same person⁸ and which, in all the circumstances, including in particular the purposes for which the land and the land mentioned in head (a) above is used, forms with the land so mentioned a single establishment;

128. (c) on, over or under other land which is within 500 metres of the land mentioned in head (a) above and controlled by the same person; or

129. (d) in or on a structure controlled by the same person any part of which is within 500 metres of the land mentioned in head (a) above,

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4594 at any one time shall not exceed the established quantity⁹; and

4595 (2) to such other conditions, if any, as are prescribed¹⁰ for these purposes and are applicable in the case of that consent,

and in calculating whether the established quantity is exceeded, a quantity of a substance which falls within more than one of heads (a) to (d) above must only be counted once¹¹.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 le subject to the Planning (Hazardous Substances) Act 1990 s 11(5), (6) (as amended): see the text and notes 5-6 infra; and PARA 1250 ante.

3 le under ibid s 11(1) (as amended): see PARA 1250 ante. The time limit for making such claims has now expired: see PARA 1250 the text and notes 3, 6-7 ante.

4 Ibid s 11(3) (amended for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)). As to the application of the Planning (Hazardous Substances) Act 1990 s 11 (as so amended) to Crown land see PARAS 1214-1215 ante.

5 As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.

6 Planning (Hazardous Substances) Act 1990 s 11(5) (amended for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)). For the meaning of 'establishment period' see PARA 1250 note 3 ante.

7 For the meaning of 'land' see PARA 1216 note 6 ante.

8 As to when two or more bodies corporate are treated as one person for the purposes of the Planning (Hazardous Substances) Act 1990 s 11 (as amended) see PARA 1234 note 5 ante.

9 For these purposes, 'established quantity' means, in relation to any land, the maximum quantity which was present on, over or under the land at any one time within the establishment period: ibid s 11(8) (substituted for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)).

10 As to the conditions so prescribed see PARA 1253 post.

11 Planning (Hazardous Substances) Act 1990 s 11(7) (amended by the Environmental Protection Act 1990 ss 144, 162(2), Sch 13 paras 1, 4(b), Sch 16 Pt VII; further amended for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2)).

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1253. Deemed consent conditions.

The following conditions are prescribed for the purposes of granting deemed consent for the established presence of a hazardous substance¹:

- 4596 (1) below ambient temperature vessel conditions²;
- 4597 (2) ambient temperature vessel conditions for buried or mounded vessels³;
- 4598 (3) ambient temperature vessel conditions for non-buried or non-mounded vessels⁴;
- 4599 (4) above ambient temperature vessel conditions⁵;
- 4600 (5) a vessel location condition⁶; and
- 4601 (6) movable container storage area conditions⁷.

The time limit for making claims for such deemed consent has now expired⁸.

1 The conditions described in heads (1)-(6) in the text are the prescribed conditions for the purposes of the Planning (Hazardous Substances) Act 1990 s 11(7)(b) (as substituted) (see PARA 1252 ante): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 15. As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

2 See *ibid* reg 15, Sch 3 para 1 (Sch 3 amended by SI 1999/981). A hazardous substance may only be present at below ambient temperature in a vessel in a vessel area if: (1) it was present at below ambient temperature in a vessel in that vessel area at any time during the establishment period; (2) the vessel in which it is present does not have a greater capacity than the capacity specified in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 2, Form 8 Table B col 1 (as substituted); and (3) the pressure at which it is present does not exceed: (a) atmospheric pressure, if the substance was not present at above atmospheric pressure at below ambient temperature in a vessel in that vessel area at any time during the establishment period; or (b) the pressure specified in Sch 2, Form 8 Table B col 2 (as substituted), in any other case: Sch 3 para 1 (as so amended). As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante. As to the circumstances in which the presence of a hazardous substance in a vessel is not to be taken into account see PARA 1251 note 6 ante; for the meaning of 'vessel' see PARA 1251 note 5 ante; and for the meaning of 'establishment period' see PARA 1250 note 3 ante. For these purposes, 'vessel area' means an area identified in a vessel location plan in accordance with reg 14(4) (see PARA 1251 ante): regs 2(3), 16(7) (reg 16(4)-(8) amended by SI 1999/981). As to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 2, Form 8 Table B (as substituted) see PARA 1251 note 3 ante.

For the purposes of the conditions set out in Sch 3 paras 1-5 (as so amended), and for the purpose of completing Sch 2, Form 8 Table B (as substituted), a hazardous substance is not treated as being present in a vessel at other than ambient temperature by virtue only of (i) the heating of the substance to maintain its fluidity during seasonal variations in temperature; or (ii) any cooling effect resulting from the vaporisation of the substance during the withdrawal of vapour from the vessel; or (iii) the presence of the substance at above or below ambient temperature on entry into the vessel, if the temperature of the substance is allowed to move to ambient temperature upon entry: reg 16(4) (as so amended). For these purposes, references to a column of Table B refer to the relevant column of Table B of the form on which the claim for deemed consent is made which applies to the relevant hazardous substance and vessel area: reg 16(8) (as so amended).

For the purposes of the conditions set out in Sch 3 paras 1-5 (as so amended), and for the purposes of completing Sch 2, Form 8 Table B (as substituted), a hazardous substance is not treated as being present at above atmospheric pressure unless the pressure at which it is present exceeds 1.5 bar absolute (reg 16(5) (as so amended)); and for the purposes of those conditions, no account is to be taken of an increase in pressure during the operation of a pressure relief system (reg 16(6)).

3 See *ibid* Sch 3 para 2 (as amended: see note 2 *supra*). A hazardous substance may only be present at ambient temperature in a buried or mounded vessel in a vessel area if: (1) it was present at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period; (2) the buried or mounded vessel in which it is present does not have a greater capacity than that specified in Sch

2, Form 8 Table B col 3 (as substituted); (3) the pressure at which it is present in the buried or mounded vessel does not exceed: (a) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a buried or mounded vessel in that vessel area at any time during the establishment period; or (b) the pressure specified in Sch 2, Form 8 Table B col 4 (as substituted) in any other case: Sch 3 para 2 (as so amended). For these purposes, 'buried or mounded vessel' includes a vessel which is only partially buried or mounded: reg 2(1).

4 See *ibid* Sch 3 para 3 (as amended: see note 2 *supra*). A hazardous substance may only be present at ambient temperature in a non-buried or non-mounded vessel in a vessel area if: (1) it was present at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period; (2) the non-buried or non-mounded vessel in which it is present does not have a greater capacity than that specified in Sch 3, Form 8 Table B col 5 (as substituted); (3) the pressure at which it is present in the non-buried or non-mounded vessel does not exceed: (a) atmospheric pressure, if the substance was not present at above atmospheric pressure at ambient temperature in a non-buried or non-mounded vessel in that vessel area at any time during the establishment period; or (b) the pressure specified in Sch 3, Form 8 Table B col 6 (as substituted), in any other case: Sch 3 para 3 (as so amended).

5 See *ibid* Sch 3 paras 4, 5 (as amended: see note 2 *supra*). A hazardous substance may only be present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in a vessel area if: (1) it was present at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; (2) the vessel in which it is present does not have a greater capacity than that specified in Sch 2, Form 8 Table B col 7 (as substituted); and (3) the pressure at which it is present does not exceed: (a) atmospheric pressure, if the substance was not present at above atmospheric pressure at above ambient temperature and at or below its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or (b) the pressure specified in Sch 2, Form 8 Table B col 8 (as substituted), in any other case: Sch 3 para 4 (as so amended).

A hazardous substance may only be present at above its boiling point at 1 bar absolute in a vessel area if: (i) it was present at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; (ii) the temperature at which it is present does not exceed the temperature specified in Sch 2, Form 8 Table B col 9 (as substituted); (iii) the vessel in which it is present does not have a greater capacity than that specified in Sch 2, Form 8 Table B col 10 (as substituted); and (iv) the pressure at which it is present does not exceed: (A) atmospheric pressure, if the substance was not present at above atmospheric pressure at above its boiling point at 1 bar absolute in a vessel in that vessel area at any time during the establishment period; or (B) the pressure specified in Sch 2, Form 8 Table B col 11 (as substituted), in any other case: Sch 3 para 5 (as so amended).

6 See *ibid* Sch 3 para 6 (as amended: see note 2 *supra*). A hazardous substance may not be present in a vessel outside of a vessel area: Sch 3 para 6 (as so amended).

7 See *ibid* Sch 3 para 7 (as amended: see note 2 *supra*). A hazardous substance may only be stored in movable containers in an area identified in a movable container storage area plan for that substance in accordance with reg 14(3) (see PARA 1251 *ante*): Sch 3 para 7(1). The quantity of a hazardous substance stored in such an area may not exceed the maximum quantity of the substance stored in movable containers in that area at any time during the establishment period: Sch 3 para 7(2) (as so amended). A hazardous substance may not be stored in such an area in a movable container with a capacity in excess of: (1) 10% of the substance's controlled quantity, if it was not stored in a movable container with a capacity in excess of 10% of that quantity in that area at any time during the establishment period; or (2) the capacity of the largest movable container in which it was stored during that period in that area, in any other case: Sch 3 para 7(3).

8 See PARA 1250 the text and notes 3, 6-7 *ante*.

UPDATE

1253 Deemed consent conditions

NOTE 1--The conditions in heads (1)-(6) are now also prescribed for the purposes of the 1990 Act s 30B (see PARA 1257): SI 1992/656 reg 15 (amended by SI 2006/1283 (England), SI 2006/1388 (Wales)).

PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES
CONSENT/(iii) Deemed Consent/1254. Government authorisation.

1254. Government authorisation.

Where: (1) the authorisation of a government department¹ is required by virtue of an enactment² in respect of development³ to be carried out by a local authority⁴, or by statutory undertakers⁵ who are not a local authority; and (2) the development would involve the presence of a hazardous substance⁶ in circumstances requiring hazardous substances consent⁷, the department may, on granting that authorisation, also direct that hazardous substances consent shall be deemed to be granted subject to such conditions, if any, as may be specified in the direction⁸.

For these purposes, development is taken to be authorised by a government department if:

- 4602 (a) any consent, authority or approval to or for the development is granted by the department in pursuance of an enactment;
- 4603 (b) a compulsory purchase order is confirmed by the department authorising the purchase of land⁹ for the purpose of the development;
- 4604 (c) consent is granted by the department to the appropriation of land for the purpose of the development or the acquisition of land by agreement for that purpose;
- 4605 (d) authority is given by the department for the borrowing of money for the purpose of the development, or for the application for that purpose of any money not otherwise so applicable; or
- 4606 (e) any undertaking is given by the department to pay a grant in respect of the development in accordance with an enactment authorising the payment of such grants;

and references to the authorisation of a government department are to be construed accordingly¹⁰.

On granting a consent under the Electricity Act 1989¹¹ in respect of any operation or change of use¹² that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State¹³ may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions, if any, as may be specified in the direction¹⁴. This function in Wales is not transferred to the National Assembly for Wales¹⁵.

On making an order under the Transport and Works Act 1992¹⁶ which includes any provision that would involve the presence of a hazardous substance in circumstances requiring hazardous substances consent, the Secretary of State or, in relation to Wales, the National Assembly for Wales may direct that hazardous substances consent shall be deemed to be granted, subject to such conditions, if any, as may be specified in the direction¹⁷.

The department or, as the case may be, the Secretary of State or the Assembly must consult¹⁸ the Health and Safety Commission¹⁹ before giving any such direction²⁰.

A government department or the Secretary of State or the Assembly must, as respects any hazardous substances consent deemed to be granted by virtue of directions under the above provisions, send to the hazardous substances authority²¹ concerned any such information as appears to be required by that authority for the purposes of a register kept²² by it²³.

1 For the meaning of 'government department' see PARA 1214 note 1 ante.

2 For the meaning of 'enactment' see PARA 1217 note 10 ante.

- 3 For the meaning of 'development' see PARA 1220 note 12 ante.
- 4 For these purposes, references to a local authority are deemed to include references to a National Park authority: Environment Act 1995 s 70, Sch 9 para 14(2). For the meaning of 'local authority' see PARA 1225 note 1 ante; and as to National Park authorities see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 526 et seq.
- 5 For the meaning of 'statutory undertakers' see PARA 1218 ante.
- 6 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.
- 7 For the meaning of 'hazardous substances consent' see PARA 1234 ante.
- 8 Planning (Hazardous Substances) Act 1990 s 12(1). The provisions of the Planning (Hazardous Substances) Act 1990, except s 22 (as amended) (see PARA 1286 post), apply in relation to any hazardous substances consent deemed to be granted by virtue of directions under s 12 (as amended) as if it had been granted by the Secretary of State or by the National Assembly for Wales on an application referred to him or to it under s 20 (as amended) (see PARA 1248 ante): s 12(5). As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

As to the application of s 12 (as amended) to Crown land see PARA 1214 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 12 (as amended) see PARA 1234 note 5 ante.
- 9 For the meaning of 'land' see PARA 1216 note 6 ante.
- 10 Planning (Hazardous Substances) Act 1990 s 12(4).
- 11 Ie under the Electricity Act 1989 s 36 (as amended) (consent for construction etc of generating stations): see **FUEL AND ENERGY** vol 19(2) (2007 Reissue) PARA 1249.
- 12 For the meaning of 'use' see PARA 1244 note 7 ante.
- 13 As to the Secretary of State see PARA 19 ante.
- 14 Planning (Hazardous Substances) Act 1990 s 12(2).
- 15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).
- 16 Ie under the Transport and Works Act 1992 s 1 (orders as to construction, operation etc of railways, tramways etc) or under s 3 (orders as to construction, operation etc of inland waterways): see **RAILWAYS, INLAND WATERWAYS AND CROSS-COUNTRY PIPELINES** vol 39(1A) (Reissue) PARA 307.
- 17 Planning (Hazardous Substances) Act 1990 s 12(2A) (added by the Transport and Works Act 1992 s 18). Where the applicant seeks a direction from the Secretary of State or the Assembly, under the Planning (Hazardous Substances) Act 1990 s 12(2A) (as so added), that hazardous substances consent shall be deemed to be granted, he must submit with the application: (1) an application for hazardous substances consent in either the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 2 Form 1 or Form 2 (each as substituted) (see PARA 1238 ante, PARA 1258 post), as the case may require; and (b) the information and documentation specified in such one or more of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000, SI 2000/2190, r 5(1)(b), r 5(2)(b) (as amended) and r 5(3)(b) as the case may require: rr 10(7), 28(4). As soon as practicable after the date of an application, the applicant must submit to the Secretary of State or to the Assembly evidence by affidavit of compliance with the provisions of rr 13, 14(1)-(8), and must exhibit to any such affidavit copies of notices placed in newspapers and the London Gazette (and Lloyd's List if applicable) in accordance with r 14: rr 10(8), 28(4).
- 18 For the meaning of 'consult' see PARA 2 note 1 ante.
- 19 As to the Health and Safety Commission see **HEALTH AND SAFETY AT WORK** vol 52 (2009) PARA 367 note 10.
- 20 Planning (Hazardous Substances) Act 1990 s 12(3).
- 21 As to hazardous substances authorities see PARAS 1219-1220 ante.
- 22 Ie under the Planning (Hazardous Substances) Act 1990 s 28 (as amended): see PARA 1221 ante.
- 23 Ibid s 12(6) (added by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 5).

UPDATE**1254 Government authorisation**

NOTE 17--SI 2000/2190 rr 10(7), 28(4) now SI 2006/1466 rr 10(7), 28(3)(a).

TEXT AND NOTE 19--Reference to Health and Safety Commission now to Health and Safety Executive (see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq): Planning (Hazardous Substances) Act 1990 s 12(3) (amended by SI 2008/960).

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(iv) Applications by the Crown***A. PROVISIONS BEFORE AMENDMENT BY THE 2004 ACT*****1255. Application for hazardous substances consent in anticipation of disposal of Crown land.**

At the date at which this title states the law, the following provisions have effect for the purpose of enabling Crown land¹, or an interest in Crown land, to be disposed² of with the benefit of hazardous substances consent³.

Notwithstanding the interest of the Crown in the land in question, an application for such consent may be made (1) by the appropriate authority⁴; or (2) by any person authorised by that authority in writing; and all the statutory provisions⁵ relating to the making and determination of such an application apply accordingly⁶ as if the land were not Crown land⁷.

Any hazardous substances consent so granted⁸ applies only:

- 4607 (a) to the presence of the substance to which the consent relates after the land in question has ceased to be Crown land; and
- 4608 (b) so long as that land continues to be Crown land, to the presence of the substance by virtue of a private interest in the land⁹.

The Secretary of State¹⁰ or, in relation to Wales, the National Assembly for Wales¹¹ may by regulations:

- 4609 (i) modify or exclude any of the statutory provisions referred to above¹² and any other statutory provisions in their application to consents granted by virtue of these provisions;
- 4610 (ii) make provision for requiring a hazardous substances authority¹³ to be notified of any disposal of, or interest in, any Crown land in respect of which such an application has been made; and
- 4611 (iii) make such other provision in relation to the making and determination of such applications as he or the Assembly thinks necessary or expedient¹⁴.

The above provisions are not to be construed as affecting any right to apply for hazardous substances consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land¹⁵.

As from a day to be appointed, however¹⁶, the provisions set out above are repealed by the Planning and Compulsory Purchase Act 2004¹⁷ and the Crown may apply for hazardous substances consent regardless of whether disposal of the land in question is anticipated¹⁸.

1 The Planning (Hazardous Substances) Act 1990 s 31(3) (meaning of 'Crown land': see PARA 1214 note 2 ante) applies for these purposes as it applies for the purposes of s 31 (as amended): s 32(7). For the meaning of 'land' para 1216 note 6 ante.

2 For these purposes, references to the disposal of an interest in Crown land include references to the grant of an interest in such land: *ibid* s 32(6).

A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for these purposes as having an interest in land; and references to the disposal or grant of an interest in Crown land and to a private interest in such land are to be construed accordingly: s 32(8). 'Private interest' means an interest which is neither a Crown interest nor a Duchy interest: s 32(6). Section 31(3) (as originally enacted) (meanings of 'Crown interest' and 'Duchy interest' (see PARA 1214 notes 1-2 ante)) applies for these purposes as it applies for the purposes of s 31 (as amended): s 32(7).

3 *Ibid* s 32(1). For the meaning of 'hazardous substances consent' see PARA 1234 ante.

4 *Ibid* s 31(5) (as originally enacted) (meaning of 'the appropriate authority': see PARA 1214 note 5 ante) applies for these purposes as it applies for the purposes of s 31 (as amended): s 32(7).

5 For these purposes, 'statutory provisions' means provisions contained in or having effect under any enactment: *ibid* s 32(6)). For the meaning of 'enactment' see PARA 1217 note 10 ante.

6 *Ie* subject to *ibid* s 32(3), (4): see the text and notes 7-14 *infra*.

7 *Ibid* s 32(2).

8 *Ie* by virtue of *ibid* s 32.

9 *Ibid* s 32(3).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 32, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 *Ie* any of the statutory provisions referred to in *ibid* s 32(2) in their application by virtue of s 32(2): see the text and notes 5-7 *supra*.

13 As to hazardous substances authorities see PARAS 1219-1220 ante.

14 Planning (Hazardous Substances) Act 1990 s 32(4). At the date at which this title states the law no such regulations had been made.

15 *Ibid* s 32(5).

16 *Ie* as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 13 note 8 ante.

17 See *ibid* ss 79(4), 120, Sch 3 para 12(2), Sch 9. At the date at which this title states the law, those repeals were not in force.

18 See the Planning (Hazardous Substances) Act 1990 s 30A (as added); and PARA 1215 ante; s 31A (as prospectively added); and PARA 1256 post.

UPDATE**1255 Application for hazardous substances consent in anticipation of disposal of Crown land**

TEXT AND NOTES 16, 17--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(iv) Applications by the Crown/B. PROVISIONS INTRODUCED BY THE 2004 ACT/1256. Applications for hazardous substances consent by the Crown.

B. PROVISIONS INTRODUCED BY THE 2004 ACT**1256. Applications for hazardous substances consent by the Crown.**

Partly as from a day to be appointed¹, the following provisions apply to an application for hazardous substances consent² made by or on behalf of the Crown³. The Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ may by regulations⁶ modify or exclude any statutory provision⁷ relating to the making and determination of such applications⁸.

1 le a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 3 infra.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 Planning (Hazardous Substances) Act 1990 s 31A(1) (s 31A added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 12(1), partly as from a day to be appointed (see note 1 supra); at the date at which this title states the law, s 79(4), Sch 3 para 12(1) were in force for limited purposes only: see PARA 13 note 8 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 31A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 As to the making of regulations generally see PARA 1213 ante.

7 A statutory provision is a provision contained in or having effect under any enactment: Planning (Hazardous Substances) Act 1990 s 31A(3) (as added: see note 3 supra). For the meaning of 'enactment' see PARA 1217 note 10 ante.

8 Ibid s 31A(2) (as added: see note 3 supra).

UPDATE**1256 Applications for hazardous substances consent by the Crown**

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(iv) Applications by the Crown/B. PROVISIONS INTRODUCED BY THE 2004 ACT/1257. Transitional arrangements.

1257. Transitional arrangements.

Partly as from a day to be appointed¹, the following transitional provisions apply if at any time during the establishment period² a hazardous substance³ was present on, over or under Crown land⁴. The appropriate authority⁵ must make a claim in the prescribed⁶ form before the end of the transitional period⁷. The claim must contain the prescribed information as to:

- 4612 (1) the presence of the substance during the establishment period;
- 4613 (2) how and where the substance was kept and used⁸.

Unless either of the statutory exceptions applies⁹, the hazardous substances authority¹⁰ is deemed to have granted the hazardous substances consent¹¹ so claimed¹².

The first statutory exception applies if the hazardous substances authority thinks that a claim does not comply with heads (1) and (2) above¹³. If that exception applies, the hazardous substances authority must, before the end of the period of two weeks starting with the date it received the claim, notify the claimant that the authority thinks the claim is invalid and give its reasons¹⁴.

The second statutory exception applies if at no time during the establishment period was the aggregate quantity of the substance equal to or greater than the controlled quantity¹⁵.

Hazardous substances consent which is deemed to be granted under these provisions is subject:

- 4614 (a) to the condition that the maximum aggregate quantity of the substance that may be present for these purposes¹⁶ at any one time must not exceed the established quantity¹⁷;
- 4615 (b) to such other conditions, if any, as are prescribed for these purposes and are applicable in the case of the consent¹⁸.

1 le a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see note 2 infra.

2 The establishment period is the period of 12 months ending on the day before the date of commencement of the Planning and Compulsory Purchase Act 2004 s 79(3): Planning (Hazardous Substances) Act 1990 s 30B(10) (s 30B(1)-12) added by the Planning and Compulsory Purchase Act 2004 s 79(3), partly as from a day to be appointed (see note 1 supra); at the date at which this title states the law, s 79(3) was in force for limited purposes only: see PARA 13 note 8 ante).

3 As to what is a hazardous substance see PARA 1230 et seq ante.

4 Planning (Hazardous Substances) Act 1990 s 30B(1) (as added: see note 2 supra). For the meaning of 'Crown land' for these purposes see PARA 1215 ante.

5 For the meaning of 'the appropriate authority' for these purposes see PARA 1215 note 11 ante.

6 For the meaning of 'prescribed' see PARA 1216 note 1 ante.

7 Ibid s 30B(2) (as added: see note 2 supra). The transitional period is the period of six months starting on the date of commencement of the Planning and Compulsory Purchase Act 2004 s 79(3): Planning (Hazardous Substances) Act 1990 s 30B(11) (as so added).

- 8 Ibid s 30B(3) (as added: see note 2 supra).
- 9 Ie unless either ibid s 30B(5) or (7) (as added) applies: see the text and notes 13-15 infra.
- 10 As to hazardous substances authorities see PARAS 1219-1220 ante.
- 11 As to hazardous substances consent see PARA 1234 et seq ante.
- 12 Planning (Hazardous Substances) Act 1990 s 30B(4) (as added: see note 2 supra).
- 13 Ibid s 30B(5) (as added: see note 2 supra).
- 14 Ibid s 30B(6) (as added: see note 2 supra).
- 15 Ibid s 30B(7) (as added: see note 2 supra). As to controlled quantities see PARA 1230 et seq ante.
- 16 A substance is present for these purposes of head (a) in the text if: (1) it is on, over or under land to which the claim for consent relates; (2) it is on, over or under other land which is within 500 metres of it and is controlled by the Crown; or (3) it is in or on a structure controlled by the Crown any part of which is within 500 metres of it; and in calculating whether the established quantity is exceeded a quantity of a substance which falls within more than one of heads (1)-(3) supra must be counted only once: ibid s 30B(9) (as added: see note 2 supra). For the meaning of 'the established quantity' see note 17 infra.
- 17 The established quantity in relation to any land is the maximum quantity which was present on, over or under the land at any one time within the establishment period: ibid s 30B(12) (as added: see note 2 supra).
- 18 Ibid s 30B(8) (as added: see note 2 supra).

UPDATE

1257 Transitional arrangements

TEXT AND NOTE 1--Day now appointed for remaining purposes: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/A. APPLICATION FOR CONSENT WITHOUT PREVIOUS CONDITIONS/1258. Mode of application.

(v) Variation, Revocation and Continuation of Consent

A. APPLICATION FOR CONSENT WITHOUT PREVIOUS CONDITIONS

1258. Mode of application.

An application for a hazardous substances consent without a condition subject to which a previous consent was granted¹ must²:

- 4616 (1) be made to the hazardous substances authority³ on the prescribed form⁴;
- 4617 (2) include the particulars specified in that form, a change of location plan, if required⁵, and particulars of the relevant consent⁶;
- 4618 (3) be accompanied by three copies of the form, the relevant consent, any plan submitted with it and the required⁷ notices and certificates⁸.

Where such an application relates to more than one relevant consent, particulars of each such consent must be included in the application⁹.

When the hazardous substances authority receives¹⁰ an application for hazardous substances consent, it must, as soon as practicable, acknowledge receipt in writing¹¹. Where, in the opinion of the hazardous substances authority, the application is invalid, the authority must, as soon as practicable, notify the applicant of the authority's opinion, giving its reasons¹².

1 le an application to which the Planning (Hazardous Substances) Act 1990 s 13 (as amended) relates: see PARA 1259 post.

2 le subject to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 26: see PARA 1216 note 9 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 For the prescribed form of application see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(2)(a), Sch 2, Form 2 (Form 2 substituted by SI 1999/981).

5 A change of location plan is so required in the case of an application to which the Planning (Hazardous Substances) Act 1990 s 13 (as amended) applies which relates to a condition restricting the location of a hazardous substance, and must be a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies the location of the hazardous substance at the date of the application and the proposed location requiring the application: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(6). As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

6 The relevant consent so referred to is the existing hazardous substances consent which applies to the hazardous substances to which the application applies; and the particulars of the relevant consent to be supplied are a copy of the consent, in the case of a consent granted on an application under the Planning (Hazardous Substances) Act 1990, a copy of the relevant claim, in the case of a consent deemed to be granted under s 11 (as amended) (see PARA 1250 et seq ante) or a copy of the relevant direction, in the case of a consent deemed to be granted under s 12 (as amended) (see PARA 1254 ante): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2)(a), 5(8).

7 le the notices and certificates required under ibid reg 6 (see PARA 1240 ante) and reg 7 (see PARA 1242 ante).

8 Ibid reg 5(2).

9 Ibid reg 5(9).

10 As to when an application is taken to have been received see PARA 1223 ante.

11 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 9(1).

12 Ibid reg 9(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/A. APPLICATION FOR CONSENT WITHOUT PREVIOUS CONDITIONS/1259. Consideration of application.

1259. Consideration of application.

The following provisions apply to an application for hazardous substances consent¹ without a condition subject to which a previous hazardous substances consent was granted².

On such an application the hazardous substances authority³ must consider only the question of the conditions subject to which hazardous substances consent should be granted⁴.

If, on such an application, the hazardous substances authority determines that:

- 4619 (1) hazardous substances consent should be granted subject to conditions differing from those subject to which the previous consent was granted; or
- 4620 (2) it should be granted unconditionally,

it must grant hazardous substances consent accordingly⁵.

If, however, on such an application, the hazardous substances authority determines that hazardous substances consent should be granted subject to the same conditions as those subject to which the previous consent was granted, it must refuse the application⁶.

Where (a) hazardous substances consent has been granted or is deemed to have been granted for the presence on, over or under land⁷ of more than one hazardous substance⁸; and (b) an application under these provisions does not relate to all the substances, the hazardous substances authority must only have regard to any condition relating to a substance to which the application does not relate to the extent that it has implications for a substance to which the application does relate⁹.

Where: (i) more than one hazardous substances consent has been granted or is deemed to have been granted in respect of the same land; and (ii) an application under these provisions does not relate to all the consents, the hazardous substances authority must only have regard to any consent to which the application does not relate to the extent that it has implications for consent to which the application does relate¹⁰.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 Planning (Hazardous Substances) Act 1990 s 13(1). As to the application of s 13 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 13 (as amended) see PARA 1234 note 5 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 Planning (Hazardous Substances) Act 1990 s 13(2).

5 Ibid s 13(3).

6 Ibid s 13(4).

7 For the meaning of 'land' see PARA 1216 note 6 ante.

8 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

9 Planning (Hazardous Substances) Act 1990 s 13(5).

10 Ibid s 13(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/B. REVOCATION OR MODIFICATION OF CONSENT; IN GENERAL/1260. General power to revoke or modify consent.

B. REVOCATION OR MODIFICATION OF CONSENT; IN GENERAL

1260. General power to revoke or modify consent.

The hazardous substances authority¹ may by order revoke a hazardous substances consent² or modify it to such extent as the authority considers expedient if it appears to the authority, having regard to any material consideration³, that it is expedient to revoke or modify it⁴.

The hazardous substances authority may also by order revoke a hazardous substances consent if it appears to the authority:

- 4621 (1) that there has been a material change of use⁵ of land⁶ to which a hazardous substances consent relates⁷; or
- 4622 (2) that planning permission has been granted for development⁸ the carrying out of which would involve a material change of use of such land and the development to which the permission relates has been commenced⁹; or
- 4623 (3) in the case of a hazardous substances consent which relates only to one substance, that that substance has not for at least five years been present on, over or under the land to which the consent relates in a quantity equal to or exceeding the controlled quantity¹⁰; or
- 4624 (4) in the case of a hazardous substances consent which relates to a number of substances, that none of those substances has for at least five years been so present¹¹.

An order under the above provisions must specify the grounds on which it is made¹².

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 As to what are material considerations see PARAS 484 note 4, 485 ante.

4 Planning (Hazardous Substances) Act 1990 s 14(1). As to confirmation of such an order by the Secretary of State or the National Assembly for Wales see PARA 1261 post; as to the application of s 14 to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 14 see PARA 1234 note 5 ante.

5 For the meaning of 'use' see PARA 1244 note 7 ante.

6 For the meaning of 'land' see PARA 1216 note 6 ante.

7 Planning (Hazardous Substances) Act 1990 s 14(2)(a). An order made by virtue of s 14(2)(a) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance: s 14(3).

8 For the meaning of 'development' see PARA 1220 note 12 ante.

9 Planning (Hazardous Substances) Act 1990 s 14(2)(b). An order made by virtue of s 14(2)(b) in the case of a consent relating to more than one substance may revoke it entirely or only so far as it relates to a specified substance: s 14(3).

10 Ibid s 14(2)(c). As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.

11 Ibid s 14(2)(d).

12 Ibid s 14(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/B. REVOCATION OR MODIFICATION OF CONSENT; IN GENERAL/1261. Confirmation by the Secretary of State or the Assembly of orders revoking or modifying consents.

1261. Confirmation by the Secretary of State or the Assembly of orders revoking or modifying consents.

An order¹ revoking or modifying a hazardous substances consent² does not have effect unless it is confirmed by the Secretary of State³ or, in relation to Wales, by the National Assembly for Wales⁴. The Secretary of State or the Assembly may confirm any such order submitted to him or to it either without modification or subject to such modification as he or the Assembly considers expedient⁵.

Where a hazardous substances authority⁶ submits such an order to Secretary of State or the Assembly for confirmation, the authority must serve notice of the order on:

- 4625 (1) any person who is an owner⁷ of the whole or any part of the land⁸ to which the order relates;
- 4626 (2) any person other than an owner who appears to the authority to be in control of the whole or any part of that land;
- 4627 (3) any other person who in its opinion will be affected by the order⁹.

Any such notice must specify the period, which must be not less than 28 days from the service of it, within which any person on whom the notice is served may require an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for that purpose¹⁰. If such a person so requires, the Secretary of State or the Assembly, before confirming the order, must give that person and the hazardous substances authority such an opportunity¹¹.

Where such an order has been confirmed by the Secretary of State or by the Assembly, the hazardous substances authority must serve a copy of the order on every person who was entitled to be served with notice under heads (1) to (3) above¹².

1 Ie an order under the Planning (Hazardous Substances) Act 1990 s 14: see PARA 1260 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Planning (Hazardous Substances) Act 1990 s 15(1) (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt VII). As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 15 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the application of the Planning (Hazardous Substances) Act 1990 s 15 (as modified and amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 15 (as modified and amended) see PARA 1234 note 5 ante.

5 Ibid s 15(2).

6 As to hazardous substances authorities see PARAS 1219-1220 ante.

7 For the meaning of 'owner' see PARA 1217 note 1 ante.

8 For the meaning of 'land' see PARA 1216 note 6 ante.

9 Planning (Hazardous Substances) Act 1990 s 15(3). As to the service of notices see PARA 1212 ante at head (5) in the text.

10 Ibid s 15(4).

11 Ibid s 15(5).

12 Ibid s 15(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/B. REVOCATION OR MODIFICATION OF CONSENT; IN GENERAL/1262. Compensation in respect of orders revoking or modifying consents.

1262. Compensation in respect of orders revoking or modifying consents.

Where an order is made¹ revoking or modifying a hazardous substances consent², then, if on a claim made to the hazardous substances authority³ within the prescribed⁴ time and in the prescribed manner it is shown that any person has suffered damage in consequence of the order:

4628 (1) by depreciation of the value of an interest to which he is entitled in the land⁵ or in minerals⁶ in, on or under it; or

4629 (2) by being disturbed in his enjoyment of the land or of minerals in, on or under it,

the authority must pay him compensation in respect of that damage⁷.

Any person who carries out any works in compliance with the order is entitled⁸, on making a claim⁹, to recover from the hazardous substances authority compensation in respect of any expenses reasonably incurred by him in that behalf¹⁰.

Any compensation so payable to a person must, however, be reduced by the value to him of any timber, apparatus or other materials removed for the purpose of complying with the order¹¹.

1 le under the Planning (Hazardous Substances) Act 1990 s 14(1): see PARA 1260 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 For the meaning of 'prescribed' see PARA 1216 note 1 ante.

5 For the meaning of 'land' see PARA 1216 note 6 ante.

6 For the meaning of 'minerals' see PARA 1220 note 4 ante.

7 Planning (Hazardous Substances) Act 1990 s 16(1), (2). As to the payment of compensation under s 16 in respect of land which is ecclesiastical property see PARA 1217 ante. At the date at which this title states the law, no regulations had been made for the specific purposes of s 16(2); cf, however, the procedure for claiming compensation under the Town and Country Planning Act 1990 s 115: see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 12 (as amended); and PARA 966 ante.

The Town and Country Planning Act 1990 s 117 (as amended) (see PARA 930 ante) and s 118 (see PARA 931 ante), which contain general provisions as to the assessment of and the determination of claims for

compensation, apply as if compensation under the Planning (Hazardous Substances) Act 1990 s 16 were compensation under the Town and Country Planning Act 1990 s 115 (see PARA 923 ante): Planning (Hazardous Substances) Act 1990 s 16(5). Compensation payable under s 16 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the order under the Planning (Hazardous Substances) Act 1990 s 14(1) (see PARA 1260 ante) until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

As to the power of the council of a county to direct that any expenses incurred by it under the Planning (Hazardous Substances) Act 1990 s 16 shall be treated as special expenses see PARA 1225 ante; as to the application of s 16 to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 16 see PARA 1234 note 5 ante.

8 Ie without prejudice to *ibid* s 16(2): see the text and notes 1-7 *supra*.

9 Ie a claim made as mentioned in *ibid* s 16(2): see the text and notes 1-7 *supra*.

10 *Ibid* s 16(3). See also note 7 *supra*.

11 *Ibid* s 16(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/B. REVOCATION OR MODIFICATION OF CONSENT; IN GENERAL/1263. Revocation of consent on change of control of land.

1263. Revocation of consent on change of control of land.

A hazardous substances consent¹ is revoked if there is a change in the person in control of part of the land² to which it relates, unless an application for the continuation of the consent has previously been made to the hazardous substances authority³.

Regulations may make provision in relation to such applications corresponding to any provision that may be made⁴ in relation to applications for hazardous substances consent⁵.

As from a day to be appointed⁶, however, the above provisions do not apply if the control of land changes from one emanation of the Crown to another⁷.

1 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 Planning (Hazardous Substances) Act 1990 s 17(1). As to the application of s 17 to Crown land see the text and notes 6-7 *infra*; and PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 17 see PARA 1234 note 5 ante.

4 Ie by regulations under *ibid* s 7 (as amended) (see PARA 1237 ante) or s 8 (see PARA 1241 ante).

5 *Ibid* s 17(2). In exercise of the powers so conferred, and prior to the transfer of functions, so far as exercisable in relation to Wales, to the National Assembly for Wales (see PARA 20 ante), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5: see PARA 1264 post. As to the making of regulations generally see PARA 1213 ante.

6 Ie as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed for these purposes.

7 Planning (Hazardous Substances) Act 1990 s 17(3) (added by the Planning and Compulsory Purchase Act 2004 s 79(4), Sch 3 para 20, as from a day to be appointed: see note 6 *supra*).

UPDATE**1263 Revocation of consent on change of control of land**

TEXT AND NOTE 6--Day now appointed: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/C. APPLICATION FOR CONTINUATION OF CONSENT/1264. Application for continuation of hazardous substances consent.

C. APPLICATION FOR CONTINUATION OF CONSENT**1264. Application for continuation of hazardous substances consent.**

An application for continuation of a hazardous substances consent¹ must:

- 4630 (1) be made to the hazardous substances authority² on the prescribed form³;
- 4631 (2) include the particulars specified in that form, a change of control plan⁴, and particulars of the relevant consent⁵;
- 4632 (3) be accompanied by three copies of the form, the relevant consent, the change of control plan and the required⁶ notices and certificates⁷.

Where such an application relates to more than one relevant consent, particulars of each such consent must be included in the application⁸.

Before making the application, the applicant must publicise it⁹ and it may not be entertained by the hazardous substances authority unless accompanied by the appropriate form relating to notification of owners¹⁰. The applicant must make a copy of the application available for inspection during the prescribed period or periods¹¹.

Where the hazardous substances authority receives¹² an application for hazardous substances consent, it must, as soon as practicable, acknowledge receipt in writing¹³. Where, in the opinion of the hazardous substances authority, the application is invalid, the authority must, as soon as practicable, notify the applicant of the authority's opinion, giving its reasons¹⁴.

1 le an application to which the Planning (Hazardous Substances) Act 1990 s 17 relates: see PARA 1263 ante.

2 As to hazardous substances authorities see PARAS 1219-1220 ante.

3 For the prescribed form of application see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(2)(b), 5(3)(a), Sch 2, Form 2 (Form 2 substituted by SI 1999/981).

4 The change of control plan so required is a plan of the land to which the application relates, drawn to a scale of not less than 1 to 2,500, which identifies each area of the site under separate control after the proposed change of control: *ibid* reg 5(7).

5 The relevant consent so referred to is the existing hazardous substances consent which applies to the hazardous substance to which the application applies; and the particulars of the relevant consent to be supplied are a copy of the consent, in the case of a consent granted on an application under the Planning (Hazardous Substances) Act 1990, a copy of the relevant claim, in the case of a consent deemed to be granted under s 11 (as amended) (see PARA 1250 et seq ante) or a copy of the relevant direction, in the case of a consent deemed

to be granted under s 12 (as amended) (see PARA 1254 ante): Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(8).

6 The notices and certificates required under *ibid* reg 6 (see PARA 1240 ante) and reg 7 (see PARA 1242 ante).

7 *Ibid* reg 5(3). Regulations 6-13 (as amended) (see PARA 1238 et seq, 1248 ante, PARA 1288 post) apply to applications made under the Planning (Hazardous Substances) Act 1990 s 17 as they apply to applications for hazardous substances consent: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 5(10).

8 *Ibid* reg 5(9).

9 See *ibid* reg 6 (applied by virtue of reg 5(10)); and PARA 1240 ante.

10 See *ibid* reg 7 (applied by virtue of reg 5(10)); and PARA 1242 ante.

11 See *ibid* reg 8 (applied by virtue of reg 5(10)); and PARA 1238 ante.

12 As to when an application is taken to have been received see PARA 1223 ante.

13 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 9(1).

14 *Ibid* reg 9(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/C. APPLICATION FOR CONTINUATION OF CONSENT/1265. Fee for application.

1265. Fee for application.

A fee of £200 is payable to a hazardous substances authority¹ on an application² for continuation of hazardous substances consent³.

Where, however, applications relating to the same site are made to two or more hazardous substances authorities, a fee is payable only to the authority in whose area the largest part of the site is situated; and the amount payable is the amount that would have been payable if the application had fallen to be made to one authority in relation to the whole site⁴.

Any fee due in respect of an application must accompany the application when it is made to the hazardous substances authority⁵; and any fee so paid must be refunded if the application is rejected as invalidly made⁶.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 Is an application under the Planning (Hazardous Substances) Act 1990 s 17(1): see PARA 1263 ante.

3 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2)(a), 24(2). For the meaning of 'hazardous substances consent' see PARA 1234 ante.

4 *Ibid* reg 24(3).

5 *Ibid* reg 24(4).

6 *Ibid* reg 24(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/C. APPLICATION FOR CONTINUATION OF CONSENT/1266. Powers on determination of application.

1266. Powers on determination of application.

Where an application is made¹ for the continuation of a hazardous substances consent², the hazardous substances authority³ may:

- 4633 (1) modify⁴ the consent in any way it considers appropriate; or
- 4634 (2) revoke it⁵.

In dealing with such an application, the authority must have regard to any material consideration⁶ and, in particular, but without prejudice to the generality of the above:

- 4635 (a) to the matters to which a hazardous substances authority is required to have regard⁷ in dealing with an application for consent; and
- 4636 (b) to any advice which the Health and Safety Executive⁸ has given⁹ following consultations¹⁰.

If an application relates to more than one consent, the authority may make different determinations in relation to each¹¹; and, if a consent relates to more than one hazardous substance¹², the authority may make different determinations in relation to each¹³.

It is the duty of a hazardous substances authority, when continuing hazardous substances consent, to attach to the consent either:

- 4637 (i) a statement that it is unchanged in relation to specified matters¹⁴ included in it; or
- 4638 (ii) a statement of any change in respect of those matters¹⁵.

Where any application for the continuation of a hazardous substances consent is made¹⁶ to a hazardous substances authority, then, unless within such period as may be prescribed¹⁷, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority, the hazardous substances authority either:

- 4639 (A) gives notice to the applicant of its decision on the application; or
- 4640 (B) gives notice to him that the application has been referred to the Secretary of State¹⁸ or, in relation to Wales, to the National Assembly for Wales¹⁹ in accordance with directions given by either of them²⁰,

the application is deemed to have been granted²¹.

1 le under the Planning (Hazardous Substances) Act 1990 s 17 (as amended): see PARA 1263 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 The modifications which a hazardous substances authority may so make include, without prejudice to the generality of the Planning (Hazardous Substances) Act 1990 s 18(1), the making of the consent subject to

conditions with respect to any of the matters mentioned in s 10(1) (see PARA 1245 ante); and s 10(2) (as amended) (see PARA 1245 ante) applies as respects those conditions as it applies to the grant of consent subject to conditions: s 18(6).

5 Ibid s 18(1). As to the application of s 18 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 18 (as amended) see PARA 1234 note 5 ante. See also PARA 1263 the text and notes 6-7 ante.

6 As to what are material considerations see PARAS 484 note 4, 485 ante.

7 Ie by ibid s 9(2)(a)-(d): see PARA 1244 ante at heads (a)-(d) in the text.

8 As to the Health and Safety Executive see HEALTH AND SAFETY AT WORK vol 52 (2009) PARA 361 et seq.

9 Ie following consultations in pursuance of regulations under the Planning (Hazardous Substances) Act 1990 s 17(2): see PARA 1263 ante. For the relevant regulations see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 10 (as amended); and PARA 1243 ante.

10 Planning (Hazardous Substances) Act 1990 s 18(2) (amended by the Environmental Protection Act 1990 s 162(2), Sch 16 Pt VII).

11 Planning (Hazardous Substances) Act 1990 s 18(3).

12 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

13 Planning (Hazardous Substances) Act 1990 s 18(4).

14 Ie the matters included in it by virtue of ibid s 9(4) (see PARA 1246 ante) and s 10(3) (see PARA 1245 ante).

15 Ibid s 18(5).

16 Ie under ibid s 17(1): see PARA 1263 ante.

17 For the meaning of 'prescribed' see PARA 1216 note 1 ante. For the prescribed period see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(2) (applied by reg 5(10)); and PARA 1247 ante.

18 As to the Secretary of State see PARA 19 ante.

19 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 18 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

20 Ie under the Planning (Hazardous Substances) Act 1990 s 20 (as amended): see PARA 1248 ante, PARA 1268 post.

21 Ibid s 18(7). As to the service of notices see PARA 1212 ante at head (5) in the text; and as to notification of the decision see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(3)-(5) (applied by reg 5(10)); and PARA 1247 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/C. APPLICATION FOR CONTINUATION OF CONSENT/1267. Compensation on revocation or modification of consent.

1267. Compensation on revocation or modification of consent.

Where, on an application for continuation of a hazardous substances consent¹, the hazardous substances authority² modifies or revokes the consent, it must pay to the person in control of the whole of the land³ before the change in control by virtue of which the application was made

compensation in respect of any loss or damage sustained by him and directly attributable to the modification or revocation⁴.

1 le under the Planning (Hazardous Substances) Act 1990 s 17(1): see PARA 1263 ante. For the meaning of 'hazardous substances consent' see PARA 1234 ante.

2 As to hazardous substances authorities see PARAS 1219-1220 ante.

3 For the meaning of 'land' see PARA 1216 note 6 ante.

4 Planning (Hazardous Substances) Act 1990 s 19. Compensation payable under s 19 carries interest at the rate for the time being prescribed under the Land Compensation Act 1961 s 32 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641) from the date of the modification or revocation of the hazardous substances consent until payment: Planning and Compensation Act 1991 s 80(1), Sch 18 Pt I. As to payments on account of compensation or interest see s 80(2), (3); and PARA 581 note 15 ante.

As to the application of the Planning (Hazardous Substances) Act 1990 s 19 to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 19 see PARA 1234 note 5 ante. See also PARA 1263 the text and notes 6-7 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/ (8) HAZARDOUS SUBSTANCES CONSENT/(v) Variation, Revocation and Continuation of Consent/C. APPLICATION FOR CONTINUATION OF CONSENT/1268. Reference of applications to the Secretary of State or to the Assembly.

1268. Reference of applications to the Secretary of State or to the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may give directions requiring applications for continuation of hazardous substances consent³ to be referred to him or to the Assembly instead of being dealt with by hazardous substances authorities⁴. These powers and their exercise have already been discussed in the context of applications for hazardous substances consent⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 20 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le applications under the Planning (Hazardous Substances) Act 1990 s 17(1): see PARA 1263 ante. For the meaning of 'hazardous substances consent' see PARA 1234 ante.

4 Ibid s 20(1). As to hazardous substances authorities see PARAS 1219-1220 ante.

5 See PARA 1248 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(i) Offences; in general/1269. Offences.

(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL

(i) Offences; in general

1269. Offences.

If there is a contravention of hazardous substances control, the appropriate person¹ is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000². There is a contravention of hazardous substances control if:

- 4641 (1) a quantity of a hazardous substance³ equal to or exceeding the controlled quantity⁴ is or has been present on, over or under land and either:
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130. (a) there is no hazardous substance consent⁵ for the presence of the substance; or
131. (b) there is hazardous substances consent for its presence but the quantity present exceeds the maximum quantity permitted by the consent;
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- 4642 (2) there is or has been a failure to comply with a condition subject to which a hazardous substances consent was granted⁶.

In determining the amount of any fine to be imposed on a person convicted of such an offence, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence⁷.

In proceedings for any such offence it is a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence, or that commission of the offence could be avoided only by the taking of action amounting to a breach of a statutory duty⁸.

In any proceedings for an offence consisting of a contravention falling within head (1) above, it is a defence for the accused to prove that at the time of the alleged commission of the offence he did not know, and had no reason to believe:

- 4643 (i) if the case falls within head (1)(a) above, that the substance was present or that it was present in a quantity equal to or exceeding the controlled quantity;
- 4644 (ii) if the case falls within head (1)(b) above, that the substance was present in a quantity exceeding the maximum quantity permitted by the consent⁹.

In any proceedings for an offence consisting of a contravention falling within head (2) above, it is a defence for the accused to prove that he did not know, and had no reason to believe, that there was a failure to comply with a condition subject to which hazardous substances consent had been granted¹⁰.

Failure to comply with a hazardous substances contravention notice¹¹ is also an offence; such offences are discussed below¹².

1 For these purpose, 'the appropriate person' means (1) in relation to a contravention falling within the Planning (Hazardous Substances) Act 1990 s 23(2)(a) (see head (1) in the text): (a) any person knowingly causing the substance to be present on, over or under the land; (b) any person allowing it to be so present; and (2) in relation to a contravention falling within s 23(2)(a) or (b) (see heads (1)-(2) in the text), the person in control of the land: s 23(3). For the meaning of 'land' see PARA 1216 note 6 ante.

2 Ibid s 23(1), (4) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 10(a)). As to the transitional exemptions see PARA 1282 post; as to offences by corporations see PARA 1212 ante at head (7) in the text; as to the application of the Planning (Hazardous Substances) Act 1990 s 23 (as amended) to Crown land see PARAS 1214-1215 ante, PARA 1284 post; and as to when two or more bodies corporate are treated as one person for the purposes of s 23 (as amended) see PARA 1234 note 5 ante.

- 3 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.
- 4 As to the power to prescribe the quantity which is to be the controlled quantity of a substance see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.
- 5 For the meaning of 'hazardous substances consent' see PARA 1234 ante.
- 6 Planning (Hazardous Substances) Act 1990 s 23(2).
- 7 Ibid s 23(4A) (added by the Planning and Compensation Act 1991 Sch 3 para 10(b)).
- 8 Planning (Hazardous Substances) Act 1990 s 23(5).
- 9 Ibid s 23(6).
- 10 Ibid s 23(7).
- 11 For the meaning of 'hazardous substances contravention notice' see PARA 1270 post.
- 12 See PARA 1279 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1270. Power to issue hazardous substances contravention notice.

(ii) Hazardous Substances Contravention Notices

A. IN GENERAL

1270. Power to issue hazardous substances contravention notice.

Where it appears to the hazardous substances authority¹ that there is or has been a contravention of hazardous substances control², it may issue a notice (a 'hazardous substances contravention notice')³. A hazardous substances authority may not, however, issue a hazardous substances contravention notice where it appears to the authority that a contravention of a hazardous substances control can be avoided only by the taking of action amounting to a breach of statutory duty⁴.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For these purposes, 'contravention of hazardous substances control' is to be construed in accordance with the Planning (Hazardous Substances) Act 1990 s 23(2) (see PARA 1269 ante): s 39(1).

3 Ibid s 24(1), (2) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 11(a)). As to the contents of such notices see PARA 1273 post; as to their withdrawal see PARA 1271 post; as to the variation of such notices see PARA 1276 post; as to the application of the Planning (Hazardous Substances) Act 1990 s 24 (as amended) to Crown land see PARAS 1214-1215 ante, PARA 1284 post; and as to when two or more bodies corporate are treated as one person for the purposes of s 24 (as amended) see PARA 1234 note 5 ante.

4 Ibid s 24(3). As to breach of statutory duty see TORT vol 45(2) (Reissue) PARA 395 et seq. For guidance as to the use of hazardous substances contravention notices see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 101; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 99; and as to the status of such guidance see PARA 9 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1271. Power to withdraw hazardous substances contravention notice.

1271. Power to withdraw hazardous substances contravention notice.

The hazardous substances authority¹ may withdraw a hazardous substances contravention notice², without prejudice to its power to issue another, at any time before or after the notice takes effect³. If the authority does so, it must immediately give notice of the withdrawal to every person who was served⁴ with a copy of the notice or would, if the notice were reissued, be served with a copy of it⁵.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

3 Planning (Hazardous Substances) Act 1990 s 24(8) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 11(b)). As to when the notice takes effect see PARA 1273 post.

4 As to the persons on whom such notices must be served see PARA 1274 post.

5 Planning (Hazardous Substances) Act 1990 s 24(9) (amended by the Planning and Compensation Act 1991 Sch 3 para 11(c)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1272. Power to make regulations.

1272. Power to make regulations.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations:

4645 (1) specify matters which are to be included³ in hazardous substances contravention notices⁴;

4646 (2) provide for:

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132. (a) appeals to him or to the Assembly against hazardous substances contravention notices;

133. (b) the persons by whom, grounds upon which and time within which such an appeal may be brought;

134. (c) the procedure to be followed on such appeals;

135. (d) the directions that may be given on such an appeal;

136. (e) the application to such appeals, subject to such modifications as the regulations may specify, of any of the specified provisions⁵ of the Town and Country Planning Act 1990⁶;

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- 4647 (3) direct that any of the specified provisions⁷ of the Town and Country Planning Act 1990 are to have effect in relation to hazardous substances contravention notices subject to such modifications as he or the Assembly may specify in the regulations⁸;
- 4648 (4) make such other provision as he or the Assembly considers necessary or expedient in relation to hazardous substances contravention notices⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 25, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 In addition to the matters which are required to be included in such notices by the Planning (Hazardous Substances) Act 1990 s 24 (as amended): see PARA 1273 post.

4 Ibid s 25(1)(a). For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

5 In any of the provisions of the Town and Country Planning Act 1990 s 174 (as amended) (see PARA 603 ante), s 175(1)-(3), (6) (as amended) (see PARAS 603-604 ante), s 176 (as amended) (see PARA 609 ante), s 177 (as amended) (see PARA 610 ante), s 285 (as amended) (see PARA 44 ante) and s 289 (as amended) (see PARA 648 ante).

6 Planning (Hazardous Substances) Act 1990 s 25(1)(b) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 30).

7 In any of the provisions of the Town and Country Planning Act 1990 s 178 (as amended) (see PARA 568 ante), s 179 (as substituted) (see PARA 569 ante), s 180 (as substituted) (see PARAS 570, 584 ante), s 181 (as amended) (see PARA 571 ante), s 183 (as amended) (see PARAS 577-579 ante), s 184 (as amended) (see PARAS 577-579 ante), s 186 (as amended) (see PARA 581 ante), s 187 (as amended) (see PARA 582 ante) and s 188 (as amended) (see PARA 553 ante).

8 Planning (Hazardous Substances) Act 1990 s 25(1)(c) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 8; and by the Planning and Compensation Act 1991 ss 25, 84(6), Sch 3 para 30, Sch 19 Pt I).

9 Planning (Hazardous Substances) Act 1990 s 25(1)(d). Regulations under s 24 (as amended) or s 25 (as amended) may make different provision for different cases or descriptions of case: s 25(3).

In exercise of the power so conferred, and prior to the transfer of functions, so far as exercisable in relation to Wales, to the Assembly (see note 2 supra), the Secretary of State made the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 17-22, Sch 4: see PARAS 1273-1274, 1277, 1291 post.

As to the application of the Planning (Hazardous Substances) Act 1990 s 25 (as amended) to Crown land see PARAS 1214-1215 ante, PARA 1284 post; and as to when two or more bodies corporate are treated as one person for the purposes of s 25 (as amended) see PARA 1234 note 5 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1273. Contents of notices.

1273. Contents of notices.

A hazardous substances contravention notice¹ must:

- 4649 (1) specify an alleged contravention of hazardous substances control²; and
- 4650 (2) require such steps as may be specified in the notice to be taken to remedy wholly or partly the contravention³.

A hazardous substances contravention notice must also specify:

- 4651 (a) a date not less than 28 days from the date of service of copies of the notice as the date on which it is to take effect;
- 4652 (b) in respect of each of the steps required to be taken to remedy the contravention of hazardous substances control, the period from the notice taking effect within which the step is to be taken⁴;

and must identify the land⁵ to which the notice relates, whether by reference to a plan or otherwise⁶.

Where a hazardous substances authority⁷ issues a hazardous substances contravention notice, the steps required by the notice may, if the authority thinks it expedient and without prejudice to the generality of head (2) above, include a requirement that the hazardous substance be removed from the land⁸. Where a notice includes such a requirement, it may also contain a direction that at the end of such period as may be specified in the notice any hazardous substances consent⁹ for the presence of the substance shall cease to have effect or, if it relates to more than one substance, shall cease to have effect so far as it relates to the substances which are required to be removed¹⁰.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 For the meaning of 'contravention of hazardous substances control' see PARA 1270 note 2 ante.

3 Planning (Hazardous Substances) Act 1990 s 24(1)(a), (b) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 11(a)). As to the application of the Planning (Hazardous Substances) Act 1990 s 24 (as amended) to Crown land see PARAS 1214-1215 ante, PARA 1284 post; and as to when two or more bodies corporate as treated as one person for the purposes of s 24 (as amended) see PARA 1234 note 5 ante.

4 Ibid s 24(5).

5 For the meaning of 'land' see PARA 1216 note 6 ante.

6 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 17(1).

7 As to hazardous substances authorities see PARAS 1219-1220 ante.

8 Planning (Hazardous Substances) Act 1990 s 24(6).

9 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

10 Planning (Hazardous Substances) Act 1990 s 24(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1274. Service of copy notices.

1274. Service of copy notices.

A copy of a hazardous substances contravention notice¹ must be served:

- 4653 (1) on the owner² of the land³ to which it relates;

- 4654 (2) on any person other than the owner who appears to the hazardous substances authority⁴ to be in control of the land; and
- 4655 (3) on such other persons as may be prescribed⁵, that is to say on all persons having an interest in the land which in the opinion of the authority issuing the notice is materially affected by the notice⁶.

Every copy of a hazardous substances contravention notice so served must be accompanied by a statement setting out:

- 4656 (a) the hazardous substances authority's reasons for issuing the notice;
- 4657 (b) the right of appeal to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸ against the notice, and the person by whom, grounds upon which and time within which such an appeal may⁹ be brought¹⁰.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 For the meaning of 'owner' see PARA 1217 note 1 ante.

3 For the meaning of 'land' see PARA 1216 note 6 ante.

4 As to hazardous substances authorities see PARAS 1219-1220 ante.

5 Planning (Hazardous Substances) Act 1990 s 24(4). For the meaning of 'prescribed' see PARA 1216 note 1 ante. As to the application of the Planning (Hazardous Substances) Act 1990 s 24 (as amended) to Crown land see PARAS 1214-1215 ante, PARA 1284 post; as to when two or more bodies corporate are treated as one person for the purposes of s 24 (as amended) see PARA 1234 note 5 ante; and as to the service of notices see PARA 1212 ante at head (5) in the text.

6 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 17(2).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Ie under the Town and Country Planning Act 1990 s 174 (as amended), as applied and modified for these purposes: see PARA 1290 post.

10 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 2(1), (2)(a), (5), 17(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1275. Register of notices.

1275. Register of notices.

Every hazardous substances authority¹ must keep an enforcement register containing the following information in respect of each hazardous substances contravention notice² issued by the authority:

- 4658 (1) the address of the land³ to which the notice relates;
- 4659 (2) the date of service of copies of the notice;

- 4660 (3) a statement of the alleged contravention of hazardous substances control⁴, the steps required by the notice to remedy the contravention, and the period within which such steps are to be taken;
- 4661 (4) the date specified in the notice as the date on which it is to take effect;
- 4662 (5) the date and effect of any variation of the notice;
- 4663 (6) the date of any appeal to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ against the notice and the date of the final determination of the appeal⁷.

Every entry in the register must be made within 14 days of the relevant information being available to the hazardous substances authority⁸; and the register must include an index to enable any person to trace an entry in the register⁹. The register must be kept at the principal office of the hazardous substances authority¹⁰; and every register so kept must be available for inspection by the public at all reasonable hours¹¹.

The entry relating to the hazardous substances contravention notice and everything relating to such notice must be removed from the register if the notice is quashed by the Secretary of State or by the Assembly or is withdrawn¹².

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 As to the circumstances in which there is a contravention of hazardous substances control see PARA 1269 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 s 188 (as substituted and applied for the purposes set out in the text), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Town and Country Planning Act 1990 s 188(1) (s 188(1)-(2) applied by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 21; substituted for these purposes by reg 21(1), Sch 4 Pt 3 para 9). As to appeals see PARA 1290 et seq post.

References to sections of the Town and Country Planning Act 1990 mentioned in the Planning (Hazardous Substances) Regulations 1992 reg 21 are to be construed, in those sections and in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended), as references to those sections as modified by those regulations in relation to hazardous substances control: reg 2(5). The provisions of the Town and Country Planning Act 1990 s 188 (as amended) (register of enforcement and stop notices: see PARA 553 ante) as modified under the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 21(2) are set out in Sch 4 Pt 5: regs 2(1), (2) (a), (5), 21(2). For the modifications so set out see the text and notes 1-6 supra, 8-12 infra.

8 Town and Country Planning Act 1990 s 188(1C) (as substituted and applied: see note 7 supra).

9 Ibid s 188(1B) (as substituted and applied: see note 7 supra).

10 Ibid s 188(2) (as substituted and applied: see note 7 supra).

11 Ibid s 188(3) (as applied: see note 7 supra).

12 Ibid s 188(1A) (as substituted and applied: see note 7 supra). As to withdrawal of such notices see PARA 1271 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/A. IN GENERAL/1276. Variation of notices.

1276. Variation of notices.

A hazardous substances authority¹ may waive or relax any requirement of a hazardous substances contravention notice² issued by it and, in particular, may extend any period specified³ in the notice⁴; and the powers so conferred may be exercised before or after the notice takes effect⁵.

The hazardous substances authority must, immediately after exercising those powers, give notice of the exercise to every person who has been served with a copy of the hazardous substances contravention notice⁶ or would, if the notice were reissued, be served with a copy of it⁷.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

3 I.e. any period specified in the Planning (Hazardous Substances) Act 1990 s 24(5)(b): see PARA 1273 ante at head (b) in the text.

4 Ibid s 24A(1) (s 24A added by the Planning and Compensation Act 1991 s 25, Sch 3 para 12). As to when two or more bodies corporate are treated as one person for the purposes of the Planning (Hazardous Substances) Act 1990 s 24A (as so added) see PARA 1234 note 5 ante.

5 Ibid s 24A(2) (as added: see note 4 supra). As to when the notice takes effect see PARA 1273 ante.

6 As to the persons who must be served with a copy of the notice see PARA 1274 ante.

7 Planning (Hazardous Substances) Act 1990 s 24A(3) (as added: see note 4 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/B. EFFECT OF NOTICES/1277. Application of statutory provisions relating to enforcement notices.

B. EFFECT OF NOTICES

1277. Application of statutory provisions relating to enforcement notices.

In relation to hazardous substances contravention notices¹, the specified provisions² of the Town and Country Planning Act 1990 relating to the execution and cost of works required by, the penalties for non-compliance with, and the effect of planning permission on, enforcement notices and the effect of enforcement notices against subsequent development have effect, subject to the specified³ modifications⁴.

The specified provisions⁵ of that Act relating to the validity of, and appeals to the High Court relating to, enforcement notices also have effect in relation to hazardous substances contravention notices, subject to the specified⁶ modifications⁷.

- 1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.
- 2 Ie the Town and Country Planning Act 1990 ss 178-181 (as amended): see PARA 568 et seq ante.
- 3 Ie the modifications set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1), Sch 4 Pt 2. The provisions of the Town and Country Planning Act 1990 ss 178-181 (as amended), as so modified, are set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 5: regs 2(1), (2)(a), (5), 20(2). As to the modifications so set out see PARAS 1278-1281 post.
- 4 Ibid regs 2(1), (2)(a), (5), 20(1). References to sections of the Town and Country Planning Act 1990 mentioned in the Planning (Hazardous Substances) Regulations 1992 SI 1992/656, regs 20, 22 are to be construed, in those sections and in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended), as references to those sections as modified by those regulations in relation to hazardous substances control: reg 2(5).
- 5 Ie the Town and Country Planning Act 1990 s 285 (as amended) (see PARA 44 ante) and s 289 (as amended) (see PARA 648 ante).
- 6 Ie the modifications set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1), Sch 4 Pt 4. The provisions of the Town and Country Planning Act 1990 ss 285, 289 (as amended), as so modified, are set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 5: regs 2(1), (2)(a), (5), 22(3). As to the modifications so set out see PARAS 1286, 1295 post.
- 7 Ibid regs 2(1), (2)(a), (5), 22(1). See also note 4 supra.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/B. EFFECT OF NOTICES/1278. Execution and cost of works required by hazardous substances contravention notice.

1278. Execution and cost of works required by hazardous substances contravention notice.

Where any steps required by a hazardous substances contravention notice¹ to be taken are not taken within the period for compliance with the notice², the hazardous substances authority³ may:

- 4664 (1) enter the land⁴ and take the steps; and
- 4665 (2) recover from the person who is then the owner⁵ of the land any expenses reasonably incurred⁶ by the authority in doing so⁷.

Any person who wilfully obstructs a person acting in the exercise of the powers so conferred is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale⁸.

Where a copy of a hazardous substances contravention notice has been served in respect of any contravention of hazardous substances control⁹:

- 4666 (a) any expenses incurred by the owner or occupier of any land for the purpose of complying with the notice; and
- 4667 (b) any sums paid¹⁰ by the owner of any land in respect of expenses incurred by the hazardous substances authority in taking steps required by such a notice to be taken,

are deemed to be incurred or paid for the use and at the request of the person by whom the contravention of hazardous substances control was committed¹¹.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 Where different periods are specified for different steps under the Planning (Hazardous Substances) Act 1990 s 24(5)(b) (see PARA 1273 ante) in relation to a hazardous substances contravention notice, references in the Town and Country Planning Act 1990 s 178 (as amended) (as applied and amended for these purposes) and s 179 (as substituted) (as applied and amended for these purposes: see PARA 1279 post) to the period for compliance with a hazardous substances contravention notice, in relation to any step, are to the period at the end of which the step is required to have been taken: s 178(7) (s 178 applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1); the Town and Country Planning Act 1990 s 178(7) added for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1), Sch 4 Pt 2 para 5(e)).

3 As to hazardous substances authorities see PARAS 1219-1220 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 For the meaning of 'owner' para 17 note 1 ante.

6 In relation to enforcement notices, the expenses recoverable by a local planning authority under the Town and Country Planning Act 1990 s 178(1) (as substituted: see PARA 568 ante) are, until recovered, a charge that is binding on successive owners of the land to which the notice relates and the charge takes effect as from the date of the completion by the local planning authority of the steps required to be taken by the notice: see the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(2); and PARA 568 note 6 ante. Quære whether reg 14(2) also applies to expenses recoverable by a hazardous substances authority under the Town and Country Planning Act 1990 s 178(1) (as substituted) as applied and amended for these purposes.

7 Town and Country Planning Act 1990 s 178(1) (as applied (see note 2 supra); substituted by the Planning and Compensation Act 1991 s 7(1); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 5(a), (b)).

Regulations made under the Town and Country Planning Act 1990 may provide that (1) the Public Health Act 1936 s 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale); (2) s 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises); and (3) s 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act) shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a hazardous substances contravention notice: Town and Country Planning Act 1990 s 178(3) (as so applied; amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 5(a)). Regulations so made applying the Public Health Act 1936 s 289 may include adaptations and modifications for the purpose of giving the owner of land to which a hazardous substances contravention notice relates the right, as against all other persons interested in the land, to comply with the requirements of the hazardous substances contravention notice: Town and Country Planning Act 1990 s 178(4) (as so applied; amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 5(a), (d)). Quære whether the Town and Country Planning General Regulations 1992, SI 1992/1492, reg 14(1) (see PARA 568 note 7 ante) applies for these purposes. Regulations under the Town and Country Planning Act 1990 s 178(3) (as so applied and amended) may also provide for the charging on the land of any expenses recoverable by a hazardous substances authority under s 178(1) (as so substituted, applied and amended): s 178(5) (as so applied; amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 5(b)). See note 6 supra.

8 Town and Country Planning Act 1990 s 178(6) (as applied (see note 2 supra); substituted by the Planning and Compensation Act 1991 s 7(1)). For the meaning of 'the standard scale' see PARA 53 note 10 ante. As to offences by corporations see PARA 1212 ante at head (7) in the text.

9 As to the circumstances in which there is a contravention of hazardous substances control see PARA 1269 ante.

10 Ie under the Town and Country Planning Act 1990 s 178(1) (as substituted, applied and amended): see the text and notes 1-7 supra.

11 Ibid s 178(2) (as applied (see note 2 supra); amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 25, Sch 19 Pt I; and amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 5(a)-(c)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/B. EFFECT OF NOTICES/1279. Offence where hazardous substances contravention notice not complied with.

1279. Offence where hazardous substances contravention notice not complied with.

Where, at any time after the end of the period for compliance with a hazardous substances contravention notice¹, any steps required by the notice to be taken have not been taken, the person who is then the owner² of the land³ and any person other than the owner who is in control of the land is in breach of the notice⁴.

Where a person is in breach of a hazardous substances contravention notice, he is guilty of an offence and liable on conviction on indictment to a fine or on summary conviction to a fine not exceeding £20,000⁵; but in proceedings against any person for such an offence it is a defence for him to show that he did everything he could be expected to do to secure compliance with the notice⁶.

An offence under the above provisions⁷ may be charged by reference to any day or longer period of time and a person may be convicted of a second or subsequent offence by reference to any period of time following the preceding conviction for such an offence⁸. Where, however,:

- 4668 (1) a person charged with such an offence has not been served with a copy of the hazardous substances contravention notice; and
- 4669 (2) the notice is not contained in the appropriate register⁹,

it is a defence for him to show that he was not aware of the existence of the notice¹⁰.

In determining the amount of any fine to be imposed on a person convicted of an offence under the above provisions¹¹, the court must in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence¹².

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante; and as to the period for compliance see PARA 1278 note 2 ante.

2 For the meaning of 'owner' see PARA 17 note 1 ante.

3 For the meaning of 'land' see PARA 2 note 10 ante.

4 Town and Country Planning Act 1990 s 179(1) (s 179 substituted by Planning and Compensation Act 1991 s 8 and applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1); the Town and Country Planning Act 1990 s 179(1) further substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1), Sch 4 Pt 2 para 6(a)).

5 Town and Country Planning Act 1990 s 179(2), (8) (as substituted and applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 6(b)). As to offences by corporations see PARA 1212 ante at head (7) in the text.

6 Town and Country Planning Act 1990 s 179(3) (as substituted and applied: see note 4 supra).

7 Ie an offence under *ibid* s 179(2) (as substituted, applied and amended): see the text and note 5 supra.

8 *Ibid* s 179(6) (as substituted and applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 6(d)).

9 le the appropriate register kept under the Town and Country Planning Act 1990 s 188 (as applied and amended): see PARA 1275 ante.

10 Ibid s 179(7) (as substituted and applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 6(e)).

11 See note 7 supra.

12 Town and Country Planning Act 1990 s 179(9) (as substituted and applied: see note 4 supra). As to the court's obligation under s 179(9) (as substituted) see *R v Browning* [1996] 1 PLR 61, CA; and PARA 569 note 14 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/B. EFFECT OF NOTICES/1280. Effect of hazardous substances consent on hazardous substances contravention notice.

1280. Effect of hazardous substances consent on hazardous substances contravention notice.

Where, after the service of a copy of a hazardous substances contravention notice¹, hazardous substances consent² is granted for the presence of a hazardous substance³ on, over or under the land⁴ to which the notice relates, the notice ceases to have effect so far as inconsistent with that consent⁵.

The fact that a hazardous substances contravention notice has wholly or partly ceased to have effect by virtue of these provisions does not, however, affect the liability of any person for an offence in respect of a previous failure to comply, or secure compliance, with the notice⁶.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 Town and Country Planning Act 1990 s 180(1) (s 180 (as substituted: see note 6 infra)) applied by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1); the Planning (Hazardous Substances) Act 1990 s 180(1) further substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1), Sch 4 Pt 2 para 7(a)).

6 Town and Country Planning Act 1990 s 180(3) (as applied (see note 5 supra); substituted by the Planning and Compensation Act 1991 Sch 7 paras 8, 26; amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 7(c)). The Town and Country Planning Act 1990 s 180(2) (as so substituted) does not apply for these purposes: see the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 2 para 7(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(ii) Hazardous Substances Contravention Notices/B. EFFECT OF NOTICES/1281. Continuing effect of hazardous substances contravention notice.

1281. Continuing effect of hazardous substances contravention notice.

Compliance with a hazardous substances contravention notice¹ does not discharge that notice². Without prejudice to this, where a provision of a hazardous substances contravention notice requires:

- 4670 (1) a hazardous substance³ to be removed from the land⁴ to which the notice relates, the presence on, over or under that land of a quantity of that substance equal to or exceeding its controlled quantity⁵ at any time after the substance has been removed in compliance with the hazardous substances contravention notice is in contravention of that notice⁶;
- 4671 (2) the quantity of a hazardous substance on, over or under the land to which the notice relates to be reduced below a specified quantity, being greater than the controlled quantity, the presence on, over or under that land of a quantity of that substance equal to or in excess of the specified quantity at any time after the quantity of that substance has been reduced below the specified quantity in compliance with the hazardous substances contravention notice is in contravention of that notice⁷;
- 4672 (3) steps to be taken to remedy a failure to comply with a condition subject to which a hazardous substances consent⁸ was granted, after those steps have been taken no further steps may be taken which would constitute a breach of that condition, and the taking of such further steps is in contravention of that notice⁹.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 Town and Country Planning Act 1990 s 181(1) (s 181 (as substituted) applied by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 20(1); and further substituted for these purposes by reg 20(1), Sch 4 Pt 2 para 8).

3 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

4 For the meaning of 'land' see PARA 2 note 10 ante.

5 As to the power to prescribe the quantity of a hazardous substance that is the controlled quantity see PARA 1230 ante; and as to the quantity so prescribed see PARAS 1231-1233 ante.

6 Town and Country Planning Act 1990 s 181(2) (as applied and substituted: see note 2 supra).

7 Ibid s 181(3) (as applied and substituted: see note 2 supra).

8 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

9 Town and Country Planning Act 1990 s 181(4) (as applied and substituted: see note 2 supra). Section 178 (as applied and amended) (see PARA 1278 ante) and s 179 (as substituted, applied and amended) (see PARA 1279 ante) apply to the contravention of a hazardous substances contravention notice to which s 181 (as so applied and substituted) applies as if the period for compliance with the notice had expired on the date the contravention took place, but the hazardous substances authority may not enter the land under s 178(1) (as substituted, applied and amended) without, at least 28 days before its entry, serving on the owner or occupier of the land a notice of its intention to do so: s 181(5) (as applied and substituted: see note 2 supra). For the meaning of 'owner' see PARA 17 note 1 ante.

SUBSTANCES CONTROL/(iii) Transitional Exemptions/1282. Transitional exemptions; in general.

(iii) Transitional Exemptions

1282. Transitional exemptions; in general.

Where a hazardous substance¹ was present on, over or under any land² at any time within the period of 12 months immediately preceding 1 June 1992³, then subject to certain statutory conditions⁴, no offence was committed⁵ and no hazardous substances contravention notice⁶ might be issued in relation to it before the end of a six-month transitional period from that date⁷. Without prejudice to this transitional exemption, no offence was committed⁸, and no hazardous substances contravention notice might be issued, in respect of the presence of a hazardous substance without hazardous substances consent⁹ during the period of 28 days beginning with 1 June 1992¹⁰. Where an application for hazardous substances consent was received by the hazardous substances authority¹¹ within that 28-day period, no offence was committed¹², and no hazardous substances contravention notice might be issued, in respect of a hazardous substance included in the application and present on, over or under the land to which the application applied during the period beginning with the date on which the application was so received and ending on the determination of the application, or eight weeks after the application was so received, whichever was the earlier¹³.

The Planning (Control of Major-Accident Hazards) Regulations 1999¹⁴, which came into force on 20 April 1999¹⁵, made a number of amendments to the Planning (Hazardous Substances) Act 1990 and the Planning (Hazardous Substances) Regulations 1992¹⁶, in particular by prescribing new categories of hazardous substances and their controlled quantities¹⁷. No offence was committed¹⁸, and no hazardous substances contravention notice might be issued, until the end of the period of six months beginning with 20 April 1999¹⁹ in relation to a hazardous substance which was on, over or under any land, if:

- 4673 (1) the substance was present on, over or under the land at any time within the period of 12 months immediately preceding 20 April 1999²⁰ and was not a substance or quantity of substance for which hazardous substances consent was required before that date²¹; and
- 4674 (2) the substance had not been present during the six-month transitional period²² in a quantity greater in aggregate than the established quantity²³.

The Secretary of State's²⁴ power²⁵ to issue temporary exemption directions and the like power of the National Assembly for Wales²⁶ have already been discussed²⁷.

1 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

2 For the meaning of 'land' see PARA 1216 note 6 ante.

3 Ie at any time within the establishment period: Planning (Hazardous Substances) Act 1990 s 26(1), (3) (as originally enacted); and see PARA 1249 note 3 ante.

4 See ibid s 26(1), (2) (as originally enacted).

5 Ie under ibid s 23 (as amended): see PARA 1269 ante.

6 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

7 See the Planning (Hazardous Substances) Act 1990 ss 11(8), 26(1), (2), (3) (as originally enacted), s 26(2A) (added by the Planning and Compensation Act 1991 s 25, Sch 3 para 14).

- 8 See note 5 supra.
 - 9 For the meaning of 'hazardous substances consent' see PARA 1234 ante.
 - 10 See the Planning (Hazardous Substances) Act 1990 (Commencement and Transitional Provisions) Order 1992, SI 1992/725, art 4(1), (3).
 - 11 As to hazardous substances authorities see PARAS 1219-1220 ante.
 - 12 See note 5 supra.
 - 13 Planning (Hazardous Substances) Act 1990 (Commencement and Transitional Provisions) Order 1992, SI 1992/725, art 4(2).
 - 14 Ie the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981.
 - 15 See ibid reg 1(1).
 - 16 Ie the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended): see PARA 1230 et seq ante.
 - 17 See ibid reg 3(1), Sch 1 (as substituted and amended); and PARAS 1230-1233 ante.
 - 18 See note 5 supra.
 - 19 Ie 'the transitional period': see the Planning (Hazardous Substances) Act 1990 s 11(8) (substituted for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (2); applied by the Planning (Hazardous Substances) Act 1990 s 26(3)).
 - 20 Ie 'the establishment period': see the Planning (Hazardous Substances) Act 1990 s 11(8) (as substituted and applied: see note 19 supra).
 - 21 Ie before 'the relevant date': see ibid s 11(8) (as substituted and applied: see note 19 supra).
 - 22 See note 19 supra.
 - 23 Planning (Hazardous Substances) Act 1990 s 26(1) (substituted for these purposes by the Planning (Control of Major-Accident Hazards) Regulations 1999, SI 1999/981, reg 4(1), (3)); Planning (Hazardous Substances) Act 1990 s 26(2A) (as added: see note 7 supra). 'The established quantity' means, in relation to any land, the maximum quantity which was present on, over or under the land at any one time within the establishment period: s 11(8) (as substituted and applied: see note 19 supra).
- At the date at which this title states the law, the Law Commission had proposed the repeal of s 26 (as amended) as the transitional period thereunder is now spent: see *Statute Law Revision--Town and Country Planning Repeal Proposals* (Law Com, June 2005).
- 24 As to the Secretary of State see PARA 19 ante.
 - 25 Ie under the Planning (Hazardous Substances) Act 1990 s 27 (as amended): see PARA 1236 ante.
 - 26 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
 - 27 See PARA 1236 ante.

UPDATE

1282 Transitional exemptions; in general

TEXT AND NOTES 18-23--Planning (Hazardous Substances) Act 1990 s 26 repealed:
Statute Law (Repeals) Act 2008.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/ (iv) Injunctions/1283. Enforcement of hazardous substances control by injunction.

(iv) Injunctions

1283. Enforcement of hazardous substances control by injunction.

Where a hazardous substances authority¹ considers it necessary or expedient for any actual or apprehended contravention of hazardous substances control² to be restrained by injunction, the authority may apply to the court³ for an injunction, whether or not it has exercised or is proposing to exercise any of its other powers under the Planning (Hazardous Substances) Act 1990⁴.

On such an application the court may grant such an injunction as the court thinks appropriate for the purpose of restraining the contravention⁵.

Rules of court may, in particular, provide for such an injunction to be issued against a person whose identity is unknown⁶. Without prejudice to the court's power to make an order for service by an alternative method or an order dispensing with service⁷, an applicant for such an injunction must, in the claim form, describe the defendant by reference to (1) a photograph; (2) a thing belonging to or in the possession of the defendant; or (3) any other evidence, with sufficient particularity to enable service to be effected⁸. The applicant must file⁹ in support of the application evidence by witness statement or affidavit:

- 4675 (a) verifying that he was unable to ascertain, within the time reasonably available to him, the defendant's identity;
- 4676 (b) setting out the action taken to ascertain the defendant's identity; and
- 4677 (c) verifying the means by which the defendant has been described in the application and that the description is the best that the applicant is able to provide¹⁰.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 As to the circumstances where there is a contravention of hazardous substances control see PARA 1269 ante.

3 For these purposes, 'the court' means the High Court or the county court: Planning (Hazardous Substances) Act 1990 s 26AA(4) (s 26AA added by the Planning and Compensation Act 1991 s 25, Sch 3 para 15).

4 Planning (Hazardous Substances) Act 1990 s 26AA(1) (as added: see note 3 supra). As to injunctions generally see CIVIL PROCEDURE vol 11 (2009) PARA 331 et seq.

5 Ibid s 26AA(2) (as added: see note 3 supra).

6 Planning (Hazardous Substances) Act 1990 s 26AA(3) (as added: see note 3 supra).

7 As to service of court documents see CIVIL PROCEDURE vol 11 (2009) PARA 138 et seq.

8 CPR Sch 1 RSC Ord 110 r 1(2), (4), Sch 2 CCR Ord 49 r 7(2), (4).

9 For the meaning of 'filing' see PARA 585 note 11 ante.

10 CPR Sch 1 RSC Ord 110 r 1(3), Sch 2 CCR Ord 49 r 7(3). As to witness statements and affidavits see generally CIVIL PROCEDURE vol 11 (2009) PARA 979 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(9) CONTRAVENTION OF HAZARDOUS SUBSTANCES CONTROL/(v) Enforcement in relation to the Crown/1284. Enforcement in relation to the Crown; in general.

(v) Enforcement in relation to the Crown

1284. Enforcement in relation to the Crown; in general.

At the date at which this title states the law, notwithstanding any interest of the Crown in Crown land¹, any restrictions or powers imposed or conferred by the provisions of the Planning (Hazardous Substances) Act 1990 relating to enforcement² apply and are exercisable³ in relation to Crown land to the extent of any interest⁴ in it for the time being held otherwise than by or on behalf of the Crown⁵.

As from a day to be appointed⁶, however, the above provisions are repealed by the Planning and Compulsory Purchase Act 2004⁷ and new provision is made regarding enforcement in relation to the Crown. As from such a day, and despite the general application of the Planning (Hazardous Substances) Act 1990 to the Crown⁸, no act or omission done or suffered by or on behalf of the Crown constitutes an offence under that 1990 Act⁹. A local planning authority¹⁰ must not take any step for the purposes of enforcement in relation to Crown land¹¹ unless it has the consent of the appropriate authority¹²; and the appropriate authority may give such consent subject to such conditions as it thinks appropriate¹³. A step taken for the purposes of enforcement is anything done in connection with the enforcement of anything required to be done¹⁴ or prohibited by or under the Planning (Hazardous Substances) Act 1990¹⁵; and this includes entering land, bringing proceedings and the making of an application¹⁶ but does not include service of a notice¹⁷ or the making of an order, other than by a court¹⁸.

1 For the meanings of 'Crown interest' and 'Crown land' for these purposes see PARA 1214 notes 1-2 ante.

2 I.e. the Planning (Hazardous Substances) Act 1990 ss 23-26AA (as amended); see PARA 1269 et seq ante.

3 No hazardous substances contravention notice may, however, be issued or served in relation to land which is for the time being Crown land, except with the consent of the appropriate authority: see *ibid* s 31(2) (as prospectively repealed); and PARA 1214 ante. Nor may an order be made under s 26AA (as added) (see PARA 1283 ante) without such consent: see PARA 1214 ante. For the meaning of 'the appropriate authority' for these purposes see PARA 1214 note 5 ante.

4 A person who is entitled to occupy Crown land by virtue of a licence in writing is treated for these purposes as having an interest in land: see *ibid* s 31(4); and PARA 1214 note 4 ante.

5 See *ibid* s 31(1) (as prospectively repealed); and PARA 1214 ante.

6 I.e. as from a day to be appointed under the Planning and Compulsory Purchase Act 2004 s 121. At the date at which this title states the law, no such day had been appointed.

7 See *ibid* ss 79(4), 120, Sch 3 para 8(1), (2), Sch 9. At the date at which this title states the law, these repeals were not in force.

8 See the Planning (Hazardous Substances) Act 1990 s 30A (as prospectively added); and PARA 1215 ante. Section 23 (as amended) (offences: see PARA 1269 ante), s 26AA (as added) (injunctions: see PARA 1283 ante), s 36A (as added) (warrants to enter land: see PARA 1228 ante) and s 36B(2) (as added) (offences relating to rights of entry: see PARA 1229 ante) do not, however, apply: see PARA 1215 note 2 ante.

9 *Ibid* s 30C(1) (ss 30C(1)-(6), 30D(1)-(3) added by the Planning and Compulsory Purchase Act 2004 s 84(4), as from a day to be appointed: see note 6 supra).

- 10 As to local planning authorities see PARA 28 et seq ante.
- 11 For the meaning of 'Crown land' for these purposes see PARA 1215 ante.
- 12 Planning (Hazardous Substances) Act 1990 s 30C(2) (as added: see note 9 supra). For the meaning of 'the appropriate authority' for these purposes see PARA 1215 note 11 ante.
- 13 Ibid s 30C(3) (as added: see note 9 supra).
- 14 To the extent that an interest in land is a Crown interest or a Duchy interest, anything which requires or is permitted to be done by or in relation to the owner of the interest in land must be done by or in relation to the appropriate authority: ibid s 30D(1), (2) (as added: see note 9 supra). For the meanings of 'Crown interest' and 'Duchy interest' for these purposes see PARA 1215 notes 9-10 ante. An interest in land includes an interest only as occupier of the land: s 30D(3) (as so added).
- 15 Ibid s 30C(4) (as added: see note 9 supra).
- 16 Ibid s 30C(5) (as added: see note 9 supra).
- 17 As to the service of notices generally see PARA 1212 ante at head (5) in the text.
- 18 Planning (Hazardous Substances) Act 1990 s 30C(6) (as added: see note 9 supra).

UPDATE

1284 Enforcement in relation to the Crown; in general

TEXT AND NOTES 6, 7--Day now appointed and repeals in force: SI 2006/1281.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(10) VALIDITY OF NOTICES AND DECISIONS/1285. Validity of hazardous substances contravention notices.

(10) VALIDITY OF NOTICES AND DECISIONS

1285. Validity of hazardous substances contravention notices.

The validity of a hazardous substances contravention notice¹ may not, except by way of an appeal², be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought³. This restriction does not, however, apply to proceedings brought for failure to take any steps required by such a notice⁴ against a person who:

- 4678 (1) has held an interest in the land⁵ since before the hazardous substances contravention notice was issued⁶;
- 4679 (2) did not have a copy of the hazardous substances contravention served on him⁷; and
- 4680 (3) satisfies the court that he did not know and could not reasonably have been expected to know that the hazardous substances contravention notice had been issued⁸ and that his interests have been substantially prejudiced by the failure to serve him with a copy of it⁹.

1 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 le an appeal under the Town and Country Planning Act 1990 Pt VII (ss 171A-196C) (as amended) (enforcement: see PARA 551 et seq ante) as applied to the enforcement of hazardous substances control by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, regs 18-22 (see PARA 1290 et seq post).

3 Town and Country Planning Act 1990 s 285(1) (substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1), Sch 4 para 10(a)).

4 le proceedings under the Town and Country Planning Act 1990 s 179 (as substituted), as applied and amended by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended): see PARA 1279 ante.

5 For the meaning of 'land' see PARA 2 note 10 ante.

6 Town and Country Planning Act 1990 s 285(2)(a) (s 285 applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1); amended, as so applied, by reg 22(1), Sch 4 para 10(b)). As to issuing a hazardous substances contravention notice see PARA 1270 ante.

7 Town and Country Planning Act 1990 s 285(2)(b) (as applied and amended: see note 6 supra). As to the service of a copy of the hazardous substances contravention notice see PARA 1274 ante.

8 Ibid s 285(2)(c)(i) (as applied and amended: see note 6 supra).

9 Ibid s 285(2)(c)(ii) (as applied and amended: see note 6 supra). Section 285(3), (4) (see PARA 44 ante) does not apply for these purposes: Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1) Sch 4 para 10(c).

UPDATE

1285 Validity of hazardous substances contravention notices

NOTE 3--See *Staffordshire CC v Challinor* [2007] EWCA Civ 864, [2008] JPL 392.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(10) VALIDITY OF NOTICES AND DECISIONS/1286. Validity of Secretary of State's or Assembly's decisions etc.

1286. Validity of Secretary of State's or Assembly's decisions etc.

If any person is aggrieved¹ by any specified decision² of the Secretary of State³ or, in relation to Wales, of the National Assembly for Wales⁴, or by any specified correction notice⁵ and wishes to question its validity on the grounds:

- 4681 (1) that it is not within the statutory powers⁶; or
- 4682 (2) that any of the relevant requirements⁷ have not been complied with in relation to that decision,

he may, within six weeks from the date on which the decision is taken or the correction notice issued, make an application to the High Court⁸.

If the hazardous substances authority⁹ which made the decision on the application to which the proceedings relate or, as the case may be, referred the application wishes to question the validity of any such decision on any of the grounds mentioned in head (1) or head (2) above, the authority may¹⁰, within six weeks from the date on which the decision is taken, make an application to the High Court¹¹.

On any such application the High Court:

- 4683 (a) may by interim order suspend the operation of the decision the validity of which is questioned by the application until the final determination of the proceedings;
- 4684 (b) if satisfied that the decision in question is not within the statutory powers, or that the interests of the applicant have been substantially prejudiced¹² by a failure to comply with any of the relevant requirements in relation to it, may quash that decision¹³.

Except as provided above, the validity of any such decision or correction notice¹⁴ may not be questioned in any legal proceedings whatsoever¹⁵.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 Ie under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) (reference of applications to the Secretary of State or to the National Assembly for Wales: see PARAS 1248, 1268 ante) or s 21 (as amended) (appeals relating to hazardous substances consent: see PARAS 1287-1289 post).

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 22 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 The Planning (Hazardous Substances) Act 1990 s 22 (as amended) (see the text and notes 1-4 supra, 6-15 infra) applies to a correction notice issued under the Planning and Compulsory Purchase Act 2004 s 57 (see PARA 56 ante) as if it were a decision of the Secretary of State or, as the case may be, of the Assembly under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) or s 21 (as amended), if the decision document in respect of which the correction notice is given records a decision mentioned in the Planning and Compulsory Purchase Act 2004 s 59(4)(g) (ie a decision under the Planning (Hazardous Substances) Act 1990 s 20 (as amended) or s 21 (as amended)): Planning and Compulsory Purchase Act 2004 s 58(6).

6 Ie the powers of the Planning (Hazardous Substances) Act 1990.

7 For these purposes, the relevant requirements', in relation to any decision, means any requirements of the Planning (Hazardous Substances) Act 1990 or the Town and Country Planning Act 1990 or of the Tribunals and Inquiries Act 1992, or of any order, regulations or rules made under the Planning (Hazardous Substances) Act 1990 or under either of those Acts which are applicable to that decision: Planning (Hazardous Substances) Act 1990 s 22(4) (amended by the Environmental Protection Act 1990 s 144, Sch 13 paras 1, 7; the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 33).

8 Planning (Hazardous Substances) Act 1990 s 22(1); and see note 5 supra. As to the application of s 22 (as amended) to Crown land and ecclesiastical property see PARAS 1214-1215, 1217 ante.

9 As to hazardous substances authorities see PARAS 1219-1220 ante.

10 Ie without prejudice to the Planning (Hazardous Substances) Act 1990 s 22(1): see the text and notes 1-8 supra.

11 Ibid s 22(2).

12 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

13 Planning (Hazardous Substances) Act 1990 s 22(3).

14 Ie any such decision as is mentioned in ibid s 22(1): see the text and notes 1-8 supra; and as to correction notices see note 5 supra.

15 Ibid s 22(5). Nothing in s 22(5), however, affects the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State or the Assembly to take any such decision as is there mentioned: s 22(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(i) Rights of Appeal/A. APPEALS REGARDING HAZARDOUS SUBSTANCES CONSENTS/1287. Right of appeal.

(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL

(i) Rights of Appeal

A. APPEALS REGARDING HAZARDOUS SUBSTANCES CONSENTS

1287. Right of appeal.

Where a hazardous substances authority¹ refuses an application for hazardous substances consent² or an application for continuation of hazardous substances consent³ or an application for any consent, agreement or approval of the authority required by a condition imposed on the grant of such consent, or grants it subject to conditions, the applicant may, if he is aggrieved⁴ by the authority's decision, appeal to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶.

A person who has made an application for hazardous substances consent may also appeal to the Secretary of State or to the Assembly if the hazardous substances authority has neither:

- 4685 (1) given notice to the applicant of its decision on the application; nor
- 4686 (2) given notice to him that the application has been referred to the Secretary of State or to the Assembly in accordance with directions given⁷ by him or by the Assembly,

within such period as may be prescribed⁸, or within such extended period as may at any time be agreed upon in writing between the applicant and the hazardous substances authority; and for these purposes in such a case the authority is deemed to have decided to refuse the application⁹.

Any such appeal must be made by notice served in the prescribed manner within such period as may be prescribed¹⁰.

1 As to hazardous substances authorities see PARAS 1219-1220 ante.

2 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

3 Ie an application under the Planning (Hazardous Substances) Act 1990 s 17(1); see PARA 1263 ante.

4 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

5 As to the Secretary of State see PARA 19 ante.

6 Planning (Hazardous Substances) Act 1990 s 21(1). As to the transfer of functions under s 21 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to the power of the council of a county to direct that any expenses incurred by it under the Planning (Hazardous Substances) Act 1990 s 21 (as amended) shall be treated as special expenses see PARA 1225 ante; as to the application of s 21 (as amended) to Crown land see PARAS 1214-1215 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 21 (as amended) see PARA 1234 note 5 ante.

7 le under *ibid* s 20 (as amended): see PARAS 1248, 1268 ante.

8 As to the period so prescribed see PARA 1288 post. For the meaning of 'prescribed' see PARA 1216 note 1 ante.

9 Planning (Hazardous Substances) Act 1990 s 21(2).

10 *Ibid* s 21(3). As to the procedure on such an appeal see PARAS 1288, 1297 et seq post.

UPDATE

1287 Right of appeal

TEXT AND NOTE 10--Planning (Hazardous Substances) Act 1990 s 21(3A)-(3D) added: Planning Act 2008 Sch 11 paras 1, 6 (in force in relation to England).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(i) Rights of Appeal/A. APPEALS REGARDING HAZARDOUS SUBSTANCES CONSENTS/1288. Procedure for making appeal.

1288. Procedure for making appeal.

An appeal to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² against a decision or failure to take a decision relating to hazardous substances³ must be made within six months of:

- 4687 (1) the date of the notice of the decision giving rise to the appeal; or
- 4688 (2) in the case of an appeal where the hazardous substances authority⁴ has neither given notice to the applicant of its decision nor given notice that the application has been referred to the Secretary of State or to the Assembly⁵, the expiry of the period within which a hazardous substances authority must give written notice of its decision or notice that the application has been so referred⁶,

or within such longer period as the Secretary of State or the Assembly may, at any time, allow⁷.

Such an appeal must:

- 4689 (a) be made to the Secretary of State or the Assembly on a form obtained from him or from the Assembly;
- 4690 (b) include the information specified in the form; and
- 4691 (c) be accompanied by the specified documents⁸ and the required⁹ certificate¹⁰.

The documents so specified are:

- 4692 (i) the application made to the hazardous substances authority which has occasioned the appeal;
- 4693 (ii) any notices and certificates¹¹ which accompanied the application;
- 4694 (iii) any correspondence with the authority relating to the application; and
- 4695 (iv) the notice of decision, if any¹².

An appeal may not be entertained by the Secretary of State or by the Assembly unless it is accompanied by whichever of the prescribed certificates¹³ is appropriate, signed by or on behalf of the appellant¹⁴.

The appellant must send a copy of the completed notice of appeal form and accompanying certificate to the hazardous substances authority at the same time as the appeal is made to the Secretary of State or to the Assembly¹⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie an appeal under the Planning (Hazardous Substances) Act 1990 s 21 (as amended): see PARA 1287 ante.

4 As to hazardous substances authorities see PARAS 1219-1220 ante.

5 Ie in the case of an appeal under the Planning (Hazardous Substances) Act 1990 s 21(2): see PARA 1287 ante.

6 Ie the period specified in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 11(3): see PARA 1247 ante.

7 Ibid regs 2(1), (2)(a), 13(1).

8 Ie the documents specified in ibid reg 13(3): see heads (i)-(iv) in the text.

9 Ie the certificate required by ibid reg 13(4): see the text and notes 13-14 infra.

10 Ibid reg 13(2). Appeal forms are available from the Planning Inspectorate at Tollgate House, Houlton Street, Bristol BS2 9DJ (see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 49) or at Room1-004, Cathays Park, Cardiff CF10 3NQ (see National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 47).

11 Ie any notices and certificates required by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 6 (see PARA 1240 ante) and reg 7 (see PARA 1242 ante).

12 Ibid reg 13(3).

13 Ie whichever of ibid reg 7(1), Sch 2, Form 5 Certificates A-D is appropriate. The required notice referred to in Sch 2, Form 5 Certificates B and C must, in the case of an appeal under the Planning (Hazardous Substances) Act 1990 s 21 (as amended), be a notice given on the Planning (Hazardous Substances) Regulations 1992 Sch 2, Form 7: reg 13(5).

14 Ibid reg 13(4).

15 Ibid reg 13(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(i) Rights of Appeal/A. APPEALS REGARDING HAZARDOUS SUBSTANCES CONSENTS/1289. Powers on determination of appeal.

1289. Powers on determination of appeal.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may allow or dismiss an appeal against a decision or a failure to take a decision relating to hazardous substances³ or may reverse or vary any part of the decision of the hazardous substances

authority⁴, whether or not the appeal relates to that part of it, and may deal with the application as if it had been made to him or to the Assembly in the first instance⁵.

Before so determining an appeal, the Secretary of State or the Assembly must, if either the applicant or the hazardous substances authority so wishes, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for the purpose⁶. The procedure on such appeals is discussed below⁷.

The decision of the Secretary of State or of the Assembly on any such appeal is final⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le an appeal under the Planning (Hazardous Substances) Act 1990 s 21 (as amended): see PARA 1287 ante.

4 As to hazardous substances authorities see PARAS 1219-1220 ante.

5 Planning (Hazardous Substances) Act 1990 s 21(4).

6 Ibid s 21(5). As to the application of s 21 (as amended) to Crown land see PARA 1214 ante; and as to when two or more bodies corporate are treated as one person for the purposes of s 21 (as amended) see PARA 1234 note 5 ante.

7 Ibid s 21(8), Schedule (as amended) applies to such appeals: see PARA 1297 et seq post.

8 Ibid s 21(6). As to questioning of the validity of such decisions by the Secretary of State or the Assembly see PARA 1286 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(i) Rights of Appeal/B. APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES/(A) Appeals to the Secretary of State or the Assembly/1290. Right of appeal.

B. APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

(A) APPEALS TO THE SECRETARY OF STATE OR THE ASSEMBLY

1290. Right of appeal.

A person having an interest in the land¹ to which a hazardous substances contravention notice² relates or a relevant occupier³ may appeal to the Secretary of State⁴ or, in relation to Wales, to the National Assembly for Wales⁵ against the notice, whether or not a copy of it has been served on him⁶.

An appeal may be brought on any of the following grounds:

- 4696 (1) that, in respect of any contravention of hazardous substances control⁷ specified in the notice, hazardous substances consent⁸ ought to be granted for the quantity of the hazardous substance⁹ present on, over or under the land or, as the case may be, the condition concerned ought to be discharged;

- 4697 (2) that the matters alleged to constitute a contravention of hazardous substances control have not occurred;
- 4698 (3) that those matters, if they occurred, do not constitute a contravention of hazardous substances control;
- 4699 (4) that copies of the hazardous substances contravention notice were not duly served¹⁰;
- 4700 (5) that the steps required by the notice to be taken exceed what is necessary to remedy any contravention of hazardous substances control;
- 4701 (6) that any period specified in the notice¹¹ falls short of what should reasonably be allowed¹².

If any person appeals against a hazardous substances contravention notice, the notice is of no effect¹³ pending the final determination or the withdrawal of the appeal¹⁴.

Where any person has appealed to the Secretary of State or to the Assembly against a hazardous substances contravention notice, no person is entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed¹⁵.

The statutory provisions relating to appeals against enforcement notices¹⁶ apply to appeals against hazardous substances contravention notices, subject to the specified¹⁷ modifications¹⁸.

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

3 For these purposes, 'relevant occupier' means a person who (1) on the date on which the hazardous substances contravention notice is issued occupies the land to which the notice relates by virtue of a licence; and (2) continues so to occupy the land when the appeal is brought: Town and Country Planning Act 1990 s 174(6) (amended by the Planning and Compensation Act 1991 ss 32, 84(6), Sch 7 paras 8, 22, Sch 19 Pt I; applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); amended for these purposes by reg 18(1), Sch 4 Pt 1 para 1(f)).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Town and Country Planning Act 1990 s 174 (as amended and applied) and the Planning (Hazardous Substances) Act 1990 s 25 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Town and Country Planning Act 1990 s 174(1) (as applied (see note 3 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 1(a)).

7 As to the circumstances in which there is a contravention of hazardous substances control see PARA 1269 ante.

8 For the meaning of 'hazardous substances consent' see PARA 1234 ante.

9 As to the power to prescribe hazardous substances and a controlled quantity of such substances see PARA 1230 ante; and as to the substances and quantity so prescribed see PARAS 1231-1233 ante.

10 Ie were not served as required by the Planning (Hazardous Substances) Act 1990 s 24(4): see PARA 1274 ante.

11 Ie in accordance with ibid s 24(5)(b): see PARA 1273 ante.

12 Town and Country Planning Act 1990 s 174(2) (as applied (see note 3 supra); substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 1(b)).

13 Ie subject to regulations under the Planning (Hazardous Substances) Act 1990 s 25 (as amended): see note 14 infra. Such regulations may make different provision for different cases or descriptions of cases: s 25(3).

14 Ibid s 25(2) (amended by the Planning and Compensation Act 1991 s 25, Sch 3 para 13). The Planning (Hazardous Substances) Act 1990 s 25(2) (as so amended) is subject to any order under the Town and Country Planning Act 1990 s 289(4A) (as added) (see PARA 648 ante), as applied by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1) (see PARA 1295 post): regs 2(1), (2)(a), (5), 22(2).

15 Planning (Hazardous Substances) Act 1990 s 25(4).

16 Ie the Town and Country Planning Act 1990 s 174 (as amended) (see PARA 603 ante), s 175(3), (6) (see PARA 603 ante), s 176 (as amended) (see PARA 609 ante) and s 177 (as amended) (see PARA 610 ante).

17 Ie the modifications set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt I. The provisions of the Town and Country Planning Act 1990 s 174 (as amended), s 175(3), (6), s 176 (as amended) and s 177 (as amended), as so modified, are set out in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 5: reg 18(2). As to the modifications so set out see the text and notes 1-12 supra; and PARAS 1291-1293 post.

18 Ibid reg 18(1). References to sections of the Town and Country Planning Act 1990 mentioned in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18 are to be construed, in those sections and in the Planning (Hazardous Substances) Regulations 1992, SI 1992/656 (as amended), as references to those sections as modified by those regulations in relation to hazardous substances control: reg 2(1), (2)(a), (5).

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1291. Procedure for making appeal.

An appeal against a hazardous substances contravention notice¹ must be made either:

4702 (1) by giving written notice of the appeal to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ before the date specified in the hazardous substances contravention notice as the date on which it is to take effect⁴; or

4703 (2) by sending such notice to him or to the Assembly in a properly addressed and prepaid letter posted to him or to it at such time that, in the ordinary course of post, the letter would be delivered before that date⁵.

Such a notice must be accompanied by a copy of the hazardous substances contravention notice, together with a statement:

4704 (a) specifying the grounds on which the appeal is being made against the hazardous substances contravention notice; and

4705 (b) setting out the appellant's submissions in relation to each ground of appeal⁶.

If, where more than one ground is specified in that statement, the appellant does not in that statement give information required under head (b) above in relation to each of those grounds, the Secretary of State or the Assembly may determine the appeal without considering any ground as to which the appellant has failed in that statement to give such information⁷.

A person who appeals against a hazardous substances contravention notice must, at the same time as notice of the appeal is given or sent to the Secretary of State or to the Assembly under

the above provisions, serve on the hazardous substances authority⁸ a copy of the notice of appeal and accompanying material required⁹ to be submitted¹⁰. The hazardous substances authority must, within 28 days of being served with the notice of appeal, serve on the Secretary of State or the Assembly and on the appellant a statement:

- 4706 (i) setting out the authority's submissions in relation to each ground of appeal; and
- 4707 (ii) indicating whether it would be prepared to grant hazardous substances consent for the presence on, over or under the land¹¹ of any quantity of the hazardous substances to which the hazardous substances contravention notice relates and, if so, particulars of the conditions, if any, which the authority would wish to impose on such consent¹².

The hazardous substances authority must, within that 28-day period, give notice of the appeal to occupiers of properties in the locality of the site to which the hazardous substances contravention notice relates¹³.

The Secretary of State or the Assembly must¹⁴, if either the appellant or the hazardous substances authority so desires, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or by the Assembly for the purpose¹⁵. The procedure on such appeals is discussed below¹⁶.

1 Ie an appeal under the Town and Country Planning Act 1990 s 174(1) (as applied and amended for these purposes): see PARA 1290 ante. For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 ss 174, 175 (as amended and applied for the purposes set out in the text), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 As to the date on which a hazardous substances contravention notice takes effect see PARA 1273 ante.

5 Town and Country Planning Act 1990 s 174(3)(a), (b) (substituted by the Planning and Compensation Act 1991 s 6(1); applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); amended, as so applied, by reg 18(1), Sch 4 Pt 1 para 1(c)). At the date at which this title states the law, no amending regulations had been made applying the Town and Country Planning Act 1990 s 174(3)(c) (as added) (use of electronic communications: see PARA 603 ante) for these purposes.

6 Town and Country Planning Act 1990 s 174(4) (as applied (see note 5 supra); substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 1(d)).

7 Town and Country Planning Act 1990 s 174(5) (as applied (see note 5 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 1(e)).

8 As to hazardous substances authorities see PARAS 1219-1220 ante.

9 Ie under the Town and Country Planning Act 1990 s 174(4) (as applied and substituted): see the text and note 6 supra.

10 Planning (Hazardous Substances) Regulations 1992 SI 1992/656, regs 2(1), (2) (a), (5), 19(1).

11 For the meaning of 'land' see PARA 1216 note 6 ante.

12 Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 19(2).

13 Ibid reg 19(3).

14 Ie subject to the Town and Country Planning Act 1990 s 176(4) (as applied and amended): see PARA 1292 note 9 post.

15 Ibid s 175(3) (applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); amended, as so applied, by Sch 4 Pt 1 para 2(a)).

16 The Town and Country Planning Act 1990 Sch 6 (as amended) (see PARA 621 et seq ante, PARA 1302 post) applies to appeals under s 174 (as amended), including appeals under s 174 (as amended) as applied by regulations under the Planning (Hazardous Substances) Act 1990 s 25(1) (see PARA 1272 ante): Town and Country Planning Act 1990 s 175(6) (applied for these purposes by Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); amended, as so applied, by Sch 4 Pt 1 para 2(b)).

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1292. Powers on determination of appeal; in general.

On an appeal against a hazardous substances contravention notice¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 4708 (1) correct any defect, error or misdescription in the hazardous substances contravention notice; or
- 4709 (2) vary the terms of the hazardous substances contravention notice,

if satisfied that the correction or variation will not cause injustice to the appellant or the hazardous substances authority⁴.

Where the Secretary of State or the Assembly determines to allow the appeal, he or it may quash the notice⁵; and he or the Assembly must give any directions necessary to give effect to his or its determination on the appeal⁶.

The Secretary of State or the Assembly:

- 4710 (a) may dismiss an appeal if the appellant fails to submit a statement in writing⁷; and
- 4711 (b) may allow an appeal and quash the hazardous substances contravention notice if the hazardous substances authority fails⁸ to serve the specified statement⁹.

Where it would otherwise be a ground for determining an appeal against a hazardous substances contravention notice in favour of the appellant that a person required to be served with a copy of the hazardous substances contravention notice was not served, the Secretary of State or the Assembly may disregard that fact if neither the appellant nor that person has been substantially prejudiced¹⁰ by the failure to serve him¹¹.

1 le an appeal under the Town and Country Planning Act 1990 s 174 (as applied and amended): see PARAS 1290-1291 ante. For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to transfer of functions under the Town and Country Planning Act 1990 s 176 (as applied and amended for the purposes set out in the text), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Town and Country Planning Act 1990 s 176(1) (applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); the Town and Country Planning Act 1990 s 176(1) substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 23; and amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1), Sch 4 Pt 1 para 3(a)). As to hazardous substances authorities see PARAS 1219-1220 ante. The Town and Country Planning Act 1990 s 176(1) (as substituted) does not permit the inspector to add anything to an enforcement notice (and hence to a hazardous substances enforcement notice) which the authority could not have included: see *Tandridge District Council v Verrechia* [2000] QB 318, [1999] 3 All ER 247, CA.

5 Town and Country Planning Act 1990 s 176(2) (as applied (see note 4 supra); substituted by the Planning and Compensation Act 1991 Sch 7 paras 8, 23).

6 Town and Country Planning Act 1990 s 176(2A) (as applied (see note 4 supra); substituted by the Planning and Compensation Act 1991 Sch 7 paras 8, 23). By virtue of the Planning (Consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 5, the Planning (Hazardous Substances) Act 1990 s 25 (as amended) (see PARAS 1272, 1291 ante) had effect, until a day to be appointed by the Secretary of State, with the addition of the following subsection:

411 '(5) Subsection (5) of section 250 of the Local Government Act 1972 (which authorises a minister holding an inquiry under that section to make orders with respect to the costs of the parties) shall apply in relation to any proceedings before the Secretary of State on an appeal under this section as if those proceedings were an inquiry held by the Secretary of State under section 250'.

The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

7 If the appellant fails to comply with the Town and Country Planning Act 1990 s 174(4) (as applied and substituted): see PARA 1291 ante.

8 If the appellant fails to comply with the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 19(2): see PARA 1291 ante.

9 Town and Country Planning Act 1990 s 176(3) (as applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 3(b)). If the Secretary of State or the Assembly proposes to dismiss an appeal under the Town and Country Planning Act 1990 s 176(3) (a) (as so applied and amended) (see head (a) in the text) or to allow an appeal and quash the hazardous substances contravention notice under s 176(3)(b) (as so applied and amended) (see head (b) in the text), he or the Assembly need not comply with s 175(3) (as applied and amended) (see PARA 1291 ante): s 176(4) (as applied (see note 4 supra); amended by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 3(c)).

10 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

11 Town and Country Planning Act 1990 s 176(5) (as applied (see note 4 supra); amended by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 3(c)).

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1293. Grant or modification of hazardous substances consent on appeals against hazardous substances contravention notices.

On the determination of an appeal against a hazardous substances contravention notice¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may:

- 4712 (1) grant hazardous substances consent⁴ for the presence of the hazardous substance⁵ on, over or under the land⁶ to which the hazardous substances contravention notice relates or on, over or under part of that land;
- 4713 (2) discharge any condition⁷ subject to which hazardous substances consent was granted⁸.

In considering whether so to grant hazardous substances consent, the Secretary of State or the Assembly must have regard to the specified⁹ considerations¹⁰.

In relation to a grant of hazardous substances consent or a determination under the above provisions the Secretary of State's or the Assembly's decision is final¹¹.

1 le an appeal under the Town and Country Planning Act 1990 s 174 (as applied and amended): see PARAS 1290-1291 ante. For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Town and Country Planning Act 1990 s 177 (as amended and applied for the purposes set out in the text), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 The hazardous substances consent which may be so granted is any hazardous substances consent which might be granted on an application under the Planning (Hazardous Substances) Act 1990 (see PARA 1212 et seq ante): Town and Country Planning Act 1990 s 177(3) (s 177 applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1); the Town and Country Planning Act 1990 s 177(3) substituted by the Planning and Compensation Act 1991 s 32, Sch 7 paras 8, 24 (2); and amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1), Sch 4 Pt 1 para 4(d)).

Where an appeal against a hazardous substances contravention notice is brought under the Town and Country Planning Act 1990 s 174 (as applied and amended), the appellant is deemed to have made an application for hazardous substances consent in respect of the matters specified in the hazardous substances contravention notice as constituting a contravention of hazardous substances control: s 177(5) (as so applied; substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992 Sch 4 Pt 1 para 4(f)).

Where (1) the statement under the Town and Country Planning Act 1990 s 174(4) (as applied and substituted (see PARA 1291 ante) specifies the ground mentioned in s 174(2)(a) (as applied and substituted) (see PARA 1290 ante at head (1) in the text); (2) any fee is payable under regulations made by virtue of the Planning (Hazardous Substances) Act 1990 s 26A (as added) (see PARA 1226 ante) in respect of the application deemed to be made by virtue of the appeal; and (3) the Secretary of State or the Assembly gives notice in writing to the appellant specifying the period within which the fee must be paid, then, if that fee is not paid within that period, the appeal, so far as brought on that ground, and the application lapse at the end of that period: Town and Country Planning Act 1990 s 177(5A) (as so applied; added by the Planning and Compensation Act 1991 s 6(3); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(g)). As to the fee so payable see PARA 1294 post.

Any hazardous substances consent so granted on an appeal is treated as granted on the application deemed to have been made by the appellant: Town and Country Planning Act 1990 s 177(6) (as so applied; amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(h)). For the meaning of 'hazardous substances consent' see PARA 1234 ante.

5 As to the power to prescribe hazardous substances see PARA 1230 ante; and as to the substances so prescribed see PARAS 1231-1233 ante.

6 For the meaning of 'land' see PARA 2 note 10 ante.

7 Where the Secretary of State or the Assembly so discharges a condition, he or the Assembly may substitute another condition for it, whether more or less onerous: Town and Country Planning Act 1990 s 177(4) (as applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(e)).

8 Town and Country Planning Act 1990 s 177(1) (as applied (see note 4 supra); substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(a)).

9 le the considerations specified in the Planning (Hazardous Substances) Act 1990 s 9(2) (as amended): see PARA 1244 ante.

10 Town and Country Planning Act 1990 s 177(2) (as applied (see note 4 supra); substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(c)). For the purposes of the Planning (Hazardous Substances) Act 1990 s 28 (as amended) (see PARA 1221 ante), the Secretary of State's or the Assembly's decision is treated as having been given by him or by the Assembly in dealing with an application for hazardous substances consent made to the hazardous substances authority: Town and Country Planning Act 1990 s 177(8) (as so applied; substituted for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 1 para 4(i)). As to hazardous substances authorities see PARAS 1219-1220 ante.

11 Town and Country Planning Act 1990 s 177(7) (as applied (see note 4 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992 Sch 4 Pt 1 para 4(h)).

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1294. Fees for deemed applications.

A fee must be paid¹ to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ in every case where an application for hazardous substances consent⁴ is deemed to have been made⁵ in consequence of an appeal⁶ against a hazardous substances contravention notice⁷ by every person who has made a valid appeal against the relevant contravention notice and whose appeal has not been withdrawn before the date on which the Secretary of State or the Assembly issues a notice⁸ requiring payment⁹. These provisions do not, however, apply where the appellant had:

- 4714 (1) before the date when the hazardous substances contravention notice was issued, applied to the hazardous substances authority¹⁰ for hazardous substances consent for the presence of the quantity of the substance to which the notice relates, and had paid to the authority the fee payable in respect of that application; or
- 4715 (2) before the date specified in the notice as the date on which it is to take effect¹¹, made an appeal to the Secretary of State or to the Assembly against the refusal of the hazardous substances authority to grant such consent,

and at the date when the relevant notice was issued that application or, in the case of an appeal made before that date, that appeal, had not been determined¹².

The fee so payable is the amount which would be payable¹³ if the application were an application for hazardous substances consent¹⁴.

The fee must be paid at such time as the Secretary of State or the Assembly may in the particular case specify by notice in writing to the appellant¹⁵.

Any fee paid in respect of the deemed application must be refunded to the appellant by the Secretary of State or by the Assembly if:

- 4716 (a) he or it declines jurisdiction on the relevant appeal on the grounds that it does not comply with one or more of the statutory requirements¹⁶;
- 4717 (b) he or it dismisses the relevant appeal in exercise of the statutory powers¹⁷ on the grounds that the appellant has failed to comply with the statutory requirements¹⁸;
- 4718 (c) he or it allows the relevant appeal and quashes the relevant hazardous substances contravention notice in exercise of the statutory powers¹⁹ on the grounds that the hazardous substances authority has failed to comply with the statutory requirements²⁰;
- 4719 (d) the relevant appeal is withdrawn with the result that there are at least 21 days between the date on which the notice in writing of the withdrawal is received by the Secretary of State or the Assembly and:
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137. (i) the date, or in the event of postponement the latest date, appointed for the holding of an inquiry or hearing into that appeal; or
138. (ii) in the case of an appeal which is being dealt with by written representations, the date, or in the event of postponement the latest date, appointed for the inspection of the site to which the notice relates;
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- 4720 (e) the hazardous substances authority withdraws the relevant hazardous substances contravention notice before it takes effect, or the Secretary of State or the Assembly decides that the notice is a nullity;
- 4721 (f) the Secretary of State or the Assembly allows the relevant appeal on any of the specified grounds²¹; or
- 4722 (g) the Secretary of State or the Assembly allows the relevant appeal on the ground that the notice is invalid, or that it contains a defect, error or misdescription which cannot be²² corrected²³.

1 He subject to the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 25(4): see the text and notes 10-12 *infra*.

2 As to the Secretary of State see PARA 19 *ante*.

3 As to the transfer of functions under the Town and Country Planning Act 1990 and the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

4 For the meaning of 'hazardous substances consent' see PARA 1234 *ante*.

5 He by virtue of the Town and Country Planning Act 1990 s 177(5) (as applied and substituted): see PARA 1293 *ante*.

6 He under *ibid* s 174 (as applied and amended) see PARA 1290 *ante*.

7 For the meaning of 'hazardous substances contravention notice' see PARA 1270 *ante*.

8 He under the Planning (Hazardous Substances) Regulations 1992, SI 1999/672, reg 25(3): see the text and note 15 *infra*.

9 *Ibid* regs 2(1), (2)(a), (5), 25(1).

10 As to hazardous substances authorities see PARAS 1219-1220 *ante*.

11 As to the date on which a hazardous substances contravention notice takes effect see PARA 1273 *ante*.

12 Planning (Hazardous Substances) Regulations 1992, SI 1999/672, reg 25(4).

13 He under *ibid* reg 24 (see PARAS 1239, 1265 *ante*) if the application were an application to which reg 24 applied.

14 Ibid reg 25(2). Where a hazardous substances contravention notice is varied under the Town and Country Planning Act 1990 s 176(1) (as substituted, applied and amended) (see PARA 1292 ante) otherwise than to take account of a grant of hazardous substances consent under s 177(1) (as applied and substituted) (see PARA 1293 ante), and the fee calculated in accordance with the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 25(2) would have been a lesser amount if the original notice had been in the terms of the varied notice, the fee payable is that lesser amount and any excess amount already paid must be refunded: reg 25(6). In determining a fee under reg 25(6) no account is to be taken of any change in fees which takes effect after the making of the deemed decision: reg 25(7).

15 Ibid reg 25(3).

16 Ie the requirements of the Town and Country Planning Act 1990 s 174(1)-(3) (as applied and amended): see PARAS 1290-1291 ante.

17 Ie powers under ibid s 176(3)(a) (as applied and amended): see PARA 1292 ante.

18 Ie the requirements of ibid s 174(4) (as applied and substituted): see PARA 1291 ante.

19 Ie powers under ibid s 176(3)(b) (as applied and amended): see PARA 1292 ante.

20 Ie the requirements of the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 19(2): see PARA 1291 ante.

21 Ie the grounds set out in the Town and Country Planning Act 1990 s 174(2)(b)-(e) (as applied and substituted): see PARA 1290 ante at heads (2)-(5) in the text.

22 Ie under ibid s 176(1)(a) (as substituted, applied and amended): see PARA 1292 ante.

23 Planning (Hazardous Substances) Regulations 1992, SI 1999/672, regs 2(1), (2)(a), (5), 25(5).

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(B) APPEALS TO THE HIGH COURT

1295. Right of appeal to the High Court.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² gives a decision³ in proceedings on an appeal⁴ against a hazardous substance contravention notice⁵, the appellant or the hazardous substances authority⁶ or any other person having an interest in the land⁷ to which the notice relates may, according as rules of court⁸ may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State or the Assembly to state and sign a case for the opinion of the High Court⁹. At any stage of the proceedings on any such appeal the Secretary of State or the Assembly may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court¹⁰.

In proceedings brought by virtue of these provisions in respect of a hazardous substances contravention notice, the High Court or, as the case may be, the Court of Appeal may, on such terms, if any, as the court thinks fit, which may include terms requiring the hazardous substances authority to give an undertaking as to damages or any other matter, order that the notice shall have effect, or have effect to such extent as may be specified in the order, pending the final determination of those proceedings and any hearing and determination by the Secretary of State or the Assembly¹¹.

No proceedings in the High Court may be brought by virtue of the above provisions except with the leave of that court; and no appeal to the Court of Appeal may be so brought except with the leave of the Court of Appeal or of the High Court¹².

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Town and Country Planning Act 1990 s 289 (as amended and applied for the purposes set out in the text), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, 'decision' includes a direction or order; and references to the giving of a decision are to be construed accordingly: Town and Country Planning Act 1990 s 289(7) (s 289 applied for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 18(1)).

4 *le* under *ibid* Pt VII (ss 171A-196C) (as amended) (see PARA 551 et seq ante) as applied and amended for these purposes (see PARA 1290 et seq ante).

5 For the meaning of 'hazardous substances contravention notice' see PARA 1270 ante.

6 As to hazardous substances authorities see PARAS 1219-1220 ante.

7 For the meaning of 'land' see PARA 2 note 10 ante.

8 In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of the Town and Country Planning Act 1990 s 289 (as amended) (as applied: see note 3 supra), the power to make rules of court includes power to make rules (1) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for rehearing and determination by the Secretary of State or the Assembly; and (2) providing for the Secretary of State or the Assembly, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly: s 289(5) (as so applied). Rules of court may also provide for the High Court or, as the case may be, the Court of Appeal to give directions as to the exercise, until such proceedings in respect of a hazardous substances contravention notice are finally concluded and any rehearing and determination by the Secretary of State or the Assembly has taken place, of any other powers in respect of the matters to which such a notice relates: s 289(5A) (as so applied; substituted by the Planning and Compensation Act 1991 s 6(5); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, reg 22(1) Sch 4 Pt 4 para 11(a)).

9 Town and Country Planning Act 1990 s 289(1) (as applied (see note 3 supra); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992, SI 1992/656, Sch 4 Pt 4 para 11(a)).

10 Town and Country Planning Act 1990 s 289(3) (as applied: see note 3 supra). A decision of the High Court on a case stated by virtue of s 289(3) (as so applied) is deemed to be a judgment of the court within the meaning of the Supreme Court Act 1981 s 16 (as amended) (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court: see COURTS vol 10 (Reissue) PARA 639): Town and Country Planning Act 1990 s 289(4) (as so applied). As from a day to be appointed, the Supreme Court Act 1981 s 16 (as amended) is to be cited as the Senior Courts Act 1981 s 16 (as amended): see the Constitutional Reform Act 2005 s 148(1), Sch 11 para 1.

11 Town and Country Planning Act 1990 s 289(4A) (as applied (see note 3 supra); added by the Planning and Compensation Act 1991 s 6(4); amended for these purposes by the Planning (Hazardous Substances) Regulation 1992, SI 1992/656, reg 22(1), Sch 4 Pt 4 para 11(a)).

12 Town and Country Planning Act 1990 s 289(6) (as applied (see note 3 supra); substituted by the Planning and Compensation Act 1991 s 6(5); amended for these purposes by the Planning (Hazardous Substances) Regulations 1992 Sch 4 Pt 4 para 11(a)).

UPDATE

1295 Right of appeal to the High Court

NOTE 10--Appointed day is 1 October 2009: SI 2009/1604.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(i) Rights of Appeal/B. APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES/(B) Appeals to the High Court/1296. Procedure on appeal.

1296. Procedure on appeal.

The procedure for applying for permission to appeal to the High Court against a decision regarding a hazardous substances contravention notice¹, and the procedure on the hearing of such an appeal², are the same as the procedures for such applications and appeals regarding enforcement notices under the Town and Country Planning Act 1990³, and have already been discussed in that context⁴.

1 le permission to appeal under the Town and Country Planning Act 1990 s 289 (as applied and amended): see PARA 1295 ante.

2 le an appeal under ibid s 289 (as applied and amended): see PARA 1295 ante.

3 le appeal under ibid s 289 (as amended) relating to enforcement notices and notices under s 207 (as amended): see PARA 648 ante.

4 See CPR Sch 1 RSC Ord 94 rr 12, 13; and PARA 649 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(A) Appeals regarding Hazardous Substances Consents/1297. In general.

(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly

A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON

(A) APPEALS REGARDING HAZARDOUS SUBSTANCES CONSENTS

1297. In general.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by regulations prescribe the classes of appeals regarding hazardous substances consents³ which are to be determined by a person appointed by him or by the Assembly ('an appointed person') for the purpose instead of by the Secretary of State or by the Assembly⁴.

Appeals of a prescribed class must be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State or the Assembly⁵. Regulations so made may provide for the giving of publicity to any directions so given by the Secretary of State or the Assembly⁶.

The above provisions do not, however, affect any provision in the Planning (Hazardous Substances) Act 1990 or any instrument made thereunder that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State or the Assembly⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le appeals under the Planning (Hazardous Substances) Act 1990 s 21 (as amended): see PARAS 1287-1289 ante.

4 Ibid s 21(8), Schedule para 1(1), (5). Where an appointed person is an officer of the Department of the Deputy Prime Minister, the functions of determining an appeal and doing anything in connection therewith conferred on him by the Planning (Hazardous Substances) Act 1990 s 21(8), Schedule (as amended) (see PARA 1298 et seq post) are treated for the purposes of the Parliamentary Commissioner Act 1967 (see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq), if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department: Planning (Hazardous Substances) Act 1990 Schedule para 7(2)(a) (amended by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 16). Where an appointed person is an officer of the Welsh Assembly Government, the functions so conferred are treated for the purposes of the Government of Wales Act 1998 s 111, Sch 9 (as amended; prospectively repealed by the Public Services Ombudsman (Wales) Act 2005 s 39, Sch 6 paras 65, 69, as from a day to be appointed under s 40; at the date at which this title states the law, those repeals were not in force) (see PARA 23 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45), if he was appointed by the Welsh Cabinet Minister for the time being having general responsibility in planning matters in relation to Wales, as functions of that minister, by virtue of the Planning (Hazardous Substances) Act 1990 Schedule para 7(2)(b) and of the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). For the meaning of 'functions' see PARA 1225 note 10 ante.

5 Planning (Hazardous Substances) Act 1990 Schedule para 1(2). At the date at which this title states the law, no regulations had been made under Schedule para 1 and none had effect as if so made. As to the making of regulations generally see PARA 1213 ante.

6 Planning (Hazardous Substances) Act 1990 Schedule para 1(3).

7 Ibid Schedule para 1(4).

UPDATE

1297 In general

NOTE 4--Repeal of 1998 Act s 111, Sch 9 now in force: SI 2005/2800. Reference to Department of the Deputy Prime Minister now to Department for Communities and Local Government: 1990 Act Schedule para 7(2) (amended by SI 2006/1926).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(A) Appeals regarding Hazardous Substances Consents/1298. Powers and duties of appointed persons.

1298. Powers and duties of appointed persons.

An appointed person¹ has the same powers and duties as the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ has⁴ in connection with appeals against decisions or failure to take decisions relating to hazardous substances⁵.

If both the parties express a wish not to appear and be heard, the appeal may be determined without their being heard⁶; but, if either of the parties expresses a wish to appear and be heard, the appointed person must give them both an opportunity of doing so⁷.

Where an appeal has been determined by an appointed person, his decision is treated as that of the Secretary of State or of the Assembly⁸; and the validity of that decision may not, except as provided by statute⁹, be questioned in any proceedings whatsoever¹⁰.

Where in any enactment¹¹ there is a reference to the Secretary of State or to the Assembly in a context relating to or capable of relating to:

4723 (1) an appeal against a decision or failure to take a decision relating to hazardous substances¹²; or

4724 (2) any thing done or authorised or required to be done by, to or before the Secretary of State or the Assembly on or in connection with any such appeal,

then, so far as the context permits, it is to be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him¹³.

1 For the meaning of 'an appointed person' see PARA 1297 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 I.e. under the Planning (Hazardous Substances) Act 1990 s 21(4): see PARA 1289 ante.

5 Ibid s 21(8), Schedule para 2(1). Section 21(5) (see PARA 1289 ante) does not apply to an appeal which falls to be determined by an appointed person; but before the appeal is determined, the Secretary of State or the Assembly must ask the appellant and the hazardous substances authority whether they wish to appear before, and be heard by, the appointed person: Schedule para 2(2). As to hazardous substances authorities see PARAS 1219-1220 ante.

6 Ibid Schedule para 2(3).

7 Ibid Schedule para 2(4).

8 Ibid Schedule para 2(5).

9 I.e. except as provided by ibid s 22 (as amended): see PARA 1286 ante. It is not, however, a ground of application to the High Court under s 22 (as amended) that an appeal ought to have been determined by the Secretary of State or by the Assembly and not by an appointed person, unless the appellant or the hazardous substances authority challenges the appointed person's power to determine the appeal before his decision on the appeal is given: Schedule para 2(7).

10 Ibid Schedule para 2(6).

11 I.e. including the Planning (Hazardous Substances) Act 1990. For the meaning of 'enactment' see PARA 1217 note 10 ante.

12 I.e. an appeal under ibid s 21 (as amended): see PARAS 1287-1289 ante.

13 Ibid Schedule para 2(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(A) Appeals regarding Hazardous Substances Consents/1299. Determination of appeals by the Secretary of State or the Assembly instead of by an inspector.

1299. Determination of appeals by the Secretary of State or the Assembly instead of by an inspector.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may, if he or it thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person³ shall instead be determined by the Secretary of State or by the Assembly⁴.

Such a direction must state the reasons for which it is given and must be served on the appellant, on the hazardous substances authority⁵, on any person who made representations relating to the subject matter of the appeal which the authority was required to take into account⁶ and, if any person has been appointed⁷ to determine the appeal, on him⁸.

The Secretary of State or the Assembly must give the appellant, the hazardous substances authority and any person who has made representations⁹ an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State or the Assembly for that purpose if:

- 4725 (1) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
- 4726 (2) in the case of an appellant or the hazardous substances authority, either of them was not asked¹⁰ whether he or it wished to appear before, and be heard by, the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so¹¹.

In determining the appeal, the Secretary of State or the Assembly may take into account any report made to him or to it by any person previously appointed to determine the appeal¹².

The Secretary of State or the Assembly may by a further direction revoke a direction so given at any time before the determination of the appeal¹³. Such a further direction must state the reasons for which it is given and must be served on the person, if any, previously appointed to determine the appeal, on the appellant, on the hazardous substances authority and on any person who made representations relating to the subject matter of the appeal which the authority was required¹⁴ to take into account¹⁵.

Anything done by or on behalf of the Secretary of State or the Assembly in connection with the appeal which might have been done by the appointed person, including any arrangements made for the holding of a hearing or local inquiry, is treated, unless that person directs otherwise, as having been done by him¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

- 3 For the meaning of 'an appointed person' see PARA 1297 ante.
- 4 Planning (Hazardous Substances) Act 1990 s 21(8), Schedule para 3(1).
- 5 As to hazardous substances authorities see PARAS 1219-1220 ante.
- 6 Ie by regulations made under the Planning (Hazardous Substances) Act 1990 s 8(4) (see PARA 1241 ante) or, as the case may be, under s 17(2) (see PARA 1263 ante) making provision corresponding to s 8(4).
- 7 Ie under ibid Schedule para 1: see PARA 1297 ante.
- 8 Ibid Schedule para 3(2). Where in consequence of such a direction an appeal under s 21 (as amended) (see PARAS 1287-1289 ante) falls to be determined by the Secretary of State or by the Assembly, the provisions of the Planning (Hazardous Substances) Act 1990 which are relevant to the appeal apply to the appeal, subject to Schedule para 3(4)-(6) (see the text and notes 9-12 infra), as if s 21(8), Schedule (as amended) had never applied to it: Schedule para 3(3).
- 9 Ie any such representations as are mentioned in ibid Schedule para 3(2): see the text and notes 5-8 supra.
- 10 Ie in pursuance of ibid Schedule para 2(2): see PARA 1298 ante.
- 11 Ibid Schedule para 3(4). Except as so provided, the Secretary of State or the Assembly need not give any person an opportunity of appearing before, and being heard by, a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made: Schedule para 3(5).
- 12 Ibid Schedule para 3(6).
- 13 Ibid Schedule para 4(1).
- 14 See note 6 supra.
- 15 Planning (Hazardous Substances) Act 1990 Schedule para 4(2). Where such a further direction has been given, the provisions of s 21(8), Schedule (as amended) relevant to the appeal apply, subject to Schedule para 4(4), as if no direction under Schedule para 3 had been given: Schedule para 4(3).
- 16 Ibid Schedule para 4(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(A) Appeals regarding Hazardous Substances Consents/1300. Appointment of another person to determine appeal.

1300. Appointment of another person to determine appeal.

At any time before the appointed person¹ has determined the appeal the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may revoke that person's appointment and appoint another person⁴ to determine the appeal instead⁵.

Where such a new appointment is made, the consideration of the appeal or any inquiry or other hearing⁶ in connection with it must be begun afresh⁷.

- 1 For the meaning of 'an appointed person' see PARA 1297 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 le under the Planning (Hazardous Substances) Act 1990 s 21(8), Schedule para 1: see PARA 1297 ante.

5 Ibid Schedule para 5(1).

6 As to inquiries and other hearings see PARA 1301 post.

7 Planning (Hazardous Substances) Act 1990 Schedule para 5(2). Nothing in Schedule para 5(2) requires (1) the question referred to in Schedule para 2(2) (see PARA 1298 ante) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person, any answers being treated as given with reference to the new appointed person; or (2) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made: Schedule para 5(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(A) Appeals regarding Hazardous Substances Consents/1301. Local inquiries and hearings.

1301. Local inquiries and hearings.

Whether or not the parties to an appeal have asked for an opportunity to appear and to be heard, an appointed person¹ may hold a local inquiry in connection with the appeal². He must hold a local inquiry if the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ so directs⁵. Where an appointed person holds a hearing by virtue of the provisions previously discussed⁶ or holds an inquiry by virtue of these provisions⁷, an assessor may be appointed by the Secretary of State or the Assembly to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal⁸. The costs of any hearing and of any inquiry are to be defrayed⁹ by the Secretary of State or the Assembly¹⁰.

Subject to the following provisions, at any such inquiry oral evidence must be heard in public and documentary evidence must be open to public inspection¹¹. If, however, the Secretary of State in relation to England, or the Secretary of State exercising these functions concurrently with the Assembly in relation to Wales, is satisfied in the case of any such inquiry that:

4727 (1) giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to national security or the measures taken or to be taken to ensure the security of any premises or property; and

4728 (2) the public disclosure of that information would be contrary to the national interest,

he or they may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he or they may specify in that direction¹². In relation to England, if the Secretary of State is considering giving such a direction the Attorney General may appoint a person to represent the interests of any person who will be prevented from hearing or inspecting any evidence at a local inquiry if the direction is given¹³; and if before the Secretary of State gives such a direction no person is so appointed, the Attorney General may at any time

so appoint a person for the purposes of the inquiry¹⁴. The Lord Chancellor may by rules make provision:

- 4729 (a) as to the procedure to be followed by the Secretary of State before he gives such a direction in a case where a person has been so appointed¹⁵;
- 4730 (b) as to the functions¹⁶ of a person appointed¹⁷ as described above¹⁸.

If the matter in respect of which a local inquiry to which the above provisions apply¹⁹ is to be held relates to Wales, the above references²⁰ to the Attorney General must be read as references to the Counsel General to the National Assembly for Wales²¹. The Assembly may by regulations²² make provision²³ in connection with such a local inquiry²⁴; and if it acts under this power, rules made by the Lord Chancellor under the provisions set out above²⁵ do not have effect in relation to the inquiry²⁶.

If a person is appointed as described above²⁷ ('the appointed representative') the Secretary of State or the Assembly may direct any person who he or it thinks is interested in the inquiry in relation to a matter mentioned in heads (1) and (2) above ('the responsible person') to pay the fees and expenses of the appointed representative²⁸. If the appointed representative and the responsible person are unable to agree the amount of the fees and expenses, the amount must be determined by the Secretary of State or the Assembly²⁹. He or it must cause the amount agreed between the appointed representative and the responsible person or determined by him or by the Assembly to be certified³⁰. An amount so certified is recoverable from the responsible person as a civil debt³¹. If, however, a person is so appointed, but no inquiry is held³², then the above provisions³³ apply in respect of the fees and expenses of the person appointed as if the inquiry had been held³⁴.

1 For the meaning of 'an appointed person' see PARA 1297 ante.

2 Planning (Hazardous Substances) Act 1990 s 21(8), Schedule para 6(1)(a). The Tribunals and Inquiries Act 1992 applies to a local inquiry or other hearing held in pursuance of the Planning (Hazardous Substances) Act 1990 Schedule (as amended) (see PARA 1297 et seq ante) as it applies to a statutory inquiry held by the Secretary of State or by the Assembly, but as if in the Tribunals and Inquiries Act 1992 s 10(1) (statement of reasons for decisions: see JUDICIAL REVIEW vol 61 (2010) PARA 646) the reference to any decision taken by the Secretary of State or the Assembly were a reference to a decision taken by an appointed person: Planning (Hazardous Substances) Act 1990 Schedule para 7(1) (amended by the Tribunals and Inquiries Act 1992 s 18(1), Sch 3 para 34).

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Planning (Hazardous Substances) Act 1990 s 21, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Planning (Hazardous Substances) Act 1990 Schedule para 6(1)(b).

6 Ie by virtue of ibid Schedule para 2(4): see PARA 1298 ante.

7 Ie by virtue of ibid Schedule para 6.

8 Ibid Schedule para 6(2).

9 Ie subject to ibid Schedule para 6(4): see note 10 infra.

10 Ibid Schedule para 6(3). The Local Government Act 1972 s 250(2)-(5) (as amended) (evidence at and costs of local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to an inquiry held by virtue of the Planning (Hazardous Substances) Act 1990 Schedule para 6 with the following adaptations: (1) for the references in the Local Government Act 1972 s 250(4) (recovery of costs of holding inquiry) to the minister causing the inquiry to be held there must be substituted references to the Secretary of State or the Assembly; and (2) for the reference in s 250(5) (order as to costs of the parties) to the Minister causing the inquiry to be

held there must be substituted a reference to the appointed person or the Secretary of State or the Assembly: Planning (Hazardous Substances) Act 1990 Schedule para 6(4).

The appointed person or the Secretary of State or the Assembly has the same power to make orders under the Local Government Act 1972 s 250(5) in relation to proceedings under the Planning (Hazardous Substances) Act 1990 Schedule (as amended) (see PARA 1297 et seq ante) which do not give rise to an inquiry as he has in relation to such an inquiry: Schedule para 6(8).

The Planning (Hazardous Substances) Act 1990 had effect with the omission of Schedule para 6(8) until a day to be appointed by the Secretary of State: Planning (consequential Provisions) Act 1990 s 6, Sch 4 paras 1(1)(a), Table, 1(3), 16. The day so appointed was 2 January 1992: Planning (Consequential Provisions) Act 1990 (Appointed Day No 1 and Transitional Provisions) Order 1991, SI 1991/2698, art 3(1). Article 3(1) has effect, however, only for the purposes of awards of costs in relation to proceedings which give rise to a hearing (art 3(2)); and nothing in art 3 applies in relation to any proceedings occasioned by an application referred to the Secretary of State or an appeal made to him before 2 January 1992, or by an order or notice submitted or sent to the Secretary of State before that date for his confirmation or approval (art 4).

11 Planning (Hazardous Substances) Act 1990 Schedule para 6(5).

12 Ibid Schedule para 6(6), (7).

13 Ibid Schedule para 6A(1) (Schedule paras 6A(1)-(12), 8(1)-(6) added by the Planning and Compulsory Purchase Act 2004 ss 80(4), 81(3) respectively, partly as from a day to be appointed under s 121; at the date at which this title states the law, ss 80, 81 were not fully in force: see PARA 4 ante).

14 Ibid Schedule para 6A(2) (as added: see note 13 supra).

15 Ie where a person has been appointed under ibid Schedule para 6A(1) (as added): see the text to note 13 supra.

16 For the meaning of 'functions' see PARA 1225 note 10 ante.

17 Ie appointed under the Planning (Hazardous Substances) Act 1990 Schedule para 6A(1) or (2) (as added): see the text to notes 13-14 supra.

18 Ibid Schedule para 6A(3) (as added: see note 13 supra). Rules made under Schedule para 6A(3) (as so added) must be contained in a statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: Schedule para 6A(8) (as so added). As to the Lord Chancellor's power to make provision by order for the transfer, modification or abolition of his functions under the 1990 Act see the Constitutional Reform Act 2005 s 19.

19 Ie a local inquiry held in pursuance of the Planning (Hazardous Substances) Act 1990 Schedule (as amended).

20 Ie the references in ibid Schedule para 6A(1), (2) (as added): see the text to notes 13-14 supra.

21 Ibid Schedule para 8(1), (2) (as added: see note 13 supra). The Counsel General to the National Assembly for Wales is the person appointed by the Assembly to be its chief legal adviser (whether or not he is known by that title): Schedule para 8(5) (as so added).

22 Ibid s 40(3) (see PARA 1213 ante) does not apply to regulations so made: Schedule para 8(6) (as added: see note 13 supra).

23 Ie provision as mentioned in ibid Schedule para 6A(3) (as added): see heads (a)-(b) in the text.

24 Ibid Schedule para 8(3) (as added: see note 13 supra).

25 Ie under ibid Schedule para 6A(3) (as added): see heads (a)-(b) in the text.

26 Ibid Schedule para 8(4) (as added: see note 13 supra). See also note 18 supra.

27 Ie under ibid Schedule para 6A(1) or (2) (as added): see the text to notes 13-14 supra.

28 Ibid Schedule para 6A(4) (as added: see note 13 supra).

29 Ibid Schedule para 6A(5) (as added: see note 13 supra).

30 Ibid Schedule para 6A(6) (as added: see note 13 supra).

31 Ibid Schedule para 6A(7) (as added: see note 13 supra).

32 Ie no inquiry is held as mentioned in ibid Schedule para 6(1): see the text to notes 1-5 supra.

33 Ie ibid Schedule para 6A(4)-(7) (as added): see the text to notes 28-31 supra.

34 Ibid Schedule para 6A(9), (10) (as added: see note 13 supra). For these purposes, the responsible person is the person to whom the Secretary of State or the Assembly thinks he or it would have given a direction under Schedule para 6A(4) (as added) if an inquiry had been held: Schedule para 6A(11) (as so added). Schedule 3 para 6A(9)-(11) does not affect Schedule para 6(8) (see note 10 supra): Schedule para 6A(12) (as so added).

UPDATE

1301 Local inquiries and hearings

NOTE 13--2004 Act ss 80, 81 now fully in force: SI 2006/1281.

NOTES 18, 24--See the Planning (National Security Directions and Appointed Representatives) (Wales) Regulations 2006, SI 2006/1387.

NOTE 18--See the Planning (National Security Directions and Appointed Representatives) (England) Regulations 2006, SI 2006/1284.

TEXT AND NOTE 21--Reference to National Assembly for Wales now to Welsh Assembly Government: 1990 Act Schedule para 8(2) (amended by the Government of Wales Act 2006 Sch 10 para 37(a)). 1990 Act Schedule para 8(5) repealed: 2006 Act Sch 10 para 37(b), Sch 12.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/A. WHETHER APPEALS TO BE DETERMINED BY APPOINTED PERSON/(B) Appeals against Hazardous Substances Contravention Notices/1302. Application of the general statutory provisions regarding determination by appointed person.

(B) APPEALS AGAINST HAZARDOUS SUBSTANCES CONTRAVENTION NOTICES

1302. Application of the general statutory provisions regarding determination by appointed person.

The provisions of Schedule 6 to the Town and Country Planning Act 1990¹, which:

- 4731 (1) confer power on the Secretary of State² or, in relation to Wales, on the National Assembly for Wales³ to make regulations prescribing classes of appeals⁴ to be heard by an appointed person⁵;
- 4732 (2) set out the powers and duties of appointed persons⁶;
- 4733 (3) confer power on the Secretary of State or the Assembly to direct that appeals which would otherwise fall to be determined by an appointed person are to be determined by the Secretary of State or the Assembly⁷;
- 4734 (4) provide that an appointed person's appointment may be revoked and another person appointed to determine an appeal⁸;
- 4735 (5) provide that local inquiries or hearings may or must be held in connection with an appeal⁹; and
- 4736 (6) make supplementary provisions¹⁰,

apply with regard to appeals¹¹ against hazardous substances contravention notices¹². These provisions have already been discussed in the context of appeals against enforcement notices¹³.

- 1 le the Town and Country Planning Act 1990 s 175, Sch 6 (as amended): see PARA 621 et seq ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the exercise of planning functions by the National Assembly for Wales see PARA 20 ante.
- 4 le including, inter alia, classes of appeals under the Town and Country Planning Act 1990 s 174 (as amended) (appeals against enforcement notices: see PARA 603 et seq ante) and s 174 (as applied and amended) (appeals against hazardous substances contravention notices: see PARA 1290 et seq ante).
- 5 See *ibid* Sch 6 para 1 (as amended); and PARA 621 ante.
- 6 See *ibid* Sch 6 para 2 (as amended); and PARA 623 ante.
- 7 See *ibid* Sch 6 paras 3, 4 (as amended); and PARA 624 ante.
- 8 See *ibid* Sch 6 para 5; and PARA 625 ante.
- 9 See *ibid* Sch 6 para 6; and PARA 626 ante.
- 10 See *ibid* Sch 6 para 8 (as amended); and PARAS 621 note 4, 626 note 4 ante.
- 11 le appeals under *ibid* s 174 (as applied and amended): see PARA 1290 et seq ante.
- 12 See *ibid* s 175(6) (as applied and amended); and PARA 1291 note 18 ante.
- 13 See PARA 621 et seq ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/B. WRITTEN REPRESENTATIONS, HEARINGS AND INQUIRIES/1303. Determination of appeals by written representations.

B. WRITTEN REPRESENTATIONS, HEARINGS AND INQUIRIES

1303. Determination of appeals by written representations.

Where an appeal regarding a hazardous substances consent¹ comes before the Secretary of State² in England, an inquiry is not asked for and the Secretary of State does not propose to hold one, the appeal is determined following exchanges of written representations and a site visit³. A similar procedure applies in Wales⁴.

The relevant regulations providing for the procedure where an appeal to the Secretary of State⁵ or, in relation to Wales, to the National Assembly for Wales⁶ against a hazardous substances contravention notice⁷ is to be disposed of on the basis of written representations⁸ have already been discussed in the context of enforcement appeals under the Town and Country Planning Act 1990⁹.

- 1 le an appeal under the Planning (Hazardous Substances) Act 1990 s 21 (as amended) (see PARAS 1287, 1289 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 See ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 50. The Town and Country Planning (Appeals) (Written Representations Procedure) (England) Regulations 2000, SI 2000/1628 (as amended) (see PARAS 628-630 ante) do not apply, but the procedure will normally follow the spirit of those regulations: see ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 50. As to the status of such guidance see PARA 9 ante.
- 4 The Town and Country Planning (Referrals and Appeals) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/390 (as amended) (see PARAS 628-630 ante), do not apply, but the procedure will normally follow the spirit of those regulations: see National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 48.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of functions under the Town and Country Planning Act 1990 and the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 7 le an appeal under the Town and Country Planning Act 1990 s 174 (as amended and applied): see PARA 1290 ante.
- 8 le the Town and Country Planning (Enforcement) (Written Representations Procedure) (England) Regulations 2002, SI 2002/2683 (as amended) and the Town and Country Planning (Enforcement) (Written Representations Procedure) (Wales) Regulations 2003, SI 2003/395 (as amended): see PARAS 631-633 ante.
- 9 See PARAS 631-633 ante.

UPDATE

1303 Determination of appeals by written representations

NOTE 3--SI 2000/1628 replaced: Town and Country (Appeals) (Written Representations Procedure) (England) Regulations 2009, SI 2009/452.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(ii) Procedure on Determination of Appeals to the Secretary of State or the Assembly/B. WRITTEN REPRESENTATIONS, HEARINGS AND INQUIRIES/1304. Hearings and inquiries.

1304. Hearings and inquiries.

Rules have been made providing for the procedure in relation to:

- 4737 (1) any hearing¹ for the purposes of a non-transferred or transferred appeal² under, inter alia, the provisions of the Town and Country Planning Act 1990 regarding appeals against enforcement notices³;
- 4738 (2) any local inquiry⁴ caused to be held by the Secretary of State⁵, by the National Assembly for Wales⁶ or by an inspector⁷ before the determination of any such appeal⁸.

It is apprehended that those rules apply to hearings and inquiries held for the purposes of appeals⁹ against hazardous substances contravention notices¹⁰.

In relation to the procedure on the hearing of appeals and applications regarding hazardous substances consents¹¹, the hearing normally takes the form of a public local inquiry and the spirit of the general rules about planning inquiries¹² is normally followed in practice¹³ although those general rules do not specifically apply.

1 For the meaning of 'hearing' for these purposes see PARA 641 notes 2, 13 ante.

2 For the meanings of 'non-transferred appeal' and 'transferred appeal' for these purposes see PARA 641 notes 3, 14 ante.

3 See the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684 (as amended); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268 (as amended); and PARA 641 et seq ante.

4 As to local inquiries see generally para 651 et seq ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Town and Country Planning Act 1990 and the Planning (Hazardous Substances) Act 1990, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 For the meaning of 'inspector' for these purposes see PARA 695 notes 2, 12 ante.

8 See (1) the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686 (as amended); the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269 (as amended); and PARA 669 et seq ante; (2) the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685 (as amended); the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270 (as amended); and PARA 695 et seq ante.

9 I.e. appeals under the Town and Country Planning Act 1990 s 174 (as amended and applied): see PARA 1290 ante.

10 See, however (1), the Town and Country Planning (Enforcement) (Hearings Procedure) (England) Rules 2002, SI 2002/2684, r 3(1); the Town and Country Planning (Enforcement) (Hearings Procedure) (Wales) Rules 2003, SI 2003/1268, r 3(1); and PARA 641 ante; (2) the Town and Country Planning (Enforcement) (Inquiries Procedure) (England) Rules 2002, SI 2002/2686, r 3(1); the Town and Country Planning (Enforcement) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1269, r 3(1); and PARA 669 ante; and (3) the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2002, SI 2002/2685, r 3(1); the Town and Country Planning (Enforcement) (Determination by Inspectors) (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1270, r 3(1); and PARA 695 ante (jurisdiction under the respective rules).

11 I.e. appeals under the Planning (Hazardous Substances) Act 1990 s 21 (as amended) (see PARAS 1287, 1289 ante) or applications referred to the Secretary of State or, in relation to Wales, to the National Assembly for Wales under s 20 (as amended) (see PARAS 1248, 1268 ante).

12 I.e. the Town and Country Planning (Inquiries Procedure) (England) Rules 2000, SI 2000/1624 (as amended); the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2005, SI 2005/2115; the Town and Country Planning (Major Infrastructure Project Inquiries Procedure) (England) Rules 2002, SI 2002/1223 (revoked with savings); and the Town and Country Planning (Inquiries Procedure) (Wales) Rules 2003, SI 2003/1266 (as amended): see PARAS 659 et seq, 677 et seq, 686 et seq ante.

13 See ODPM Circular 04/2000 *Planning Controls for Hazardous Substances* para 50; National Assembly for Wales Circular 20/01 *Planning Controls for Hazardous Substances* para 48. As to the status of such guidance see PARA 9 ante.

PARAS 1009-1508)/16. HAZARDOUS SUBSTANCES/(11) APPEALS ETC RELATING TO HAZARDOUS SUBSTANCES CONTROL/(iii) Judicial Review; Maladministration/1305. In general.

(iii) Judicial Review; Maladministration

1305. In general.

Judicial review may be available as a means of challenging decisions relating to hazardous substances control¹. The availability of, and procedure on, judicial review is discussed in detail elsewhere in this work².

Decisions of local authorities, the Secretary of State³ or the National Assembly for Wales⁴ in relation to such matters are also susceptible to review by the appropriate ombudsman⁵.

1 As to judicial review of planning decisions generally see PARA 650 ante.

2 See JUDICIAL REVIEW. As to time limits for making applications in cases involving planning matters see eg *R (on the application of Young) v Oxford City Council* [2003] JPL 232, [2002] All ER (D) 226 (Jun), CA.

3 As to the Secretary of State see PARA 19 ante.

4 As to the Assembly see PARA 20 ante.

5 See PARAS 23, 41 ante; and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 41 et seq.

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17. URBAN DEVELOPMENT AND REGENERATION

(1) ENGLISH PARTNERSHIPS AND THE WELSH DEVELOPMENT AGENCY

(i) English Partnerships

1306. The Urban Regeneration Agency; in general.

The Urban Regeneration Agency was created by the Leasehold Reform, Housing and Urban Development Act 1993¹ with the main object of securing the regeneration of certain urban and other land in England². The powers and functions of the Agency, as set out in Part III of the 1993 Act³, are broadly similar, in so far as they are concerned with town and country planning, to those of urban development corporations⁴ under Part XVI⁵ of the Local Government, Planning and Land Act 1980⁶. The Urban Regeneration Agency and its general objects, powers and functions are discussed in detail elsewhere in this work⁷ but where those powers and functions correspond to the powers and functions of urban development corporations they are noted below in that connection⁸.

Where, as respects any area in England which is an urban area or which, in the opinion of the Secretary of State, is suitable for urban development, it appears to the Secretary of State that all or any of the authorised provisions⁹ should be made in relation to the whole or any part of it or that either or both of the specified statutory provisions¹⁰ should apply in relation to it, he may by order¹¹ designate that area and either so make the authorised provision or provisions, or

direct that the specified statutory provision or provisions shall so apply, or, as the case may require, do both of those things¹². Before making a designation order the Secretary of State must consult¹³ every local authority¹⁴ any part of whose area is intended to be included in the proposed designated area¹⁵.

If a designation order so provides, the Agency is the local planning authority¹⁶ for the whole or any part of the designated area for such of the statutory purposes¹⁷ as may be specified in the order and in relation to such kinds of development as may be so specified¹⁸.

Following the creation of regional development agencies in England¹⁹, the Secretary of State has power to give directions requiring the Agency to make one or more schemes for the transfer to those agencies of such of the Agency's property, rights and liabilities as appear to him appropriate to be transferred in consequence of the carrying out by those agencies of an activity of the Agency²⁰. He also has power to make an order conferring functions on the Agency with respect to the provision of services of any description to regional development agencies and making various other provisions with relation to the functions and name of the Agency and for its winding up and dissolution²¹. Regional development agencies are discussed elsewhere in this work²².

1 See the Leasehold Reform, Housing and Urban Development Act 1993 s 158.

2 See *ibid* s 159.

3 See *ibid* Pt III (ss 158-185) (as amended).

4 As to urban development corporations see PARA 1428 *et seq post*.

5 *Ie* under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 *et seq post*.

6 Cf eg (1) the Leasehold Reform, Housing and Urban Development Act 1993 s 161 (as amended) (vesting of land by order in the Agency); and the Local Government, Planning and Land Act 1980 s 141 (as amended) (vesting of land by order in urban development corporation); and PARA 1454 *post*; (2) the Leasehold Reform, Housing and Urban Development Act 1993 s 165 (Agency's power to serve connection notice relating to private street); and the Local Government, Planning and Land Act 1980 s 157A (as added) (urban development corporation's power to serve such connection notice); and PARA 1484 *post*.

7 *Ie* see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.

8 See PARAS 1454-1455, 1458, 1484 *post*.

9 *Ie* the provisions authorised by the Leasehold Reform, Housing and Urban Development Act 1993 s 171: see the text and notes 16-18 *infra*.

10 *Ie* *ibid* ss 172, 173: see PARA 1484 *post*.

11 A designation order must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and may contain such savings and transitional and supplementary provisions as may be specified in the order: *ibid* s 170(4). The power to amend a designation order conferred by the Interpretation Act 1978 s 14 includes power to amend the boundaries of the designated area; and where any such amendment is made, any reference in the Leasehold Reform, Housing and Urban Development Act 1993 Pt III (as amended) to a designated area is a reference to the designated area as so amended: s 170(5). In Pt III (as amended) 'designation order' means an order under s 170; and 'designated area' means, subject to s 170(5), an area designated by a designation order: s 170(2).

12 *Ibid* s 170(1).

13 For the meaning of 'consult' see PARA 2 note 1 *ante*.

14 For these purposes, 'local authority' means a county council, a district council, a London borough council or the Common Council of the City of London: Leasehold Reform, Housing and Urban Development Act 1993 s 170(6).

15 *Ibid* s 170(3).

16 As to local planning authorities see PARA 28 et seq ante.

17 Ie for such purposes of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) and the Planning (Listed Buildings and Conservation Areas) Act 1990 s 67 (as amended) (see PARA 1107 ante) and s 73 (as amended) (see PARA 1173 ante): Leasehold Reform, Housing and Urban Development Act 1993 s 171(1)(a).

18 Ibid s 171(1). A designation order making such provision as is mentioned in s 171(1) may also provide that any enactment relating to local planning authorities shall not apply to the Agency and that any such enactment which applies to the Agency shall apply to it subject to such modifications as may be specified in the order: s 171(2). If a designation order so provides: (1) subject to any modifications specified in the order, the Agency has, in the whole or any part of the designated area, such of the functions conferred by the provisions mentioned in s 171(4) as may be so specified; and (2) such of the provisions of the Town and Country Planning Act 1990 Pt VI (ss 137-171) (as amended) and ss 249-251 (as amended) and s 258 and of the Planning (Listed Buildings and Conservation Areas) Act 1990 ss 32-37 (as amended) (see PARA 1139 et seq ante) as are mentioned in the order have effect, in relation to the Agency and to land in the designated area, subject to the modifications there specified: Leasehold Reform, Housing and Urban Development Act 1993 s 170(3). The provisions referred to in head (1) supra are: (a) the Town and Country Planning Act 1990 ss 171C, 171D, 172-185, 187-202, 206-222, 224, 225, 231 and 320-336, and Sch 9 para 11 (as amended); (b) the Planning (Listed Buildings and Conservation Areas) Act 1990 Pt I Chs I, II and IV(ss 1-26, 38-46) (as amended), ss 54-56, 59-61, 66, 68-72, 74-76 and 88 (as amended); and (c) the Planning (Hazardous Substances) Act 1990 ss 4-15, 17-21, 23-26AA, 36 and 36A (as amended): Leasehold Reform, Housing and Urban Development Act 1993 s 171(4). A designation order making such provision as is mentioned in s 171(3) may also provide that, for the purposes of any of the provisions specified in the order, any enactment relating to local planning authorities shall apply to the Agency subject to such modifications as may be so specified: s 171(5).

19 See the Regional Development Agencies Act 1998 s 1, Sch 1; and TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq.

20 See ibid s 36, Sch 9.

21 See ibid s 37. As to the services which the Agency may provide to regional development agencies see the Development Commission (Transfer of Functions and Miscellaneous Provisions) Order 1999, SI 1999/416, art 8(2). As to the name by which the Agency is now known see PARA 1308 post; note, however, that this change has not been formally made by order.

22 See TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq.

UPDATE

1306-1308 English Partnerships

The Urban Regeneration Agency and the Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 ss 49, 50(1). Part 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

Leasehold Reform, Housing and Urban Development Act 1993 ss 158-173, 175, 177, 183-185, Schs 17-20 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16. For transitional provision see SI 2008/3068.

1306 The Urban Regeneration Agency; in general

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

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1307. Agency's powers with regard to private streets in designated areas.

Where these provisions¹ apply in relation to a designated area² and any street works³ have been executed on any land⁴ in the designated area which was then or has since become a private street⁵ or part of a private street, the Urban Regeneration Agency⁶ may serve a notice (an 'adoption notice') on the street works authority⁷ requiring the authority to declare the street or part to be a highway⁸ which is⁹ a highway maintainable at the public expense¹⁰. Within the period of two months beginning with the date on which the adoption notice was served, the street works authority may appeal against the notice to the Secretary of State¹¹. After considering any representations made to him by the Agency and the street works authority, the Secretary of State must determine such an appeal by setting aside or confirming the adoption notice, with or without modifications¹². Where the Secretary of State so confirms the adoption notice he may at the same time impose conditions, including financial conditions, upon the Agency with which it must comply in order for the notice to take effect¹³. With effect from such date as the Secretary of State may specify, the street or part becomes a highway which is a highway maintainable at the public expense¹⁴. Where a street works authority neither complies with the adoption notice, nor appeals under the above provisions, the street or part becomes, upon the expiry of the period of two months referred to above, a highway which is a highway maintainable at the public expense¹⁵.

Where the following provision applies in relation to a designated area, the Agency submits to the Secretary of State that an order under this provision should be made in relation to any road¹⁶ in the designated area which is a private street and it appears to the Secretary of State that the traffic authority does not intend to make an order concerning traffic regulation¹⁷ in relation to the road, the Secretary of State may by order¹⁸ make in relation to the road any such provision as he might have made by order¹⁹ if he had been the traffic authority²⁰.

The Urban Regeneration Agency's power to serve a connection notice in relation to a private street, which is not confined to a private street in a designated area, is discussed elsewhere in this work²¹.

¹ ie the Leasehold Reform, Housing and Urban Development Act 1993 s 172: see the text and notes 2-15 *infra*.

² For the meaning of 'designated area' see PARA 1306 note 11 *ante*.

³ For these purposes, 'street works' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 146): Leasehold Reform, Housing and Urban Development Act 1993 s 172(6).

⁴ For the meaning of 'land' see PARA 1423 note 7 *post*.

⁵ For these purposes, 'private street' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 10): Leasehold Reform, Housing and Urban Development Act 1993 s 185.

⁶ As to the Urban Regeneration Agency see PARA 1306 *ante*.

⁷ For these purposes, 'street works authority' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 141 note 1): Leasehold Reform, Housing and Urban Development Act 1993 s 172(6).

8 For these purposes, 'highway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 7): Leasehold Reform, Housing and Urban Development Act 1993 s 185.

9 le for the purposes of the Highways Act 1980.

10 Leasehold Reform, Housing and Urban Development Act 1993 s 172(1).

11 Ibid s 172(2). As to the Secretary of State see PARA 19 ante.

12 Ibid s 172(3).

13 Ibid s 172(4)(a).

14 Ibid s 172(4)(b).

15 Ibid s 172(5). Urban development corporations have similar powers to serve adoption notices: see PARA 1484 post.

16 For these purposes, 'road' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 206): Leasehold Reform, Housing and Urban Development Act 1993 s 173(3).

17 le under the Road Traffic Regulation Act 1984 s 1 (as amended) or, as the case may be, s 6 (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 742, 747.

18 le under the Leasehold Reform, Housing and Urban Development Act 1993 s 173.

19 See note 17 supra.

20 Leasehold Reform, Housing and Urban Development Act 1993 s 173(1). The Road Traffic Regulation Act 1984 applies to such an order as it applies to an order made by the Secretary of State under s 1 (as amended) or, as the case may be, s 6 (as amended) in relation to a road for which he is the traffic authority: Leasehold Reform, Housing and Urban Development Act 1993 s 173(2). For these purposes, 'traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 236 et seq): Leasehold Reform, Housing and Urban Development Act 1993 s 173(3). The Secretary of State has similar powers in relation to submissions made by an urban development corporation: see PARA 1484 post.

21 le see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43. As to an urban development corporation's power to serve a connection notice see PARA 1484 post.

UPDATE

1306-1308 English Partnerships

The Urban Regeneration Agency and the Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 ss 49, 50(1). Part 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

Leasehold Reform, Housing and Urban Development Act 1993 ss 158-173, 175, 177, 183-185, Schs 17-20 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16. For transitional provision see SI 2008/3068.

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1308. Reconstitution of English Partnerships by informal merger of Urban Regeneration Agency and Commission for the New Towns.

On 10 May 1999, English Partnerships (the name by which the Urban Regeneration Agency was commonly known) was reconstituted by bringing together the Commission for the New Towns¹ and the national structure of the Urban Regeneration Agency² following the creation of the regional development agencies³. The regional assets and operations of the Urban Regeneration Agency were transferred to the regional development agencies on 1 April 1999, with the exception of London which remained part of the national organisation until the creation of the London Development Agency on 3 July 2000⁴.

English Partnerships retains the statutory bases of both the Commission for the New Towns and the Urban Regeneration Agency⁵.

English Partnerships maintains an internet site on the World Wide Web where details of its current role and projects may be found⁶. English Partnerships also maintains an internet property site database⁷.

1 As to the Commission for the New Towns see PARA 1383 et seq post.

2 As to the Urban Regeneration Agency see PARA 1306 ante.

3 English Partnerships press release dated 10 May 1999; English Partnerships press release dated 29 June 2000.

4 English Partnerships press release dated 10 May 1999. As to regional development agencies see PARA 1306 ante; and TRADE AND INDUSTRY vol 97 (2010) PARA 988 et seq. As to the London Development Agency see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 215.

5 English Partnerships press release dated 10 May 1999. The position of the Commission for the New Towns is now somewhat anomalous as regards its remaining functions in relation to the former new town development corporation of Cwmbran: see PARAS 1383 note 3, 1385 the text and notes 13-14 post.

6 At the date at which this title states the law, the internet address of English Partnerships was www.englishpartnerships.co.uk. The Barker Review Report (*Delivering stability--securing our future housing needs* (HM Treasury, 2004)) addresses the role of English Partnerships in Ch 3 and recommends that it should have a lead role in delivering development through partnering with public and private sector bodies in assembling complex sites, masterplanning, remediating land and developing supporting infrastructure: see Ch 3 recommendation 21.

7 The property site database referred to in the text was relaunched in January 2001 (see English Partnerships press release dated 8 January 2001) and was accessible at the date at which this title states the law at www.englishsites.com.

UPDATE

1306-1308 English Partnerships

The Urban Regeneration Agency and the Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 ss 49, 50(1). Part 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

Leasehold Reform, Housing and Urban Development Act 1993 ss 158-173, 175, 177, 183-185, Schs 17-20 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16. For transitional provision see SI 2008/3068.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(1) ENGLISH PARTNERSHIPS AND THE WELSH DEVELOPMENT AGENCY/(i) English Partnerships/1308A. The Homes and Communities Agency.

1308A. The Homes and Communities Agency.

1. General

The following provisions are in force unless otherwise stated: SI 2008/2358, SI 2008/3068.

A body corporate known as the Homes and Communities Agency ('the HCA') is established: Housing and Regeneration Act 2008 s 1(1). Schedule 1 (which makes further provision about the HCA) has effect: s 1(2).

The objects of the HCA are (1) to improve the supply and quality of housing (see s 2(3)) in England, (2) to secure the regeneration or development of land (see s 2(3)) or infrastructure (see s 2(3)) in England, (3) to support in other ways the creation, regeneration or development of communities in England or their continued well-being, and (4) to contribute to the achievement of sustainable development and good design in England, with a view to meeting the needs of people living in England: Housing and Regeneration Act 2008 s 2(1). In s 2(1) 'good design' includes design which has due regard to the needs of elderly persons and disabled persons, 'needs' includes future needs, and the reference to improving the supply of housing includes a reference to improving the supply of particular kinds of housing: s 2(2). See also ss 19(5) (financial assistance: PARA 1308A.3) (not yet in force), 44 (local government involvement: PARA 1308A.4) and 52 (role of the HCA in relation to certain former functions of the Commission for the New Towns: PARA 1308A.5): s 2(4).

The HCA may do anything it considers appropriate for the purposes of its objects or for purposes incidental to those purposes: s 3.

The following provisions (ie s 4) are in force for certain purposes. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) contains various specific powers of the HCA: s 4(1). The specific powers of the HCA (whether contained in Pt 1 or elsewhere) are to be exercised for the purposes of its objects or for purposes incidental to those purposes: s 4(2). Each power may be exercised separately or together with, or as part of, another power: s 4(3). Each power does not limit the scope of another power: s 4(4). Each power does not limit the scope of the powers conferred by s 3: s 4(5). But (a) s 4(2) and (3) do not apply to the HCA in its capacity as a local planning authority by virtue of ss 13 and 14 (see PARA 1308A.2) or in its exercise of other functions by virtue of those provisions, and (b) the powers conferred by s 3 must not be used to override a restriction imposed on the exercise of a specific power: s 4(6).

2. Land and infrastructure

The Housing and Regeneration Act 2008 s 5 provides that the Homes and Communities Agency ('the HCA') may provide housing or other land. In addition, the HCA may regenerate or develop land (s 6) and may provide infrastructure (s 7). The HCA may carry out, or facilitate the carrying out of, any of the following activities in relation to land (1) acquiring, holding, improving, managing, reclaiming, repairing or disposing of housing, (2) acquiring, holding, improving, managing, reclaiming, repairing or disposing of other land, plant, machinery, equipment or other property, and (3) carrying out building and other operations (including converting or demolishing buildings): s 8. Provision is made as to the acquisition of land (s 9, Sch 2) (Sch 2 amended by SI 2009/1307) and restrictions on disposal of land (Housing and

Regeneration Act 2008 s 10). The powers in relation to acquired land are set out: see ss 11, 12, Schs 3, 4 (Sch 4 amended by SI 2009/2748). The Secretary of State may by order designate an area in England if the Secretary of State considers that (a) the area is suitable for development, and (b) it is appropriate for the HCA to be the local planning authority for the whole or any part of the area (i) for particular permitted purposes, and (ii) in relation to particular kinds of development: Housing and Regeneration Act 2008 s 13. Provision is made as to the contents of designation orders: s 14. Prior to exercising any function conferred upon it by a designation order, the HCA must prepare and publish a statement of local involvement: s 15. Provision is also made as to the power to enter and survey land: ss 17, 18. For transitional provisions and savings see SI 2008/3068.

3. Financial provision

The following provisions are in force unless otherwise stated: SI 2008/3068.

The Homes and Communities Agency ('the HCA') may, with the consent of the Secretary of State, give financial assistance to any person: Housing and Regeneration Act 2008 s 19 (partly in force). The borrowing powers of the HCA are set out including powers to borrow (Housing and Regeneration Act 2008 s 20), loans by the Secretary of State (s 21) guarantees by the Secretary of State (Housing and Regeneration Act 2008 s 22) and financial limits (s 23). In addition, provision is made with respect to the power to charge for certain activities (s 24), and directions as to surplus funds (Housing and Regeneration Act 2008 s 25). The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such financial assistance functions as the Secretary of State may specify: s 26. The Secretary of State may appoint the HCA to act as the agent of the Secretary of State in connection with such derelict land functions as the Secretary of State may specify: s 27.

4. Other functions of the HCA

The following provisions are in force unless otherwise stated: SI 2008/2358, SI 2008/3068, SI 2009/803. For transitional provisions and savings see SI 2008/3068, SI 2009/803.

The Homes and Communities Agency ('the HCA') may carry on any business: Housing and Regeneration Act 2008 s 28. The HCA may, with the consent of the Secretary of State, form, or acquire interests in, bodies corporate: s 29. The HCA may provide such services for communities as it considers appropriate or facilitate the provision of such services: s 30.

Detailed provision is made with respect to social housing including the duties of the HCA (s 31) (not yet in force), the recovery of social housing assistance (see Housing and Regeneration Act 2008 ss 32-34) (ss 32, 33 partly in force), the duty to give financial assistance in respect of certain disposals (s 35) (not yet in force) and information in relation to social housing (s 36). The HCA must co-operate with the Regulator of Social Housing: see Housing and Regeneration Act 2008 s 37.

The HCA may (1) publish ideas or information, or disseminate or promote ideas or information in other ways; (2) undertake research or experimentation; and (3) provide other information services: see s 38. The HCA may provide (a) advice, education or training, or (b) other advisory, education or training services: s 39. The HCA may give guidance to such persons as it considers appropriate about any matters relating to its objects: Housing and Regeneration Act 2008 s 40.

Provision is made with respect to the control of subsidiaries: Housing and Regeneration Act 2008 s 41. The HCA may, with the consent of the Secretary of State, appoint an urban development corporation to act as its agent: s 42. The HCA may act with other persons (whether in partnership or otherwise) and may act as agent for other persons: s 43. The HCA must from time to time consult such representatives of local government as the HCA considers

appropriate about how the HCA pursues its objects: s 44. The HCA may provide services in support of a project: s 45.

5. Supplementary

The Housing and Regeneration Act 2008 Pt 1 Ch 5 (ss 46-58) (in force unless otherwise stated: SI 2008/2358, SI 2008/3068) makes supplementary provision for the purposes of the Housing and Regeneration Act 2008 Pt 1 (ss 1-58). For transitional provisions and savings see SI 2008/3068.

The Secretary of State may give guidance to the Homes and Communities Agency ('the HCA') as to the exercise of any of its functions: see Housing and Regeneration Act 2008 s 46. The Secretary of State may give the HCA general or specific directions as to the exercise of any of its functions: see s 47. Any consent of the Secretary of State required under Pt 1 may be given unconditionally or subject to conditions, and generally or specifically: see s 48.

The following provisions (ie s 51, Schs 6, 7) are in force for certain purposes. The Secretary of State may make one or more schemes for (1) the transfer to the HCA of designated (see s 51(4)) property, rights or liabilities of (a) the Urban Regeneration Agency, (b) the Commission for the New Towns, (c) a regional development agency (within the meaning of the Regional Development Agencies Act 1998), or (d) a Minister of the Crown (see Housing and Regeneration Act 2008 s 51(4)), or (2) the transfer to the Welsh Ministers of designated property, rights or liabilities of (i) the Urban Regeneration Agency, or (ii) the Commission for the New Towns: s 51(1). On the transfer date (see s 51(4)), the designated property, rights or liabilities are transferred and vest in accordance with the scheme: s 51(2). Schedule 6 (which makes further provision about the making of schemes) has effect: s 51(3). Schedule 7 (amended by SI 2008/3002) makes provision about the tax implications of schemes under the Housing and Regeneration Act 2008 s 51 (and schemes under s 65: see PARA 124A.1): s 51(5).

The HCA must, so far as practicable, exercise its powers in relation to (A) any property, rights or liabilities of the Commission for the New Towns transferred to it by virtue of s 51 and Sch 6, (B) any property, rights or liabilities of a new town development corporation (see s 52(4)) transferred to it by virtue of the New Towns Act 1981 s 41, Sch 10 (see PARAS 1406-1409), (C) any undertaking, or part of an undertaking, of an urban development corporation transferred to it by virtue of an agreement under the Local Government, Planning and Land Act 1980 s 165 (see PARA 1488), or (D) any property, rights or liabilities of an urban development corporation transferred to it by virtue of an order under the 1980 Act s 165B (see PARA 1489), for the purposes of the objects mentioned in the Housing and Regeneration Act 2008 s 2(1) (see PARA 1308A.1) or for purposes incidental to those purposes: s 52(1). But s 52(1) does not apply if the HCA does not consider it appropriate to exercise its powers in this way having regard, in particular, to the purposes for which the transferred property (see s 52(4)) was held by the Commission for the New Towns, the new town development corporation or (as the case may be) the urban development corporation: s 52(2). In such a case, the HCA must exercise its powers in relation to the transferred property in such a way as it considers appropriate having regard, in particular, to the objects mentioned in s 2(1), and the purposes for which the transferred property was held by the body concerned, and the references in Pt 1 to the objects of the HCA are to be read accordingly: s 52(3).

Provision is also made with respect to interim arrangements (s 53), the validity of transactions (s 54) and notices (s 55).

UPDATE

1306-1308 English Partnerships

The Urban Regeneration Agency and the Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 ss 49, 50(1). Part 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

Leasehold Reform, Housing and Urban Development Act 1993 ss 158-173, 175, 177, 183-185, Schs 17-20 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16. For transitional provision see SI 2008/3068.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(1) ENGLISH PARTNERSHIPS AND THE WELSH DEVELOPMENT AGENCY/(ii) The Welsh Development Agency/1309. The Welsh Development Agency; in general.

(ii) The Welsh Development Agency

1309. The Welsh Development Agency; in general.

The Welsh Development Agency was established in 1975¹ and now includes among its functions that of making land available for development². The development of rural Wales was, until the repeal of the relevant statutory provisions in 1998, the responsibility of a separate body, the Development Board for Rural Wales³, whose functions included the development of new towns in rural areas of Wales⁴. That Board has now been abolished⁵, as has the former Land Authority for Wales⁶.

Urban regeneration and development in Wales is now the responsibility of the Welsh Development Agency, whose constitution, functions and powers are discussed in detail elsewhere in this work⁷.

The Welsh Development Agency is a public body subject to reform by the National Assembly for Wales⁸ and may either lose or gain functions as a result of such reform⁹. The Agency maintains an internet site on the World Wide Web where details of its policies, members, office locations, services and current role and projects are available¹⁰.

1 See the Welsh Development Agency Act 1975 s 1(1); and TRADE AND INDUSTRY vol 97 (2010) PARA 954.

2 See *ibid* s 1(3)(da) (added by the Government of Wales Act 1998 s 126(3)(d)); and TRADE AND INDUSTRY vol 97 (2010) PARA 954.

3 See the Development of Rural Wales Act 1976 s 1 (repealed).

4 See *ibid* s 5, Sch 3 (repealed).

5 See the Development Board for Rural Wales (Abolition) Order 1999, SI 1999/373, art 2, which came into force on 28 February 1999: art 1. As to the transfer of property etc from the Board to the Welsh Development Agency see the Government of Wales Act 1998 s 130.

6 The functions of the Land Authority for Wales have ceased to exist: see the Government of Wales Act 1998 s 134; and PARA 964 ante. As to the Land Authority for Wales see the Community Land Act 1975 s 8, Sch 3 (repealed); the Local Government, Planning and Land Act 1980 s 102 (repealed); as to the transfer of its property etc to the Welsh Development Agency see the Government of Wales Act 1998 s 136; and as to its abolition see the Land Authority for Wales (Abolition) Order 1999, SI 1999/372. See further PARA 964 ante.

7 See TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq. The position as regards new towns in Wales created not under the Development of Rural Wales Act 1976 (see the text and note 4 supra) but under the predecessor

legislation to the New Towns Act 1981 is, however, somewhat anomalous; following the repeal of the 1976 legislation the New Towns Act 1981 has been amended so that its provisions now apply throughout Wales but the property etc of any development corporations established for such new towns is to be transferred not to the Welsh Development Agency but to the Commission for the New Towns (part of English Partnerships): see PARA 1406 post. As to the Commission for the New Towns see PARA 1383 et seq post.

8 As to the exercise of planning functions by the National Assembly for Wales see PARA 20 ante.

9 See the Government of Wales Act 1998 s 28, Sch 4 Pt I para 11.

10 At the date at which this title states the law, the internet address of the Welsh Development Agency was www.wda.co.uk.

UPDATE

1309 The Welsh Development Agency; in general

TEXT AND NOTES--The Welsh Development Agency has been abolished and its functions, property, rights and liabilities have been transferred to the National Assembly for Wales: see the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and TRADE AND INDUSTRY vol 97 (2010) PARA 954.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(i) Legislation and Administration; in general/1310. Introduction.

(2) NEW TOWNS

(i) Legislation and Administration; in general

1310. Introduction.

The new towns legislation, consolidated in the New Towns Act 1981 and subsequently amended, makes provision for the designation of areas of land in England and Wales as new towns¹. No such designations have in fact been made under the 1981 Act, although a number of new town areas were designated under the predecessor legislation².

Under the Development of Rural Wales Act 1976, the Development Board for Rural Wales had responsibility for the development of new towns in rural Wales and such development was subject to the new towns code contained in the 1976 Act³ and not to the New Towns Act 1981⁴. The relevant provisions of the 1976 Act have now been repealed⁵. The abolition of the Development Board for Rural Wales has already been discussed⁶.

1 See the New Towns Act 1981; and PARA 1311 et seq post.

2 Eg Stevenage was the first new town area to be designated under the New Towns Act 1946 (repealed) on 11 November 1946; Welwyn Garden City and Hatfield were both designated under the 1946 Act (repealed) on 20 May 1948; Central Lancashire (Preston, Chorley and Leyland) was designated under the New Towns Act 1965 (repealed) on 26 March 1970; and Milton Keynes was designated under the 1965 Act (repealed) on 23 January 1967.

3 See the Development of Rural Wales Act 1976 s 5, Sch 3 (repealed).

4 See *ibid* s 5(1) (repealed).

5 See the Government of Wales Act 1998 s 152, Sch 18 Pt IV.

6 See PARA 1309 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(i) Legislation and Administration; in general/1311. Regulations and orders.

1311. Regulations and orders.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may make regulations for the purposes of prescribing anything which is authorised or required to be prescribed³ under the New Towns Act 1981⁴. Regulations so made must be made by statutory instrument, which is subject, in the case of regulations made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament⁵.

The power to make specified orders⁶ is exercisable by statutory instrument⁷; and any provision of the New Towns Act 1981⁸ conferring a power to make orders, whether exercisable by statutory instrument or otherwise, implies a power, exercisable in the same manner and subject to the same conditions or limitations, to revoke or amend any instrument made under the power⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 77 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, 'prescribed' (except in relation to matters expressly required or authorised by the New Towns Act 1981 to be prescribed in some other way) means prescribed by regulations under that Act: s 80(1).

4 Ibid s 77(1). As to parliamentary procedure in the case of regulations made by the Assembly see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; STATUTES.

5 New Towns Act 1981 s 77(2). At the date at which this title states the law no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2)(b), the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549 (see PARA 1337 et seq post) have effect as if so made.

6 I.e. under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 post), s 2 (as amended) (see PARA 1319 post), s 39 (as amended) (see PARA 1405 post), s 40 (repealed), s 41 (as amended) (see PARA 1406 post), s 42 (repealed), s 60 (as amended) (see PARA 1399 post), ss 62A, 62B (as added) (see PARA 1396 post), Sch 9 para 7 (as added) (see PARA 1395 post).

7 Ibid s 77(3) (s 77(3), (4) amended, and s 77(3A) added, by the New Towns and Urban Development Corporations Act 1985 ss 8(2), 14, Sch 3 para 12, Sch 4). A statutory instrument containing an order under any of the following provisions is, if made by the Secretary of State, subject to annulment in pursuance of a resolution of either House of Parliament: (1) certain orders under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 note 7 post); or (2) an order under s 2 (as amended) (see PARA 1319 post), s 42 (repealed) or s 62B(1) (as added) (see PARA 1396 post): s 77(4) (as so amended; further amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(8)).

8 I.e. except ibid s 40 (repealed).

9 Ibid s 77(3A) (as added: see note 7 supra).

UPDATE

1311 Regulations and orders

TEXT AND NOTES 6, 7--New Towns Act 1981 s 77(3) further amended: Housing and Regeneration Act 2008 Sch 5 para 27, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(i) Legislation and Administration; in general/1312. Local inquiries.

1312. Local inquiries.

The Secretary of State¹ or any other minister, or, in relation to Wales, the National Assembly for Wales², may³, for the purpose of the exercise of any of his or its functions under the New Towns Act 1981, cause to be held:

- 4739 (1) such local inquiries as are directed⁴; and
- 4740 (2) such other local inquiries as he or the Assembly may think fit⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 74 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 Ie without prejudice to any other enactment authorising the holding of local inquiries (New Towns Act 1981 s 74(4)); and subject to s 74(2), (3) (as amended) (see note 5 infra): s 74(1). 'Enactment', except in s 41(5), Sch 10 (as amended) (see PARAS 1407-1409 post), includes an enactment in any local or private Act of Parliament, and an order, byelaw or scheme made under an Act of Parliament: s 80(1).

4 Ie by the New Towns Act 1981.

5 Ibid s 74(1). As to local inquiries generally see PARA 651 et seq ante.

The Local Government Act 1972 s 250(2), (3), (5) (as amended) (which relates to the giving of evidence at, and the costs of parties to, local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) applies to inquiries held in pursuance of the New Towns Act 1981 as it applies to inquiries held under the Local Government Act 1972 s 250 (as amended); and, except as regards an inquiry held for the purposes of the exercise of the Secretary of State's or the Assembly's functions under any specified provision, s 250(4) (as amended) (which relates to recovery of the costs of holding local inquiries: see LOCAL GOVERNMENT vol 69 (2009) PARA 105) similarly applies: New Towns Act 1981 s 74(2). The provisions so specified are s 37 (as amended) (see PARA 1385 post), s 40 (repealed), s 41 (as amended) (see PARA 1406 post), and s 41, Sch 10 (as amended) (see PARAS 1407-1409 post): s 74(3) (amended by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 11).

UPDATE

1312 Local inquiries

NOTE 5--New Towns Act 1981 s 74(3) further amended: Housing and Regeneration Act 2008 Sch 5 para 26.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(i) Legislation and Administration; in general/1313. Service of notices.

1313. Service of notices.

Subject to the following provisions, any notice or other document required or authorised to be served or given under the New Towns Act 1981 may be served or given either:

- 4741 (1) by delivering it to the person on whom it is to be served or to whom it is to be given; or
- 4742 (2) by leaving it at the usual or last known place of abode of that person, or, in a case where an address for service has been given by that person, at that address; or
- 4743 (3) by sending it in a prepaid letter using the special delivery service¹, or as a recorded delivery packet², addressed to that person at his usual or last known place of abode, or, in a case where an address for service has been given by that person, at that address; or
- 4744 (4) in the case of an incorporated company or body, by delivering it to the secretary or clerk of the company or body at its registered or principal office, or sending it in a prepaid letter using the special delivery service, or as a recorded delivery packet, addressed to the secretary or clerk of the company or body at that office³.

Where the notice or document is required or authorised to be served on or given to any person as having an interest in premises, and the name of that person cannot be ascertained after reasonable inquiry, or where the notice or document is required or authorised to be served on any person as an occupier of premises, the notice or document is taken to be duly served if:

- 4745 (a) being addressed to him by the description of 'the owner'⁴ or 'the occupier', as the case may be, of the premises, describing them, it is delivered, left or sent in the manner specified in heads (1), (2) or (3) above; or
- 4746 (b) being addressed to him either by name or in accordance with head (a) above, and marked in such manner as may be prescribed⁵ for securing that it is plainly identifiable as a communication of importance, it is sent to the premises in a prepaid letter using the special delivery service or as a recorded delivery packet and is not returned to the authority sending it, or it is delivered to some person on those premises, or it is affixed conspicuously to some object on those premises⁶.

Where the notice or document is required to be served on or given to all persons having interests in, or being occupiers of, premises comprised in any land⁷, and it appears to the authority required to serve or give the notice or other document that any part of that land is unoccupied, then, in such a case, the notice or document is taken to be duly served on all persons having interests in, and on any occupiers of, premises comprised in that part of the land, other than an owner who has given⁸ to that authority an address for the service of the notice on him, if:

- 4747 (i) being addressed to 'the owners and any occupiers' of that part of the land, describing it, and
- 4748 (ii) marked as mentioned in heads (a) and (b) above,

it is affixed conspicuously to some object on the land⁹.

Where the fee simple of any ecclesiastical property¹⁰ is in abeyance, it is treated for the purposes of a compulsory acquisition of the property under the New Towns Act 1981¹¹ as being vested in the Church Commissioners, and any notice to treat must be served or is deemed to have been served accordingly¹²; and, where any notice, other than a notice to treat, is required under that Act to be served on an owner of land, and the land is ecclesiastical property, a like notice must be served on the Church Commissioners¹³.

Words in the New Towns Act 1981 importing a reference to service of a notice to treat are to be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment¹⁴, is to be deemed to be served¹⁵.

1 The statutory wording is 'prepaid registered letter'. As to the special delivery service, which has replaced registered post, see POST OFFICE vol 36(2) (Reissue) PARAS 116-118.

2 The statutory wording is 'by the recorded delivery service'. As to recorded delivery packets see POST OFFICE vol 36(2) (Reissue) PARA 119.

3 New Towns Act s 75(1) (s 75 modified by virtue of the Successor Postal Services Company Inland Letter Post Scheme 2001).

4 'Owner', in relation to any building or land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the building or land, whether in possession or reversion, or who holds or is entitled to the rents and profits of the building or land under a lease or agreement of which the unexpired term exceeds three years; and 'dispose', in relation to property, includes the granting of any interest in or right over it: New Towns Act 1981 s 80(1) (definition of 'dispose' added by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 13). For the meaning of 'land' see note 7 infra.

5 For the meaning of 'prescribed' see PARA 1311 note 3 ante.

6 New Towns Act 1981 s 75(2) (as modified: see note 3 supra). Any notice or other document which is to be served on a person as having an interest in premises, or on a person as an occupier of premises, in the manner provided by s 75(2)(b) (see head (b) in the text) must, at the beginning of that notice or other document, have clearly and legibly marked upon it, in the following form, the words: 'Important--this communication affects your property'; and, where such notice or other document is not sent in a prepaid letter using the special delivery service or as a recorded delivery packet but is delivered under cover to some person on the premises, in accordance with s 75(2)(b), the cover must also be marked in like manner: New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 5; Interpretation Act 1978 s 17(2); and see the Successor Postal Services Company Inland Letter Post Scheme 2001.

7 'Land' includes messuages, tenements and hereditaments, houses, and buildings of any tenure: New Towns Act 1981 s 80(1).

8 Ie in accordance with the relevant provisions of the New Towns Act 1981.

9 Ibid s 75(3), (4).

10 For these purposes, except in so far as the context otherwise requires, 'ecclesiastical property' means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: ibid s 80(1).

11 As to compulsory acquisition see PARA 1333 et seq post.

12 New Towns Act 1981 s 76(1). As to the Church Commissioners see ECCLESIASTICAL LAW.

13 Ibid s 76(2).

14 For the meaning of 'enactment' see PARA 1312 note 3 ante.

15 New Towns Act 1981 s 80(3).

UPDATE

1313 Service of notices

TEXT AND NOTES 12, 13--1981 Act s 76 amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 23(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(i) Legislation and Administration; in general/1314. Meaning of 'the appropriate minister'.

1314. Meaning of 'the appropriate minister'.

'The appropriate minister' means¹:

- 4749 (1) in relation to statutory undertakers² carrying on any railway, light railway, tramway, road transport, dock, harbour or pier undertaking, the Secretary of State for Transport;
- 4750 (2) in relation to statutory undertakers carrying on an undertaking for the supply of hydraulic power, the Secretary of State for Trade and Industry;
- 4751 (3) in relation to the Civil Aviation Authority³ or statutory undertakers carrying on any lighthouse undertaking, the Secretary of State for Transport;
- 4752 (4) in relation to a universal postal service provider⁴, the Secretary of State for Trade and Industry;
- 4753 (5) in relation to any other statutory undertakers, the First Secretary of State⁵.

'The appropriate minister' means⁶ in the case of:

- 4754 (a) a relevant airport operator⁷, the Secretary of State for Transport⁸;
- 4755 (b) a gas transporter⁹, the Secretary of State for Trade and Industry¹⁰;
- 4756 (c) an electricity supplier¹¹, the Secretary of State for Trade and Industry¹²;
- 4757 (d) the Environment Agency¹³, the Secretary of State¹⁴;
- 4758 (e) a water undertaker or sewerage undertaker¹⁵, the Secretary of State¹⁶.

References to the Secretary of State and the appropriate minister have effect:

- 4759 (i) as references to the Secretary of State and the appropriate minister, if the appropriate minister is not the one concerned as the Secretary of State; and
- 4760 (ii) as references to the one concerned as the Secretary of State alone, if he is also the appropriate minister¹⁷.

If any question arises:

- 4761 (A) in relation to anything required or authorised to be done under the New Towns Act 1981, as to which minister is or was the appropriate minister in relation to any statutory undertakers, that question must be determined by the Treasury;
- 4762 (B) in relation to the authorisation under that Act of a compulsory acquisition of land¹⁸, whether land of statutory undertakers is operational land¹⁹, that question must be determined by the Secretary of State and the appropriate minister²⁰.

So far as exercisable in Wales, however, functions under these provisions, except for the determination of a question under head (A) above by the Treasury, are transferred to the National Assembly for Wales²¹.

- 1 le for the purposes of the New Towns Act 1981: see PARA 1315 et seq post.
- 2 For the meaning of 'statutory undertakers' see PARA 1344 post.
- 3 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.
- 4 As to the provision of a universal postal service see POST OFFICE vol 36(2) (Reissue) PARA 24.
- 5 New Towns Act 1981 s 78(1) (amended by the Telecommunications Act 1984 s 109(6), Sch 7 Pt I; the Gas Act 1986 s 67(1), Sch 9 Pt I; the Airports Act 1986 s 83(5), Sch 6 Pt I; the Electricity Act 1989 s 112(4), Sch 18; the Water Act 1989 s 190(3), Sch 27 Pt I; the Transfer of Functions (Trade and Industry) Order 1983, SI 1983/1127, art 2(1), (3); the Transfer of Functions (Energy) Order 1992, SI 1992/1314, art 3(3), Schedule para 1(c); by the Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971, arts 3-6; the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 51; and by virtue of the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626). As to the First Secretary of State see PARA 19 ante. See also the text and note 21 infra.
- 6 le in relation to statutory undertakers for the purposes of the New Towns Act 1981.
- 7 le within the meaning of the Airports Act 1986 Pt V (ss 57-62) (as amended): see AIR LAW vol 2 (2008) PARA 189.
- 8 Ibid s 58, Sch 2 para 1(2) (amended by the Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626, art 20, Sch 2 para 13).
- 9 As to gas transporters see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 835 et seq.
- 10 Gas Act 1995 s 16(1), Sch 4 para 2(10)(g) (modified by virtue of the Utilities Act 2000 s 76(7)).
- 11 le a holder of a licence under the Electricity Act 1989 s 6 (as substituted): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1065. References in any enactment to holders of licences under 6(2) (as substituted) now have effect as if they were references to electricity suppliers: Utilities Act 2000 s 31(3).
- 12 Electricity Act 1989 s 112(1), Sch 16 para 3(1)(g); and see note 11 supra.
- 13 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.
- 14 Water Act 1989 s 190, Sch 25 para 1(9)(a), (10)(viii) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4). The statutory wording is 'the Secretary of State or the minister'; but see the Ministry of Agriculture, Fisheries and Food (Dissolution) Order 2002, SI 2002/794.
- 15 As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.
- 16 Water Act 1989 Sch 25 para 1(9)(b), (10)(viii).
- 17 New Towns Act 1981 s 78(2).
- 18 For the meaning of 'land' see PARA 1313 note 7 ante. As to compulsory acquisition see PARA 1333 et seq post.
- 19 For the meaning of 'operational land' see PARA 1344 post.
- 20 New Towns Act 1981 s 78(3).
- 21 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante.

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(ii) Establishment of New Towns

A. DESIGNATION OF AREAS

1315. Designation of areas.

If the Secretary of State¹, or, in relation to Wales, the National Assembly for Wales², is satisfied, after consultation³ with any local authorities⁴ which appear to him or to the Assembly to be concerned, that it is expedient in the national interest that any area of land⁵ should be developed as a new town by a development corporation⁶, he or the Assembly may make an order⁷ designating that area as the site of the proposed new town⁸. An order so made may include in the area designated as the site of the proposed new town any existing town or other centre of population⁹.

In England, if the Secretary of State or a local planning authority¹⁰ thinks that a representation made in relation to a local development document¹¹ is in substance a representation or objection in respect of anything which is done or is proposed to be done in pursuance of such an order, he or the authority may disregard it¹². Similarly, in Wales if the Assembly or a local planning authority thinks that a representation made in relation to a local development plan¹³ is in substance a representation or objection in respect of anything which is done or is proposed to be done in pursuance of such an order, the Assembly or the authority may disregard it¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'consult' para 2 note 1 ante. The effect of failure to carry out proper consultation may be to invalidate any designation order subsequently made: see *Port Louis Corp'n v A-G of Mauritius* [1965] AC 1111, [1965] 3 WLR 67, PC.

4 For these purposes, except in so far as the context otherwise requires, 'local authority' means: (1) a billing authority or a precepting authority, as defined in the Local Government Finance Act 1992 s 69 (as amended); (2) a fire and rescue authority in Wales constituted by a scheme under the Fire and Rescue Services Act 2004 s 2 or a scheme to which s 4 applies; (3) a levying body within the meaning of the Local Government Finance Act 1988 s 74 (as amended); and (4) a body as regards which s 75 (as amended) applies; and any joint board or joint committee if all the constituent authorities are such local authorities as are mentioned in heads (1)-(4) supra: New Towns Act 1981 s 80(1) (amended by the Local Government Finance (Repeals, Savings and Consequential Amendments) Order 1990, SI 1990/776, art 8, Sch 3 para 22; the Local Government Finance Act 1992 s 117(1), Sch 13 para 51; the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 52(1)-(3)). See further LOCAL GOVERNMENT vol 69 (2009) PARA 23.

5 For the meaning of 'land' see PARA 1313 note 7 ante.

6 Ie a development corporation established under the New Towns Act 1981: see PARA 1322 et seq post.

7 The power to make an order under *ibid* s 1 (as amended) is exercisable by statutory instrument (see s 77(3) (as amended); and PARA 1311 ante); and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament where (1) the order is one designating an area as the site of proposed new town, or designating an additional area of not less than 500 acres which would extend the area of a new town by not less than 10%; and (2) an objection to the order was duly made by a county planning authority or, where the order is one designating an area in Wales, by the local planning authority, and had not been withdrawn at the time the order was made (s 77(4)(a) (amended by the New Towns and Urban Development Corporation Act 1985 s 14(1), Sch 3 para 12(3); and by the Local Government (Wales)

Act 1994 s 66(6), Sch 16 para 63(8)). The function of the Secretary of State in making a designation order is purely administrative, and he is the judge of whether he is satisfied in the national interest that such an order is expedient: *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL. As to challenging such orders by judicial review see PARA 1507 post; and JUDICIAL REVIEW. As to the making of subordinate legislation by the Assembly see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; STATUTES.

8 New Towns Act 1981 s 1(1). As to the procedure for designating an area see PARAS 1316-1317 post.

9 Ibid s 1(3). References in the New Towns Act 1981 to a new town or proposed new town are to be construed accordingly (s 1(3)); and any reference in that Act to the area of a new town is a reference to the area designated as the site of that new town by the relevant order under s 1 (as amended) (s 80(2)).

10 As to local planning authorities see PARA 28 et seq ante.

11 For the meaning of 'local development document' see PARA 92 note 7 ante.

12 Planning and Compulsory Purchase Act 2004 s 32(1)(c), (2); and see PARAS 109-110 ante.

13 For the meaning of 'local development plan' see PARA 135 ante.

14 Planning and Compulsory Purchase Act 2004 s 73(1)(c), (2); and see PARA 138 note 13 ante.

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1316. Preliminary procedure.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² proposes to make a designation order³, he or the Assembly must prepare a draft of the order, describing the area to be designated as the site of the proposed new town⁴ by reference to a map, either with or without descriptive matter⁵, together with such statement as he or the Assembly considers necessary for indicating the size and general character of the proposed new town⁶. Before making the order, the Secretary of State or the Assembly must publish in the London Gazette, in one or more newspapers circulating in the locality in which the proposed new town will be situated, and in such other newspapers, if any, as he or it considers appropriate in the circumstances⁷, a notice which must:

- 4763 (1) describe the area to be designated as the site of the proposed new town;
- 4764 (2) state that the draft of an order⁸ has been prepared by the Secretary of State or by the Assembly in relation to that area and is about to be considered by him or by it;
- 4765 (3) name a place within that area where a copy of the draft order, including any map or descriptive matter annexed to it, and of the required statement⁹ may be seen at any reasonable hour;
- 4766 (4) specify the time, not being less than 28 days from the publication of the notice in the London Gazette, within which and the manner in which objections to the proposed order may be made¹⁰.

The Secretary of State or the Assembly must, not later than the date on which the notice is published in the London Gazette, serve a like notice on the council of every county¹¹ and of every district¹² or, in the case of land in Wales, every county or county borough, in which the land¹³, or any part of the land, to which the order relates is situated and on any other local authority¹⁴ which appears to him or to the Assembly to be concerned with the order¹⁵.

If any objection to the proposed order is duly made and is not withdrawn, the Secretary of State or the Assembly must, before making the order, cause a public local inquiry¹⁶ to be held with respect to the objection¹⁷ and must consider the report of the person by whom the inquiry was held¹⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 Sch 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 I.e. an order under the New Towns Act 1981 s 1 (as amended): see PARA 1315 ante.

4 For the meaning of 'area of a new town' and 'proposed new town' see PARA 1315 note 9 ante.

5 In the case of any discrepancy between the map and any such descriptive matter, the descriptive matter prevails except in so far as may be otherwise provided by the draft order: New Towns Act 1981 s 1(4), Sch 1 para 1(2).

6 Ibid Sch 1 para 1(1).

7 Ibid Sch 1 para 2(1).

8 See note 3 supra.

9 I.e. the statement required by the New Towns Act 1981 Sch 1 para 1: see the text and notes 1-6 supra.

10 Ibid Sch 1 para 2(2).

11 As to county councils see PARA 28 ante.

12 As to district councils see PARA 28 ante.

13 For the meaning of 'land' see PARA 1313 note 7 ante.

14 For the meaning of 'local authority' see PARA 1315 note 4 ante.

15 New Towns Act 1981 Sch 1 para 2(3) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(9)). As to the service of notices see PARA 1313 ante.

16 As to public local inquiries see PARA 651 et seq ante.

17 It is not necessary for the Secretary of State to adduce evidence or present a case at the inquiry; the inquiry is solely concerned with the objections made: *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL. As to the general power of the Secretary of State or the Assembly to hold inquiries for the purposes of the new towns legislation see PARA 1312 ante.

18 New Towns Act 1981 Sch 1 para 3. The consideration given must be genuine, and the Secretary of State must not come to the objections with a foreclosed mind, but, subject thereto, the question of bias on his part is irrelevant, since he is exercising administrative and not judicial functions: *Franklin v Minister of Town and Country Planning* [1948] AC 87, [1947] 2 All ER 289, HL.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/A. DESIGNATION OF AREAS/1317. Making of order; publicity.

1317. Making of order; publicity.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may³ make the designation order⁴ either in terms of the draft or subject to such modifications as he or the

Assembly thinks fit; but, except with the consent of all persons interested, the Secretary or State or the Assembly may not make the order subject to a modification which includes in the area designated as the site of the proposed new town⁵ any land⁶ not so designated in the draft order⁷.

As soon as may be after an order has been made⁸, the Secretary of State or the Assembly must publish⁹ a notice stating that the order has been made and naming a place within the area designated by the order as the site of the proposed new town where a copy of the order may be seen at any reasonable hour¹⁰. The Secretary of State or the Assembly must serve a like notice on any local authority¹¹ on which notice of the proposed order was served¹², and on any other person who has duly made an objection to the proposed order and, at or after the time of making the objection, has sent to the Secretary of State or the Assembly a request in writing to serve him with the required notice¹³, giving an address for service¹⁴.

A designation order, when operative¹⁵, is a local land charge¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 Sch 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 I.e. subject to the New Towns Act 1981 s 1(4), Sch 1 para 3: see PARA 1316 ante.

4 I.e. under *ibid* s 1 (as amended): see PARA 1315 ante.

5 For the meaning of 'area of a new town' and 'proposed new town' see PARA 1315 note 9 ante.

6 For the meaning of 'land' see PARA 1313 note 7 ante.

7 New Towns Act 1981 Sch 1 para 4.

8 I.e. as provided by *ibid* Sch 1 (paras 1-7) (as amended): see PARA 1316 ante; the text and notes 9-14 *infra*; and PARA 1318 post.

9 I.e. as provided in *ibid* Sch 1 para 2(1): see PARA 1316 ante.

10 *Ibid* Sch 1 para 5(1).

11 For the meaning of 'local authority' see PARA 1315 note 4 ante.

12 I.e. under the New Towns Act 1981 Sch 1 para 2 (as amended): see PARA 1316 ante.

13 I.e. the notice required by *ibid* Sch 1 para 5.

14 *Ibid* Sch 1 para 5(2). As to the service of notices see PARA 1313 ante.

15 As to the time when the order becomes operative see PARA 1318 post.

16 New Towns Act 1981 s 1(5) (amended by the New Towns and Urban Development Corporations Act 1985 s 14(2), Sch 4). As to local land charges see LAND CHARGES.

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1318. Validity and date of operation of order.

If any person aggrieved¹ by a designation order² desires to question the validity of that order, or of any provision contained in it, on the ground:

- 4767 (1) that it is not within the statutory powers³; or
- 4768 (2) that any statutory requirement⁴ has not been complied with in relation to the order,

he may, within six weeks from the date on which notice of the order is first published in accordance with the relevant statutory provisions⁵, apply to the High Court⁶. On any such application the court may:

- 4769 (a) by interim order suspend the operation of the order or any of its provisions, either generally or in so far as it affects any of the applicant's property, until the final determination of the proceedings; and
- 4770 (b) quash the order or any of its provisions, either generally or in so far as it affects any of the applicant's property, if satisfied that the order or any of its provisions is not within the statutory powers or that the applicant's interests have been substantially prejudiced⁷ by any statutory requirement not having been complied with⁸.

Subject to the above provisions, a designation order may not, either before or after it has been made, be questioned in any legal proceedings whatsoever, and becomes operative on the date on which notice is first published as mentioned above⁹.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 Ie an order made under the New Towns Act 1981 s 1 (as amended): see PARA 1315 ante.

3 Ie the powers of the New Towns Act 1981: see PARA 1315 et seq ante, PARA 1319 et seq post.

4 Ie any requirement of the New Towns Act 1981.

5 Ie the relevant provisions of ibid s 1(4), Sch 1 (paras 1-7) (as amended): see the text and notes 6-9 infra; and PARAS 1316-1317 ante.

6 Ibid Sch 1 para 6(1).

7 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

8 New Towns Act 1981 Sch 1 para 6(2).

9 Ibid Sch 1 para 7. As to the availability of judicial review see PARA 1507 post; and as to the right of the Secretary of State, the National Assembly for Wales or the local planning authority to disregard certain representations which are in substance representations or objections in relation to anything done or proposed to be done under a designation order see PARA 1315 the text and notes 10-14 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/A. DESIGNATION OF AREAS/1319. Reduction of designated areas.

1319. Reduction of designated areas.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may make an order excluding any land³ specified in the order from the area of a new town⁴ if, after

consulting⁵ the development corporation⁶ for the town and any county council⁷ and district council⁸ or, in the case of land in Wales, any county council or county borough council, in whose area the land is situated, he or the Assembly is satisfied that it is expedient to make the order⁹.

On the coming into force of such an order, the land specified in the order ceases to be contained in the area of the new town and the order designating the area¹⁰ ceases to operate as regards that land¹¹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 2 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'land' see PARA 1313 note 7 ante.

4 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

5 For the meaning of 'consult' para 2 note 1 ante.

6 For the meaning of 'development corporation' see PARA 1322 post.

7 As to county councils see PARA 28 ante.

8 As to district councils see PARA 28 ante.

9 New Towns Act 1981 s 2(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(1)). The power to make orders under the New Towns Act 1981 s 2 (as amended) is exercisable by statutory instrument (see s 77(3) (as amended); and PARA 1311 ante); and a statutory instrument containing such an order is subject to annulment in pursuance of a resolution of either House of Parliament (s 77(4)(b) (amended by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 12(3)(c)). As to the making of subordinate legislation by the Assembly see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; STATUTES.

10 I.e. the order made under the New Towns Act 1981 s 1 (as amended); see PARA 1315 ante.

11 Ibid s 2(2). As to the effect of orders made under s 2 (as amended) see further PARA 1320 post. The Secretary of State or the Assembly may in an order under s 2 (as amended) make such provision by way of savings and transitional provisions, including provisions amending provisions made by or under an enactment, as he or the Assembly thinks fit; and s 2(2) applies subject to any such savings and transitional provisions: s 2(3). For the meaning of 'enactment' see PARA 1312 note 3 ante. As to the appropriate changes which must be made in the land charges register where such an order is made see LAND CHARGES.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/A. DESIGNATION OF AREAS/1320. Effect of order for reduction of designated area.

1320. Effect of order for reduction of designated area.

The development corporation¹ must dispose of any land² which it has acquired:

4771 (1) which falls within the excluded land³; and

4772 (2) which the corporation does not require for purposes connected with the development⁴ of the new town or for the provision of services for the purposes of the new town⁵.

A corporation must comply with such directions as the Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ may give⁸ for preventing this duty from being performed, or for restricting the duty, or for requiring it to be performed in a manner specified in the directions⁹.

Where a corporation purports to dispose of land by virtue of these provisions, then:

4773 (a) in favour of a person claiming under the corporation, the disposal so purporting to be made is not invalid by reason that any consent¹⁰ of the Secretary of State or of the Assembly has not been given or that any such direction as is mentioned above¹¹ has not been complied with; and

4774 (b) a person dealing with the corporation, or a person claiming under the corporation, is not to be concerned to see or inquire whether any such consent has been given or whether any such direction has been given or complied with¹².

1 For the meaning of 'development corporation' see PARA 1322 post.

2 For the meaning of 'dispose' and 'land' see PARA 1313 notes 4, 7 ante.

3 For these purposes, land ceasing to be contained in the area of a new town by virtue of the New Towns Act 1981 s 2 (as amended) (see PARA 1319 ante) is called 'excluded land': s 2(4), Sch 2 para 3. For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

4 For these purposes, except in so far as the context otherwise requires, 'development' includes redevelopment; and 'develop' is to be construed accordingly: *ibid* s 80(1).

5 *Ibid* Sch 2 para 1(1). This duty must not be performed so as to dispose of land by way of mortgage or charge (Sch 2 para 1(2) (amended by the New Towns and Urban Development Corporations Act 1985 s 14, Sch 3 paras 15(a), Sch 4)); nor may the corporation without the Secretary of State's or the National Assembly for Wales's consent, given generally or specially, perform the duty so as (1) to transfer the freehold of land; or (2) to grant a lease of land for a term of more than 99 years; or (3) to dispose of any land by way of gift (New Towns Act 1981 Sch 2 para 1(3) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 para 15(b))). See also notes 6-7 *infra*.

For transitional provisions regarding licensed premises see the New Towns Act 1981 Sch 2 para 2 (prospectively repealed by the Licensing Act 2003 s 199, Sch 7, as from a day to be appointed under s 210(2); at the date at which this title states the law, that repeal was not in force).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the New Towns Act 1981 Sch 2 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Before so giving a direction the Secretary of State or the Assembly must consult the corporation, unless satisfied that because of urgency consultation is impracticable: New Towns Act 1981 Sch 2 para 1(5). For the meaning of 'consult' para 2 note 1 ante.

9 *Ibid* Sch 2 para 1(4).

10 *Ie* required under *ibid* Sch 2 para 1 (as amended).

11 *Ie* given under *ibid* Sch 2 para 1 (as amended).

12 *Ibid* Sch 2 para 1(6).

UPDATE

1320 Effect of order for reduction of designated area

NOTE 5--Repeal in force: SI 2005/3056.

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1321. New town may be united district for public health purposes.

Where (1) an order is made¹ designating an area as the site of a new town; and (2) the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ is satisfied that, in consequence of the making of that order, it is expedient that that area, or any larger area which comprises that area, should be constituted a united district for any purpose for which a united district may be constituted under the Public Health Act 1936⁴, he or the Assembly may make an order⁵ constituting the area as to which he or it is so satisfied a united district, notwithstanding that no application in that behalf is made to him or to the Assembly by the local authorities⁶ for the areas concerned or any of them⁷.

1 le under the New Towns Act 1981 s 1 (as amended): see PARA 1315 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 33 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 le under the Public Health Act 1936 s 6 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101.

5 le an order under ibid s 6 (as amended): see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 101.

6 For the meaning of 'local authority' see PARA 1315 note 4 ante.

7 New Towns Act 1981 s 33 (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(4)).

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B. DEVELOPMENT CORPORATIONS

(A) ESTABLISHMENT AND GENERAL POWERS

1322. Establishment of development corporation.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² must by order³ establish a corporation (a 'development corporation') for the purposes of the development⁴ of each new town⁵ the site of which has been designated⁶.

A development corporation is a body corporate by such name as may be prescribed by the order, and must consist of a chairman, a deputy chairman, and such number of other members, not exceeding eleven, as may be prescribed by the order⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 3 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 The New Towns Act 1981 s 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 3 (as amended): see s 77(3) (as amended); and PARA 1311 ante. As to the making of orders generally see PARA 1311 ante.

4 For the meaning of 'development' see PARA 1320 note 4 ante.

5 In each new town the site of which has been designated under the New Towns Act 1981 s 1 (as amended): see PARA 1315 ante.

6 Ibid ss 3(1), 80(1) (s 3(1) amended by the Government of Wales Act 1998 s 152, Sch 18 Pt IV).

7 New Towns Act 1981 s 3(2). Nothing in the New Towns Act 1981, except the express provision relating to stamp duty in s 72(1) (as amended) (see PARA 1407 note 5 post) is to be construed as exempting a development corporation from liability for any tax, duty, rate, levy or other charge whatsoever, whether general or local: s 3(4). A development corporation as a public authority is subject to the same limitation period for claims against it as a private individual: see further LIMITATION PERIODS.

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1323. Objects and general powers of development corporations.

The objects of a development corporation¹ established for the purposes of a new town² are to secure the laying out and development³ of the new town in accordance with proposals approved⁴ in that behalf⁵. To secure such laying out and development every development corporation has power⁶:

- 4775 (1) to acquire⁷, hold, manage and dispose⁸ of land and other property;
- 4776 (2) to carry out building and other operations;
- 4777 (3) to provide water, electricity, gas, sewerage and other services;
- 4778 (4) to carry on any business or undertaking in or for the purposes of the new town,

and generally to do anything necessary or expedient for the purposes or incidental purposes of the new town⁹.

A development corporation in England may¹⁰:

- 4779 (a) with the Secretary of State's¹¹ consent, contribute such sums as he may, with the Treasury's concurrence, determine towards expenditure incurred or to be incurred by any local authority¹² or statutory undertakers¹³ in the performance, in relation to the new town, of any of their statutory functions, including expenditure so incurred in the acquisition of land¹⁴; and

4780 (b) with the like consent, contribute such sums as the Secretary of State with the like concurrence may determine by way of assistance towards the provision of amenities for the new town¹⁵;

and a development corporation in Wales may exercise the powers described in heads (a) and (b) above with the consent of the National Assembly for Wales¹⁶.

A transaction between a person and a development corporation is not invalidated by reason of any failure by the corporation to observe the specified objects¹⁷ or the statutory requirement that the corporation must exercise the powers conferred on it for the specified purposes¹⁸, but for the avoidance of doubt nothing in these provisions is to be construed as authorising the disregard by a development corporation of any enactment¹⁹ or rule of law²⁰.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 For the meaning of 'new town' see PARA 1315 note 9 ante.

3 For the meaning of 'development' see PARA 1320 note 4 ante.

4 Ie under the New Towns Act 1981: see PARA 1357 et seq post.

5 Ibid s 4(1).

6 Ie subject to ibid s 5 (as amended): see PARA 1325 post.

7 The power of acquiring land so conferred on a development corporation includes power to acquire any land within the area of the new town, whether or not it is proposed to develop that particular land: ibid s 4(3)(a). For the meaning of 'land' see PARA 1313 note 7 ante; and for the meaning of 'area of a new town' see PARA 1315 note 9 ante. As to the acquisition of land see PARA 1333 et seq post.

8 The power of disposing of land so conferred on a development corporation includes, in relation to any land within the area of the new town, power to dispose of that land, whether or not the development of that particular land had been proposed or approved under ibid s 7(1) (see PARA 1357 post): s 4(3)(b). For the meaning of 'dispose' see PARA 1313 note 4 ante.

9 New Towns Act 1981 s 4(2).

10 Ie without prejudice to the generality of the powers conferred by the New Towns Act 1981 on development corporations: see the text and notes 1-9 supra; and PARA 1324 et seq post.

11 As to the Secretary of State see PARA 19 ante.

12 For the meaning of 'local authority' see PARA 1315 note 4 ante.

13 For the meaning of 'statutory undertakers' see PARA 1344 post.

14 New Towns Act 1981 s 4(4)(a). As to the continued exercise of this power by the Commission for the New Towns after development see PARA 1407 post.

15 New Towns Act 1981 s 4(4)(b).

16 See notes 14-15 supra. As to the transfer of functions under s 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

17 Ie the objects in the New Towns Act 1981 s 4(1): see the text and notes 1-5 supra.

18 Ie the requirement in ibid s 4(2): see the text and note 9 supra.

19 For the meaning of 'enactment' see PARA 1312 note 3 ante.

20 New Towns Act 1981 s 4(5). Nothing in s 4(5)(a), (b) affects a transaction or purported disposal made before 13 November 1980, ie the date of the coming into force of the Local Government, Planning and Land Act 1980 Sch 25 Pt I (paras 1-6) (repealed): New Towns Act 1981 s 81, Sch 11 para 13(1)(a).

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1324. Power to operate trolley vehicle services.

The development corporation¹ may by means of an order made by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ be authorised to operate trolley vehicle⁴ services for the purposes of the corporation's new town⁵. An order so made may impose such conditions as appear to the Secretary of State or the Assembly to be required in the interests of the public safety, and may contain such incidental and consequential provisions as appear to him or to it to be necessary or expedient for the purposes of the order, including provisions:

- 4781 (1) authorising the construction and maintenance in highways of any works or equipment required in connection with the services;
- 4782 (2) providing for the making and enforcement of regulations and byelaws with respect to the construction and operation of any vehicles or equipment used for the purposes of the services, and with respect to the conduct of passengers on, and of the drivers and conductors of, any such vehicles⁶.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 32, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For these purposes, except in so far as the context otherwise requires, 'trolley vehicle' means a mechanically propelled vehicle adapted for use on roads without rails and moved by power transmitted to it from some external source: New Towns Act 1981 s 80(1).

5 Ibid s 32(1). For the meaning of 'new town' see PARA 1315 note 9 ante.

6 Ibid s 32(2). Section 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 32 (see s 77(3) (as amended) and PARA 1311 ante); but an order so made by the Secretary of State is subject to special parliamentary procedure (s 32(3)). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq. This requirement does not apply to orders made by the Assembly: see the Government of Wales Act 1998 s 44; para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; STATUTES.

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1325. Restrictions on powers of development corporations.

A development corporation¹ does not have power to borrow money except in accordance with specified² statutory provisions³.

The Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ may give directions to any development corporation:

- 4783 (1) for restricting the exercise by the corporation of any of its statutory powers⁶; or
- 4784 (2) for requiring the corporation to exercise those powers in any manner specified in the directions⁷.

Before so giving any directions to a development corporation, the Secretary of State or the Assembly must:

- 4785 (a) consult⁸ with the chairman of the corporation; and
- 4786 (b) if the chairman is not available, consult with the deputy chairman,

unless satisfied that, on account of urgency, such consultation is impracticable⁹.

A transaction between a person and a development corporation acting in purported exercise of its statutory powers is not, however, void by reason only that it was carried out in contravention of a direction so given by the Secretary of State or the Assembly; and such a person is not to be concerned to see or inquire whether such a direction has been given or complied with¹⁰.

Nothing in the New Towns Act 1981 is to be construed as authorising a development corporation to carry on:

- 4787 (i) any undertaking for the supply of water, electricity or gas, or for the provision of sewerage services; or
- 4788 (ii) any railway, light railway, tramway or trolley vehicle¹¹ undertaking,

except under the authority of an enactment¹² not contained in that Act specifically authorising the corporation to do so or, in the case of a trolley vehicle undertaking, under the authority of such an enactment or of an order¹³ under the relevant statutory provisions¹⁴.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 Ie under the New Towns Act 1981 ss 58-60 (as amended): see PARAS 1396-1399 post.

3 Ibid s 5(1).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the New Towns Act 1981 s 5 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie under the New Towns Act 1981: see PARA 1322 et seq ante, PARA 1326 et seq post.

7 Ibid s 5(2) (amended by the New Towns and Urban Development Corporation Act 1985 s 14(2), Sch 4).

8 For the meaning of 'consult' para 2 note 1 ante.

9 New Towns Act 1981 s 5(3).

10 Ibid s 5(4). In relation to any transaction or purported transaction made before 13 November 1980, for the words 'and such a person shall not be concerned to see or inquire whether a direction under that subsection has been given or complied with' there must be substituted 'unless that person had actual notice of that direction': s 81, Sch 11 para 13(2).

- 11 For the meaning of 'trolley vehicle' see PARA 1324 note 4 ante.
- 12 For the meaning of 'enactment' see PARA 1312 note 3 ante.
- 13 le under the New Towns Act 1981 s 32: see PARA 1324 ante.
- 14 Ibid s 5(5) (amended by the Water Act 1989 s 190(1), Sch 25 para 64(1)).

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(B) CONSTITUTION AND PROCEEDINGS

1326. Appointment of members and tenure of office.

The members of a development corporation¹ ('the corporation') must be appointed by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ after consultation⁴ with such local authorities⁵ as appear to him or to the Assembly to be concerned with the development⁶ of the new town⁷; and, in appointing members of the corporation, he or the Assembly must have regard to the desirability of securing the services of one or more persons resident in, or having special knowledge of, the locality in which the new town will be situated⁸.

The Secretary of State or the Assembly must appoint two of the members to be respectively chairman and deputy chairman of the corporation⁹. A member of the corporation, and the chairman and deputy chairman of the corporation, hold and must vacate office as such in accordance with the terms of the instrument by which they are respectively appointed¹⁰; but, if the chairman or deputy chairman ceases to be a member of the corporation, he also ceases to be chairman or deputy chairman, as the case may be¹¹.

Any member of the corporation may, by notice in writing addressed to the Secretary of State or to the Assembly, resign his membership; and the chairman or deputy chairman may, by the like notice, resign his office as such¹². A member of the corporation who ceases to be a member or ceases to be chairman or deputy chairman is eligible for reappointment¹³.

If the Secretary of State or the Assembly is satisfied that a member of the corporation:

- 4789 (1) has become bankrupt or made an arrangement with his creditors; or
- 4790 (2) is incapacitated by physical or mental illness; or
- 4791 (3) has been absent from meetings of the corporation for a period longer than three consecutive months without the permission of the corporation; or
- 4792 (4) is otherwise unable or unfit to discharge the functions of a member, or is unsuitable to continue as a member,

the Secretary of State or the Assembly may remove him from his office as a member of the corporation¹⁴.

- 1 For the meaning of 'development corporation' see PARA 1322 ante.
- 2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 3(3), Sch 3, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'consult' para 2 note 1 ante.

5 For the meaning of 'local authority' see PARA 1315 note 4 ante.

6 For the meaning of 'development' see PARA 1320 note 4 ante.

7 For the meaning of 'new town' see PARA 1315 note 9 ante.

8 New Towns Act 1981 s 3(3), Sch 3 para 1(1). As to the number of members see PARA 1322 ante. Members of a development corporation are disqualified for membership of the House of Commons: see PARLIAMENT vol 78 (2010) PARA 908.

9 New Towns Act 1981 Sch 3 para 1(2).

10 Ibid Sch 3 para 2.

11 Ibid Sch 3 para 3.

12 Ibid Sch 3 para 4.

13 Ibid Sch 3 para 6.

14 Ibid Sch 3 para 5.

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1327. Remuneration etc.

A development corporation¹ must pay to its members, in respect of their office as such, such remuneration and such reasonable allowances in respect of expenses properly incurred in the performance of their duties as may be determined by the Secretary of State² with the consent of the Treasury, or, in relation to Wales, by the National Assembly for Wales³, and must pay to the chairman and deputy chairman, in respect of their office as such, such additional remuneration as may be so determined⁴. In the case of any such person, who is or has been the chairman of the corporation, as the Secretary of State with the like consent, or as the Assembly, may determine, the Secretary of State or Assembly may direct the corporation:

4793 (1) to pay to or in respect of that person on his retirement or death such pension, allowance or gratuity as may be so determined; or

4794 (2) to make payments towards the provision of such a pension, allowance or gratuity⁵.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 3(3), Sch 3, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 New Towns Act 1981 s 3(3), Sch 3 para 7; Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, arts 2(2), 3(5).

5 New Towns Act 1981 Sch 3 para 8.

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1328. Meetings and proceedings.

The quorum of a development corporation¹ and the arrangements relating to its meetings are, subject to any directions given by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³, such as the corporation may determine⁴.

The validity of any proceeding of the corporation is not affected by any vacancy among its members or by any defect in the appointment of any of its members⁵.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 3(3), Sch 3, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 New Towns Act 1981 s 3(3), Sch 3 para 9.

5 Ibid Sch 3 para 10. As to complaints of maladministration in relation to development corporations see PARA 1508 post.

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1329. Execution of instruments etc.

The fixing of the seal of a development corporation¹ must be authenticated by the signature of the chairman or of some other member authorised either generally or specially by the corporation to act for that purpose²; and any document purporting to be a document duly executed under the seal of the corporation must be received in evidence and, unless the contrary is proved, is deemed to be so executed³.

Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal⁴ may be made or executed on behalf of the corporation by any person generally or specially authorised by the corporation to act for that purpose⁵.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 New Towns Act 1981 s 3(3), Sch 3 para 11.

3 Ibid Sch 3 para 13. As to the presumption of due execution see CIVIL PROCEDURE vol 11 (2009) PARA 865.

4 As to when deeds are necessary and the transactions for which an instrument under hand is necessary see DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 10 et seq, 144 et seq. Any rule of law which required a seal for the valid execution of an instrument as a deed by an individual has, except in relation to a corporation sole, been abolished: see the Law of Property (Miscellaneous Provisions) Act 1989 s 1(1)(b), (10); and DEEDS AND OTHER INSTRUMENTS vol 13 (2007 Reissue) PARAS 7-8. As to the execution, on or after 15 September 2005, of deeds by corporations see the Law of Property Act 1925 s 74A (added by the Regulatory Reform (Execution of Deeds and Documents) Order 2005, SI 2005/1906, art 4).

5 New Towns Act 1981 Sch 3 para 12.

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(C) REPORTS AND INFORMATION

1330. Annual report.

As soon as possible after the end of each financial year¹, every development corporation must make to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ a report dealing generally with the operations of the corporation during that year, and must include in the report a copy of its audited accounts⁴ for that year⁵. The Secretary of State must lay a copy of every such report before each House of Parliament⁶. In Wales, such a report must be laid before and published by the Assembly⁷.

1 The financial year of every development corporation begins with 1 April but, if the Secretary of State or, in relation to Wales, the National Assembly for Wales (with the approval of the Treasury in either case) so directs in a case where a development corporation is to be dissolved, the final financial year of the corporation is such period as is specified in the direction; and references in the New Towns Act 1981 to a financial year in relation to a development corporation are to be construed accordingly: ss 67(2), 80(1) (s 67(2) amended by the New Towns and Urban Development Corporations Act 1985 ss 9, 14(1), Sch 3 para 13). See also note 3 *infra*. For the meaning of 'development corporation' see PARA 1322 *ante*. As to dissolution of a development corporation see PARA 1406 *post*.

2 As to the Secretary of State see PARA 19 *ante*.

3 As to the transfer of functions under the New Towns Act 1981 ss 67, 70 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

4 As to audit requirements see PARA 1403 *post*; and as to financial provisions generally see PARA 1396 *et seq post*.

5 New Towns Act 1981 s 70(b).

6 See *ibid* s 70 (amended by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 11(1), (4)(b)).

7 See the Government of Wales Act 1998 s 45; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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NOTE 6--New Towns Act 1981 s 70 further amended: Housing and Regeneration Act 2008 Sch 5 para 23, Sch 16.

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1331. Information.

Every development corporation¹ must² provide the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ with such information relating to its undertaking as he or it may from time to time require⁵; and, for that purpose, every development corporation must:

- 4795 (1) permit any person authorised by the Secretary of State or the Assembly in that behalf to inspect and copy the accounts, books, documents or papers of the corporation; and
- 4796 (2) afford such explanation of them as that person or the Secretary of State or the Assembly may reasonably require⁶.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 Ie without prejudice to the requirements imposed by the New Towns Act 1981 s 70 (as amended): see PARA 1330 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the New Towns Act 1981 s 71, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 New Towns Act 1981 s 71(1).

6 Ibid s 71(2). As to financial provisions generally see PARA 1396 et seq post.

UPDATE

1331 Information

TEXT AND NOTES 5, 6--New Towns Act 1981 s 71 amended: Housing and Regeneration Act 2008 Sch 5 para 24, Sch 16.

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(D) ALLOCATION OR TRANSFER OF FUNCTIONS

1332. Allocation or transfer of new town functions.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that there are exceptional circumstances which render it expedient:

4797 (1) in the case of the area of any new town³ that the functions of a development corporation⁴ should be performed by the development corporation established for the purposes of any other new town instead of by a separate corporation established for the purpose, then, instead of establishing such a corporation, he or the Assembly may by order direct that those functions shall be performed by the development corporation established for that other town⁵;

4798 (2) that the functions of a development corporation established for the purposes of a new town should be transferred to the development corporation established for the purposes of any other new town, or to a new development corporation to be established for the purposes of the first-mentioned new town, he or the Assembly may by order provide for the dissolution of the first-mentioned corporation and for the transfer of its functions, rights and liabilities:

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1. (a) to the development corporation established for the purposes of that other new town or, as the case may be,
2. (b) to a new corporation established for the purposes of the first-mentioned new town by the order⁶.

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Before so making an order providing for the transfer of functions from or to a development corporation, or providing for the exercise of any functions by such a corporation, the Secretary of State or the Assembly must consult⁷ with that corporation⁸.

An order so made providing:

4799 (i) for the exercise of functions in relation to a new town by the development corporation established for the purposes of another new town; or

4800 (ii) for the transfer of such functions to such a corporation,

may modify the name and constitution of that corporation in such manner as appears to the Secretary of State or the Assembly to be expedient; and that corporation is treated⁹ as having been established for the purposes of each of those new towns¹⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 6, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

4 Ie under the New Towns Act 1981: see PARA 1323 et seq ante, PARA 1333 et seq post. For the meaning of 'development corporation' see PARA 1322 ante.

5 Ibid s 6(1). Section 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 6: see s 77(3) (as amended) and PARA 1311 ante. As to the making of orders generally see PARA 1311 ante.

6 Ibid s 6(2).

7 For the meaning of 'consult' para 2 note 1 ante.

8 New Towns Act 1981 s 6(4).

9 le for the purposes of the New Towns Act 1981: see PARA 1315 et seq ante, PARA 1333 et seq post.

10 Ibid s 6(3). Section 6(3) is without prejudice to the other provisions of the New Towns Act 1981 with respect to the variation of orders (see PARA 1311 ante): s 6(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(A) Powers of Acquisition/1333. Acquisition of land by development corporation; in general.

C. ACQUISITION OF LAND

(A) POWERS OF ACQUISITION

1333. Acquisition of land by development corporation; in general.

The development corporation¹ may, with the consent of the Secretary of State² or, in relation to Wales, of the National Assembly for Wales³, acquire by agreement any land⁴:

4801 (1) within the area of the new town⁵, whether or not it is proposed to develop⁶ that particular land;

4802 (2) adjacent to that area which the corporation requires for purposes connected with the development of the new town;

4803 (3) whether adjacent to that area or not, which the corporation requires for the provision of services for the purposes of the new town⁷.

The development corporation may also be authorised, by means of an order made by the corporation and submitted to and confirmed by the Secretary of State or by the Assembly⁸, to acquire compulsorily any such land as is mentioned in heads (1) to (3) above⁹.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 10, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 1313 note 7 ante.

5 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

6 For the meaning of 'develop' see PARA 1320 note 4 ante.

7 New Towns Act 1981 s 10(1). In relation to operational land of statutory undertakers, the New Towns Act 1981 s 10 has effect subject to s 13 (see PARA 1345 et seq post): s 10(5). For the meanings of 'statutory undertakers' and 'operational land' see PARA 1344 post. For the purpose of the Acquisition of Land Act 1981 s 9 (acquisition of inalienable land: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 530), the New Towns Act 1981 is deemed to have been passed before the commencement of the Acquisition of Land Act 1981: New Towns Act 1981 s 72(2) (amended by the Acquisition of Land Act 1981 s 34(1), Sch 4 para 33).

8 le in accordance with the New Towns Act 1981 s 10(1), Sch 4 Pt 1 (paras 1-6): see PARA 1337 et seq post.

9 Ibid s 10(1). A compulsory purchase order under s 10, when operative, is a local land charge: s 12. As to the date when the order becomes operative see PARA 1349 post; and as local land charges see LAND CHARGES.

As to compulsory acquisition of local authority or National Trust property see PARA 1343 post; as to acquisition of common land etc see PARA 1342 post; and as to service of notice to treat in relation to ecclesiastical property see PARA 1313 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(A) Powers of Acquisition/1334. Acquisition of land for highways.

1334. Acquisition of land for highways.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that the construction or improvement of a road is needed:

- 4804 (1) outside the area of a new town³ for the purpose of securing the development⁴ of land⁵ in that area in accordance with proposals approved by him or by the Assembly⁶; or
- 4805 (2) for the purpose of providing proper means of access to such an area,

a local highway authority⁷ may be authorised by means of an order made by the authority and submitted to and confirmed by the Secretary of State or by the Assembly⁸ to acquire compulsorily any land as to which he or the Assembly is satisfied that its acquisition by the authority is requisite for the construction or improvement of the road, or for carrying out the improvement, or controlling the development, of frontages to the road or of lands abutting on or adjacent to the road⁹.

A local highway authority may also, with the Secretary of State's or the Assembly's consent, acquire by agreement any land which the authority could be so authorised to acquire compulsorily¹⁰.

If the Secretary of State or the Assembly:

- 4806 (a) is satisfied that the construction or improvement of a road is needed to supersede a part of a road for which he or the Assembly is the highway authority; and
- 4807 (b) it appears to him or to the Assembly that such supersession is expedient for any such purpose as is mentioned in heads (1) or (2) above,

he or the Assembly may be authorised, by means of an order made by him or by it¹¹, to acquire compulsorily any land as to which he or it is satisfied that its acquisition by him or by the Assembly is requisite for the specified¹² purposes¹³.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 11 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

- 4 For the meaning of 'development' see PARA 1320 note 4 ante.
- 5 For the meaning of 'land' see PARA 1313 note 7 ante.
- 6 Ie under the New Towns Act 1981 s 7 (as amended): see PARA 1357 post.
- 7 For these purposes, except in so far as the context otherwise requires, 'local highway authority' means a highway authority other than the Secretary of State or the Assembly: *ibid* s 80(1).
- 8 Ie in accordance with the provisions of *ibid* s 11(1), Sch 4 Pt I (paras 1-6) and Sch 4 Pt II (paras 7, 8): see PARA 1337 et seq post.
- 9 *Ibid* s 11(1). A compulsory purchase order under s 11 (as amended), when operative, is a local land charge: s 12. As to the date when the order becomes operative see PARA 1349 post; and as local land charges see LAND CHARGES.
- 10 *Ibid* s 11(6).
- 11 Ie in accordance with *ibid* Sch 4 Pt III (paras 9-11): see PARA 1338 post. Section 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under Sch 4: see s 77(3) (as amended); and PARA 1311 ante. As to the making of orders generally see PARA 1311 ante.
- 12 Ie as mentioned in *ibid* s 11(1)(i) or (ii): see the text and note 9 *supra*.
- 13 *Ibid* s 11(2) (amended by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 112). In relation to operational land of statutory undertakers, the New Towns Act 1981 s 11 (as amended) has effect subject to s 13 (see PARA 1345 et seq post): s 11(7). For the meanings of 'statutory undertakers' and 'operational land' see PARA 1344 post. For the purpose of the Acquisition of Land Act 1981 s 9 (acquisition of inalienable land: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 530), the New Towns Act 1981 is deemed to have been passed before the commencement of the Acquisition of Land Act 1981: New Towns Act 1981 s 72(2) (amended by the Acquisition of Land Act 1981 s 34(1), Sch 4 para 33). As to compulsory acquisition of local authority or National Trust property see PARA 1343 post; as to acquisition of common land etc see PARA 1342 post; and as service of notice to treat in relation to ecclesiastical property see PARA 1313 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(A) Powers of Acquisition/1335. Special powers in relation to common land etc.

1335. Special powers in relation to common land etc.

Where a development corporation¹ or acquiring authority² has been authorised³ to acquire compulsorily land forming part of a common⁴, open space⁵ or fuel or field garden allotment⁶, the corporation or, as the case may be, that authority may be authorised⁷ to acquire compulsorily land for giving in exchange for the land acquired⁸. A development corporation or local highway authority, as the case may be, may also, with the consent of the Secretary of State⁹ or, in relation to Wales, of the National Assembly for Wales¹⁰, acquire by agreement land for so giving in exchange¹¹.

- 1 For the meaning of 'development corporation' see PARA 1322 ante.
- 2 For these purposes, except in so far as the context otherwise requires, 'acquiring authority', in relation to the acquisition under or for the purposes of the New Towns Act 1981 of any land, whether compulsorily or by agreement, or to a proposal so to acquire any land, means the development corporation, local highway authority or Minister of the Crown by whom the land is, or is proposed to be, acquired: s 80(1). For the meaning of 'land' see PARA 1313 note 7 ante; and for the meaning of 'local highway authority' see PARA 1334 note 7 ante.
- 3 Ie under *ibid* s 10(1) (see PARA 1333 ante) or, as the case may be, s 11(1) or (2) (as amended) (see PARA 1334 ante).

4 For these purposes, except in so far as the context otherwise requires, 'common' includes any land subject to be inclosed under the Inclosure Acts 1845-1882 (see COMMONS vol 13 (2009) PARA 419) and any town or village green: New Towns Act 1981 s 80(1).

5 For these purposes, except in so far as the context otherwise requires, 'open space' means any land laid out as a public garden, or used for purposes of public garden, or used for purposes of public recreation, or land being a disused burial ground: *ibid* s 80(1).

6 For these purposes, except in so far as the context otherwise requires, 'fuel or field garden allotment' means any allotment set out as a fuel allotment, or a field garden allotment, under an Inclosure Act: New Towns Act 1981 s 80(1).

7 See note 3 *supra*.

8 New Towns Act 1981 ss 10(3), 11(4).

9 As to the Secretary of State see PARA 19 *ante*.

10 As to the transfer of functions under the New Towns Act 1981 ss 10(3), 11(6), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

11 New Towns Act 1981 ss 10(3), 11(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(A) Powers of Acquisition/1336. Rights of entry.

1336. Rights of entry.

Where an authority, being either a development corporation¹ or a local highway authority² or the Secretary of State³ (or, in relation to Wales, the National Assembly for Wales⁴), is authorised to acquire⁵ any land⁶ compulsorily, or has under consideration the purchase of any land compulsorily⁷, any person, being an officer of the Valuation Office⁸ or a person authorised in writing by such authority, may at any reasonable time enter upon the land for the purpose of surveying it or estimating its value⁹.

A person so authorised to enter upon any land must, if so required, produce evidence of his authority before entering, and may not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier¹⁰.

Any person who obstructs a person acting in the exercise of his powers under these provisions is liable on summary conviction to a fine not exceeding level 2 on the standard scale¹¹.

1 For the meaning of 'development corporation' see PARA 1322 *ante*.

2 For the meaning of 'local highway authority' see PARA 1334 note 7 *ante*.

3 As to the Secretary of State see PARA 19 *ante*.

4 As to the transfer of functions under the New Towns Act 1981 s 73 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

5 *Ie* under the New Towns Act 1981: see PARAS 1333-1335 *ante*.

6 For the meaning of 'land' see PARA 1313 note 7 *ante*.

7 See note 5 supra.

8 For these purposes, except in so far as the context otherwise requires, 'Valuation Office' means the Valuation Office of the Inland Revenue Department: New Towns Act 1981 s 80(1).

9 Ibid s 73(1).

10 New Towns Act 1981 s 73(3).

11 Ibid s 73(4) (amended by the Criminal Justice Act 1982 s 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(B) Procedure/1337. Form and content of compulsory purchase order; publicity.

(B) PROCEDURE

1337. Form and content of compulsory purchase order; publicity.

A compulsory purchase order¹ made by a development corporation² or local highway authority³ must designate the land⁴ to which it relates by reference to a map annexed to it, either with or without descriptive matter, and, subject thereto, must be in such form as may be prescribed⁵. In the case of any discrepancy between the map or maps and any such descriptive matter, the descriptive matter prevails except in so far as may be otherwise provided by the order⁶.

After submitting the order to the Secretary of State⁷ or, in relation to Wales, to the National Assembly for Wales⁸, the acquiring authority⁹ must:

- 4808 (1) publish¹⁰ a notice in the prescribed form¹¹ describing the land, stating that an order authorising the compulsory acquisition of that land has been submitted to the Secretary of State or to the Assembly, naming a place where a copy of the order and of the map and any annexed descriptive matter may be seen at any reasonable hour, and specifying the time, not being less than 28 days from the first local advertisement¹², within which, and the manner in which, objections to the order may be made; and
- 4809 (2) if the Secretary of State or the Assembly so directs in the case of the order in question, serve on every owner¹³ of any of the land to which the order relates a notice to the like effect as the notice required to be published under head (1) above,

except that head (2) above does not apply if the order relates only to land within the area of a new town¹⁴.

Publication and, if applicable, service in accordance with the above provisions must be effected:

- 4810 (a) in the case of an order relating only to land within the area of a new town, as soon as may be after the order has been submitted;
- 4811 (b) in any other case, as soon as may be after the order has been submitted and any direction of the Secretary of State or the Assembly as to service on owners under head (2) above has been given or the Secretary of State or the Assembly has

notified the acquiring authority that he or it does not propose to give such a direction¹⁵.

- 1 For these purposes, except in so far as the context otherwise requires, 'compulsory purchase order' means an order under the New Towns Act 1981 s 10(1) (see PARA 1333 ante) or s 11(1) or (2) (as amended) (see PARA 1334 ante): s 80(1).
 - 2 For the meaning of 'development corporation' see PARA 1322 ante.
 - 3 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.
 - 4 For the meaning of 'land' see PARA 1313 note 7 ante.
 - 5 New Towns Act 1981 ss 10(1), 11(1), Sch 4 para 1(1). For the meaning of 'prescribed' see PARA 1311 note 3 ante. At the date at which this title states the law, no regulations had been made under these provisions but, by virtue of the Interpretation Act 1978 s 17(2)(b), the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, have effect as if so made. For the prescribed form of order see regs 2(1), (2), 3(b), Schedule, Form 2; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2). As to the making of regulations generally see PARA 1311 ante.
 - 6 New Towns Act 1981 Sch 4 para 1(2).
 - 7 As to the Secretary of State see PARA 19 ante.
 - 8 As to the transfer of functions under the New Towns Act 1981 Sch 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
 - 9 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.
 - 10 The notice so required to be published must be published: (1) in the case of an order relating only to land within the area of a new town, and in any other case where service on owners is not effected under the New Towns Act 1981 Sch 4 para 2(1)(b) (see head (2) in the text) by publishing that notice (a) in the London Gazette; and (b) in each of two successive weeks, in one or more newspapers circulating in the locality in which the land to which the order relates is situated; and (c) by affixing a copy, addressed to 'the owners and any occupiers' of the land, describing it, to some conspicuous object or objects on the land; (2) where service on owners is effected under Sch 4 para 2(1)(b), by publishing it in one or more newspapers circulating in the locality in which the land to which the order relates is situated: Sch 4 para 2(2). For the meaning of 'area of a new town' see PARA 1315 note 9 ante.
- Where a compulsory purchase order under s 11(1) (see PARA 1334 ante) is submitted to the Secretary of State or to the Assembly, the notice required to be published under Sch 4 para 2 must be published not only as therein mentioned but also by being exhibited at such places in the locality to which the order relates as appear to the acquiring authority to be suitable for bringing it to the attention of all persons concerned: Sch 4 para 7(1). This does not, however, apply in any case where the Secretary of State or the Assembly is satisfied that the land to which the compulsory purchase order relates is required for the purpose of a project (i) which was adequately set out in a statement prepared for the purposes of an order under s 1 (as amended) (see PARA 1315 ante) which has been made; or (ii) which has been the subject of an inquiry for the purposes of the Highways Act 1980 s 10 (as amended) or, so far as it relates to trunk roads, s 14 (as amended) (see HIGHWAYS, STREETS AND BRIDGES) or of any of the following enactments no longer in force, ie the Highways Act 1959 ss 7 or 9 (repealed) (to which the Highways Act 1980 s 10 (as amended) and, so far as it relates to trunk roads, s 14 (as amended) correspond) and the enactments to which the Highways Act 1959 ss 7 and 9 (repealed) correspond, ie the Trunk Roads Act 1936 s 1(3), the Trunk Roads Act 1946 ss 1, 4, and the Special Roads Act 1949 s 14(1) (all repealed): New Towns Act 1981 Sch 4 para 7(2).
- 11 For the prescribed form of notice see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1)(a), (b), 3(c), Schedule, Form 4; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).
 - 12 For these purposes, 'the first local advertisement', in relation to a notice, means the first publication of the notice in a newspaper circulating in the locality where the land to which the notice relates is situated, and includes, in relation to a notice so published once only, the publication of that notice: New Towns Act 1981 Sch 4 para 2(4).
 - 13 For the meaning of 'owner' see PARA 1313 note 4 ante.

14 Ibid Sch 4 para 2(1). As to the service of notices see PARA 1313 ante. The onus of proof of service is on the acquiring authority: see *Metcalfe v Basildon Development Corpn* (1960) 12 P & CR 127, Lands Tribunal.

15 New Towns Act 1981 Sch 4 para 2(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(B) Procedure/1338. Acquisitions by the Secretary of State or the Assembly.

1338. Acquisitions by the Secretary of State or the Assembly.

A compulsory purchase order made¹ by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ must designate the land⁴ to which it relates by reference to an annexed map either with or without descriptive matter, and, subject thereto, must be in such form as the Secretary of State or the Assembly may determine⁵. In the case of any discrepancy between the map and any such descriptive matter, the descriptive matter prevails except in so far as may be otherwise provided by the order⁶.

Where the Secretary of State or the Assembly proposes to make such an order, he or it must prepare a draft and then as soon as may be must:

- 4812 (1) publish in the specified manner⁷; and
- 4813 (2) in any case in which he or the Assembly thinks it requisite to do so, serve on every owner⁸ of any of the land to which the order as prepared in draft relates,

a notice⁹ in such form as he or the Assembly may determine¹⁰.

1 le under the New Towns Act 1981 s 11(2) (as amended): see PARA 1334 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 Sch 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 1313 note 7 ante.

5 New Towns Act 1981 s 11(2) (as amended: see PARA 1334 ante), Sch 4 para 9(1). Schedule 4 paras 3, 4, 5, 7, 8 (see PARAS 1339, 1341 post) have effect in relation to such an order (1) with the substitution, for references to the Secretary of State or the Assembly and to the acquiring authority, of references to the Secretary of State or the Assembly; (2) with the substitution, for references to an order as submitted and to the confirmation of an order, of references respectively to an order as prepared in draft and to the making of an order; (3) with the omission, in Sch 4 para 4(5) (see PARA 1339 post), of the reference to the acquiring authority; (4) with the substitution, for the references to a compulsory purchase order under s 11(1) and to the notice required by Sch 4 para 2 of references respectively to a compulsory purchase order under s 11(2) (as amended) and to the notice required by Sch 4 para 10 (see the text and notes 7-10 infra); and (5) with the substitution in Sch 4 para 8 (see PARA 1341 post) of the words 'the Secretary of State or the Assembly proposes to make' for the words 'there is submitted to the Secretary of State or the Assembly': Sch 4 para 11.

6 Ibid Sch 4 para 9(2).

7 le in the manner mentioned in ibid Sch 4 para 2: see PARA 1337 ante.

8 For the meaning of 'owner' see PARA 1313 note 4 ante.

9 le a notice similar, with requisite adaptations, to the notice mentioned in the New Towns Act 1981 Sch 4 para 2(1): see PARA 1337 ante.

10 Ibid Sch 4 para 10. As to the service of notices see PARA 1313 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(B) Procedure/1339. Procedure for dealing with objections.

1339. Procedure for dealing with objections.

The following provisions have effect if any objection to the compulsory purchase order¹ is duly made² and is not withdrawn³. Unless the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ decides apart from the objection not to confirm the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the Secretary of State or the Assembly must, before making a final decision⁶, consider the grounds of the objection as set out in the statement of grounds⁷, and may, if he or the Assembly thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates⁸.

In so far as the Secretary of State or the Assembly is satisfied, after considering the grounds of the objection, as set out in the original statement and any such further statement, that the objection relates to a matter which can be dealt with in the assessment of compensation⁹ or, in the case of an order relating to land¹⁰ within the area of a new town¹¹, that the objection is made on the ground that the acquisition is unnecessary or inexpedient, he or the Assembly may treat the objection as irrelevant for the purpose of making a final decision¹². If:

- 4814 (1) after considering the grounds of the objection as so set out, the Secretary of State or the Assembly is satisfied that he or it is sufficiently informed, for the purpose of making a final decision, as to the matters to which the objection relates; or
- 4815 (2) where a further statement has been required, it is not submitted within the specified period,

he or the Assembly may make a final decision without further investigation as to those matters¹³.

Subject to the power to disregard irrelevant objections and to make a decision when satisfied that he or it is sufficiently informed, the Secretary of State or the Assembly:

- 4816 (a) must, before making a final decision, afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State or by the Assembly; and
- 4817 (b) must, if the person making the objection avails himself of that opportunity, afford an opportunity of appearing and being heard on the same occasion to the acquiring authority¹⁴ and to any other persons to whom it appears to the Secretary of State or the Assembly to be expedient to afford it¹⁵.

If, however, it appears to the Secretary of State or the Assembly that the matters to which the objection relates are such as to require investigation by public local inquiry¹⁶ before he or the Assembly makes a final decision, he or it must¹⁷ cause such an inquiry to be held¹⁸.

- 1 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.
- 2 For these purposes, an objection is not treated as duly made unless (1) it is made within the time and in the manner specified in the notice required by the New Towns Act 1981 ss 10(1), 11(1), Sch 4 para 2 (see PARA 1337 ante); and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: Sch 4 para 4(1).
- 3 Ibid Sch 4 para 4(1). As to the procedure for dealing with objections in the case of an order subject to the special procedure for authorising the acquisition of the land of statutory undertakers see PARA 1347 post.
- 4 As to the Secretary of State see PARA 19 ante.
- 5 As to the transfer of functions under the New Towns Act 1981 Sch 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 6 For these purposes, any reference to making a final decision, in relation to an order, is a reference to deciding whether to confirm the order or what modification, if any, ought to be made: New Towns Act 1981 Sch 4 para 4(7).
- 7 I.e. the statement mentioned in ibid Sch 4 para 4(1)(b): see note 2 head (2) supra.
- 8 Ibid Sch 4 para 4(2).
- 9 As to assessment of compensation see COMPULSORY ACQUISITION OF LAND.
- 10 For the meaning of 'land' see PARA 1313 note 7 ante.
- 11 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.
- 12 New Towns Act 1981 Sch 4 para 4(3).
- 13 Ibid Sch 4 para 4(4).
- 14 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.
- 15 New Towns Act 1981 Sch 4 para 4(5).
- 16 As to local inquiries see also PARA 1312 ante; and as to public local inquiries see generally para 651 et seq ante.
- 17 I.e. notwithstanding anything in the New Towns Act 1981 Sch 4 para 4(1)-(5): see the text and notes 1-15 supra.
- 18 Ibid Sch 4 para 4(6)(a). Where the Secretary of State or the Assembly determines to cause such an inquiry to be held, any of the requirements of Sch 4 para 4(1)-(5) to which effect has not been given at the time when he or it so determines must be dispensed with: Sch 4 para 4(6)(b).

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1340. Contemporaneous proceedings.

Where proceedings are necessary¹ in relation to an order authorising a compulsory acquisition of land² and that land is in an area proposed to be designated as the site of a new town³ by an order a draft of which has been published in accordance with the relevant statutory provisions⁴, the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ may by

regulations provide for enabling the proceedings relating to the compulsory acquisition to be taken, so far as may be practicable, contemporaneously with the proceedings on the designation order⁷.

Where the Secretary of State or the Assembly has published⁸ a draft of an order which he or it proposes to make⁹ designating an area as the site of a new town ('the designation order') and the designation order has not been made, a local highway authority may, pending the making of the designation order, take such proceedings¹⁰ as are required to be taken by that authority in respect of the making of a compulsory purchase order in respect of land in that area¹¹.

Where, in respect of any new town ('the new town'), the Secretary of State or the Assembly has published¹² a draft of an order which he or it proposed to make¹³, varying the designation order which designated the site of the new town so as to include therein an additional area of land ('the additional area'), and the varying order has not yet been made, any proceedings required¹⁴ to be taken for the purposes of an order for the compulsory purchase by the development corporation of land in the additional area may be taken contemporaneously with any proceedings required by the New Towns Act 1981 to be taken in connection with the varying order¹⁵.

1 Ie for the purposes of the New Towns Act 1981 ss 10(1), 11(1), Sch 4 paras 1, 2, 4: see PARAS 1337, 1339 ante.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 For the meaning of 'new town' see PARA 1315 note 9 ante.

4 Ie the New Towns Act 1981 s 1 (as amended), Sch 1: see PARA 1316 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the New Towns Act 1981 Sch 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 New Towns Act 1981 Sch 4 para 6. At the date at which this title states the law, no such regulations had been made but, by virtue of the Interpretation Act 1978 s 17(2), the New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1947, SR & O 1947/1353, and the New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1965, SI 1965/75, have effect as if so made. As to the making of regulations generally see PARA 1311 ante.

8 Ie in accordance with the New Towns Act 1981 Sch 1 (as amended): see PARA 1316 ante.

9 Ie under *ibid* s 1 (as amended): see PARA 1315 ante.

10 Ie under *ibid* Sch 4: see PARAS 1337, 1339 ante.

11 New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1947, SR & O 1947/1353, regs 2, 3 (applied by virtue of the Interpretation Act 1978 s 17(2); and see note 6 *supra*). Any proceedings which may be taken by a local highway authority by virtue of the powers contained in the New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1947, SR & O 1947/1353, reg 3 are deemed, for the purposes of the New Towns Act 1981 Sch 4, to be proceedings taken after the date on which the Secretary of State or the Assembly makes the designation order: New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1947, SR & O 1947/1353, reg 4 (as so applied; and see note 6 *supra*).

12 See note 8 *supra*.

13 Ie under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 ante) and s 77 (as amended) (see PARA 1311 ante).

14 See note 10 *supra*.

15 New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1965, SI 1965/75, regs 2, 3 (applied by virtue of the Interpretation Act 1978 s 17(2); and see note 6 *supra*). Any proceedings which may be

taken by virtue of the powers contained in the New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1965, SI 1965/75, reg 3 are deemed, for the purposes of the New Towns Act 1981 Sch 4, to be proceedings taken after the date on which the Secretary of State or the Assembly makes the relevant varying order: New Towns Compulsory Purchase (Contemporaneous Procedure) Regulations 1965, SI 1965/75, reg 4 (as so applied).

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1341. Confirmation by the Secretary of State or the Assembly.

Subject to the statutory provisions relating to objections¹ in any case in which those provisions have effect, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may confirm the compulsory purchase order⁴ with or without modification, but may not, unless all persons interested consent, so modify it as to extend it to any land which was not designated by the order as submitted⁵.

Where there is submitted to the Secretary of State or the Assembly a compulsory purchase order⁶ authorising the acquisition of any land forming a frontage to, or abutting on or adjacent to, a road, and the Secretary of State or the Assembly is satisfied as respects the whole or any part of the land:

- 4818 (1) that the acquisition would be requisite only for the purpose of controlling development⁷; and
- 4819 (2) that every owner⁸ has entered, or is willing to enter, into an agreement⁹ with the local highway authority¹⁰ or the Secretary of State or the Assembly, or is bound by such an agreement, and that the agreement or proposed agreement is satisfactory for that purpose,

the order may not be confirmed so as to authorise the acquisition of any part of the land as to which the Secretary of State or the Assembly is so satisfied¹¹.

As soon as may be after the order has been confirmed, the acquiring authority¹² must publish in one or more newspapers circulating in the locality in which the land designated by the order is situated a notice in the prescribed form¹³ describing the land, stating that the order has been confirmed, and naming a place where a copy of the order and of the map and any annexed descriptive matter may be seen at any reasonable hour, and must serve a like notice on:

- 4820 (a) any owner or occupier of any of the land thereby designated by the order who, at any time after the publication of the notice of the order as submitted, has sent to the acquiring authority a request¹⁴ in writing to serve him with the notice required by this provision giving an address for service and the prescribed particulars¹⁵ of his interest;
- 4821 (b) any person who has duly made¹⁶ an objection to the order and at the time of making it or afterwards has sent to the acquiring authority such a request; and
- 4822 (c) such other persons, if any, as the Secretary of State or the Assembly may specify, whether individually or as members of a class of persons¹⁷.

¹ ie subject to the New Towns Act 1981 ss 10(1), 11(1), Sch 4 para 4: see PARA 1339 ante.

- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the New Towns Act 1981 Sch 4, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 4 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.
- 5 New Towns Act 1981 Sch 4 para 3. For the meaning of 'land' see PARA 1313 note 7 ante.
- 6 *Ie* under *ibid* s 11(1): see PARA 1334 ante.
- 7 For the meaning of 'development' see PARA 1320 note 4 ante.
- 8 For the meaning of 'owner' see PARA 1313 note 4 ante.
- 9 *Ie* such as is provided for by the New Towns Act 1981 s 9(1): see PARA 1359 post.
- 10 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.
- 11 New Towns Act 1981 Sch 4 para 8.
- 12 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.
- 13 For the meaning of 'prescribed' see PARA 1311 note 3 ante. For the prescribed form of notice see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(d), Schedule, Form 5; the Interpretation Act 1978 s 17(2). In relation to an order made by a minister, the prescribed form has effect with the substitution for references to the confirmation of an order submitted of references to the making of an order: New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 3(d). A form substantially to the like effect may be used: see reg 2(2).
- 14 As to what constitutes a request for service see *Metcalfe v Basildon Development Corpn* (1960) 12 P & CR 127, Lands Tribunal.
- 15 The particulars so prescribed of the interest of an owner or occupier are the name and postal address of the owner or occupier, a statement of the nature of the interest of the owner or occupier, and particulars sufficient to enable the acquiring authority to identify the extent and boundaries of the land in respect of which the person giving the particulars is the owner or occupier: New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 4.
- 16 As to when objection is duly made see PARA 1339 note 2 ante.
- 17 New Towns Act 1981 Sch 4 para 5. As to the service of notices see PARA 1313 ante.

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1342. Acquisition of common land etc.

In so far as a compulsory purchase order¹ authorises the acquisition of any land² in England forming part of any common³, open space⁴ or fuel or field garden allotment⁵, the order is subject to special parliamentary procedure⁶ unless the Secretary of State⁷ is satisfied:

- 4823 (1) that there has been or will be given in exchange for such land other land, not being less in area and being equally advantageous to the persons, if any, entitled to rights of common or other rights, and to the public, and that the land given in exchange has been or will be vested in the persons in whom the land

acquired was vested, and subject to the like rights, trusts and incidents as attached to the land acquired⁸; or

- 4824 (2) that the land is required for the widening of an existing highway and that the giving of other land in exchange is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public,

and certifies accordingly⁹.

Where it is proposed so to give a certificate, the Secretary of State must give public notice of his intention to do so, and may give the certificate after:

- 4825 (a) affording opportunity to all persons interested to make representations and objections in relation thereto; and
 4826 (b) causing a public local inquiry¹⁰ to be held in any case where it appears to him to be expedient to do so, having regard to any representations or objections made; and
 4827 (c) considering any representations and objections made, and, if an inquiry has been held, the report of the person who made the inquiry¹¹.

As soon as may be after the giving of such a certificate the acquiring authority¹² must publish in the London Gazette and, in each of two successive weeks, in one or more newspapers circulating in the locality in which the land designated by the order is situated, a notice in the prescribed form¹³ stating that the certificate has been given¹⁴.

The above provisions do not apply to orders confirmed by the National Assembly for Wales¹⁵.

1 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 For the meaning of 'common' see PARA 1335 note 4 ante.

4 For the meaning of 'open space' see PARA 1335 note 5 ante.

5 For the meaning of 'fuel or field garden allotment' see PARA 1335 note 6 ante.

6 As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

7 As to the Secretary of State see PARA 19 ante.

8 A compulsory purchase order may provide for vesting land given in exchange as mentioned in the New Towns Act 1981 ss 10(2)(b), 11(3)(b), Sch 4 para 13(1) (as amended: see note 9 infra) in the persons, and subject to the rights, trusts and incidents, therein mentioned, and for discharging the land acquired from all rights, trusts and incidents to which it was previously subject: Sch 4 para 13(3). For the prescribed form of order see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(b), Schedule, Form 3; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).

9 New Towns Act 1981 Sch 4 para 13(1) (amended by the Transfer of Functions (Secretary of State and Minister of Agriculture, Fisheries and Food) Order 1985, SI 1985/442, art 5(a)).

10 As to local inquiries see PARA 1312 ante; and as to public local inquiries see PARA 651 et seq ante.

11 New Towns Act 1981 Sch 4 para 13(2) (amended by the Transfer of Functions (Secretary of State and Minister of Agriculture, Fisheries and Food) Order 1985, SI 1985/442, art 5(b)).

12 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.

13 For the prescribed form of notice see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 3(i), Schedule, Form 10; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like

effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).

14 New Towns Act 1981 Sch 4 para 13(4).

15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); the Government of Wales Act 1998 s 44; para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

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1343. Other cases where acquisition is subject to special procedure.

In so far as a compulsory purchase order¹ authorises the acquisition of land² which is the property of a local authority³, or which is land belonging to the National Trust⁴ and which is held by the Trust inalienably⁵, the order is subject to special parliamentary procedure⁶ in any case where an objection to the order has been duly made⁷ by the local authority or the National Trust, as the case may be, and has not been withdrawn⁸.

1 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 For the meaning of 'local authority' see PARA 1315 note 4 ante.

4 For these purposes, except in so far as the context otherwise requires, 'National Trust' means the National Trust for Places of Historic Interest or Natural Beauty incorporated by the National Trust Act 1907: New Towns Act 1981 s 80(1). As to the National Trust see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARA 979 et seq.

5 For these purposes, except in so far as the context otherwise requires, 'held inalienably', in relation to land belonging to the National Trust, means that the land is inalienable under the National Trust Act 1907 s 21 or the National Trust Act 1939 s 8 (see NATIONAL CULTURAL HERITAGE vol 77 (2010) PARAS 979, 991): New Towns Act 1981 s 80(1).

6 As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

7 As to when an objection is duly made see PARA 1339 note 2 ante.

8 New Towns Act 1981 ss 10(2)(a), 11(3)(a), Sch 4 para 12.

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(C) OPERATIONAL LAND OF STATUTORY UNDERTAKERS

1344. Meaning of 'statutory undertakers' and 'operational land'.

In the New Towns Act 1981, except in so far as the context otherwise requires, 'statutory undertakers' means:

- 4828 (1) persons authorised by any enactment¹ to carry on:
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- 3. (a) any railway, light railway, tramway, road transport, water transport, canal or inland navigation undertaking; or
 - 4. (b) any dock, harbour, pier or lighthouse undertaking; or
 - 5. (c) any undertaking for the supply of hydraulic power; or
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- 4829 (2) the Civil Aviation Authority²; or
- 4830 (3) a person who holds a licence³ authorising the provision of air traffic services⁴; or
- 4831 (4) a universal postal service provider⁵ in connection with the provision of a universal postal service⁶,

and 'statutory undertaking' is to be construed accordingly⁷. The Environment Agency⁸, every water undertaker and every sewerage undertaker⁹ are deemed to be statutory undertakers, and each of its undertakings a statutory undertaking, for these purposes¹⁰. Gas transporters¹¹ and certain electricity suppliers¹² are also deemed to be statutory undertakers and their undertakings statutory undertakings for these purposes¹³.

Subject to certain exceptions¹⁴, and except in so far as the context otherwise requires, 'operational land', in relation to statutory undertakers, means:

- 4832 (i) land¹⁵ which is used for the purpose of the carrying on of their undertaking;
and
- 4833 (ii) land in which an interest is held for that purpose,

not being land which, in respect of its nature and situation, is comparable rather with land in general than with land which is used, or in which interests are held, for the purpose of the carrying on of statutory undertakings¹⁶.

1 For the meaning of 'enactment' see PARA 1312 note 3 ante.

2 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 et seq.

3 ie a licence under the Transport Act 2000 Pt I Ch I (ss 1-40) (as amended): see AIR LAW vol 2 (2008) PARA 139 et seq.

4 For these purposes: (1) a person who holds a licence under *ibid* Pt I Ch I (as amended) is not to be considered to be a statutory undertaker unless the person is carrying out activities authorised by the licence; (2) the person's undertaking is not to be considered to be a statutory undertaking except to the extent that it is the person's undertaking as licence holder: New Towns Act 1981 s 79(1A) (added by the Transport Act 2000 s 37, Sch 5 para 5(1), (3)).

5 For these purposes, 'universal postal service provider' means a universal service provider within the meaning of the Postal Services Act 2000; and references to the provision of a universal postal service are to be construed in accordance with that Act: New Towns Act 1981 s 80(1) (definition added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 53).

6 The undertaking of a universal postal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for these purposes; and references in the New Towns Act 1981 to his undertaking are to be construed accordingly: s 79(1B) (s 79(1B) added, and s 79(1), (3) amended, by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, Sch 1 para 52).

7 New Towns Act 1981 s 79(1) (as amended (see note 6 supra); also amended by the Telecommunications Act 1984 s 109, Sch 4 para 3; the Airports Act 1986 s 83(5), Sch 6 Pt I; the Electricity Act 1989 s 112(4), Sch 18; the Gas Act 1986 s 67(4), Sch 9 Pt I; the Water Act 1989 s 190, Sch 25 para 64; the Transport Act 2000 s 37, Sch 5 para 5(1), (2)).

8 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

9 As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq.

10 Water Act 1989 s 190, Sch 25 para 1(1), (2)(xxvi) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4). The references in the New Towns Act 1981 s 39 (as amended) (power of development corporation to transfer undertakings: see PARA 1405 post) to statutory undertakers do not, however, include references to any water undertaker or sewerage undertaker and, accordingly, references in s 39 (as amended) to a statutory undertaking do not include references to the statutory undertaking of such an undertaker: Water Act 1989 Sch 25 para 1(5).

11 A reference to a public gas transporter now has effect as a reference to a gas transporter: see the Utilities Act 2000 s 76(7).

12 Ie licence holders entitled to exercise any power conferred by the Electricity Act 1989 s 10(1), Sch 3 (as amended) (compulsory acquisition of land by licence holders): see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARA 1281 et seq. References in any enactment to holders of licences under 6(2) (as substituted) now have effect as if they were references to electricity suppliers: Utilities Act 2000 s 31(3).

13 Gas Act 1995 s 16(1), Sch 4 para 2(1)(xxx); Electricity Act 1989 s 112(1), Sch 16 para 2(2)(f).

14 Ie subject to the New Towns Act 1981 s 79(3) (as amended): see note 16 infra.

15 For the meaning of 'land' see PARA 1313 note 7 ante.

16 New Towns Act 1981 s 79(2). For these purposes, 'operational land': (1) in relation to a universal postal service provider, has the meaning given by the Post Office Act 1969 Sch 4 para 93(4) (as amended); (2) in relation to the Civil Aviation Authority, has the meaning given by the Civil Aviation Act 1982 Sch 2 para 5; (3) in relation to a person who holds a licence under the Transport Act 2000 Pt I Ch I (as amended), means any land which is used by the licence holder (or by a company associated with it) for the purpose of carrying out activities authorised by the licence or land in which the licence holder (or a company associated with it) holds an interest for that purpose: New Towns Act 1981 s 79(3) (as amended (see note 6 supra); also amended by the Civil Aviation Act 1982 s 109(2), Sch 15 para 26; the Telecommunications Act 1984 s 109, Sch 7 Pt I; and the Transport Act 2000 s 37, Sch 5 para 5(1), (4)). If for the purposes of the New Towns Act 1981 a question arises whether land is operational land in relation to a person who holds a licence under the Transport Act 2000 Pt I Ch I (as amended) the question must be decided by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: New Towns Act 1981 s 79(4) (added by the Transport Act 2000 Sch 5 para 5(1), (5)). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under the New Towns Act 1981 s 79 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

As to the appropriate minister in relation to statutory undertakers see PARA 1314 ante.

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1345. Acquisitions by development corporations and local highway authorities.

In England, in the case of operational land¹ of statutory undertakers², an order³ authorising the compulsory acquisition of that land by a development corporation⁴ or by a local highway authority⁵, instead of being made and confirmed in accordance with the normal procedure⁶, may be made, on the application⁷ of that development corporation or local highway authority,

by the Secretary of State⁸ and the appropriate minister⁹ in accordance with the following provisions¹⁰.

As soon as may be after submitting the application to the Secretary of State and the appropriate minister, the acquiring authority¹¹ must serve on every owner¹², lessee and occupier of any land to which the application relates a notice in the prescribed form¹³:

- 4834 (1) describing the land;
- 4835 (2) stating that an application¹⁴ has been submitted in relation to the land and is about to be considered by the Secretary of State and the appropriate minister;
- 4836 (3) naming a place where a copy of the application and of the map referred to in it may be seen at all reasonable hours; and
- 4837 (4) specifying the time, not being less than 28 days from the service of the notice, within which and the manner in which objections to the application may be made¹⁵.

If no objection is duly made¹⁶ by any of the persons on whom notices are required to be served, or if all objections so made are withdrawn, the Secretary of State and the appropriate minister may, if they think fit, make a compulsory purchase order in accordance with the application, with or without modifications, but may not, unless all persons interested consent, make the order with any modification which would extend it to any land to which the application did not relate¹⁷.

If any objection is duly made by any of the persons on whom notices are required to be served and is not withdrawn, the Secretary of State and the appropriate minister must:

- 4838 (a) before making an order on the application, consider the objection; and
- 4839 (b) if either the person by whom the objection was made or the acquiring authority so desires, afford that person and the acquiring authority an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State and the appropriate minister for that purpose,

and may then, if they think fit, make an order on the application¹⁸.

A compulsory purchase order made on such an application must be in such form as the Secretary of State and the appropriate minister may determine, and must describe by reference to a map the land to which the order relates¹⁹. As soon as may be after a compulsory purchase order has been made on such an application, the acquiring authority must serve on every owner, lessee and occupier of any land to which the order relates a notice in the prescribed form²⁰ stating that the order has been made and naming a place where a copy of the order and of the map referred to therein may be seen at any reasonable hour²¹.

In Wales, the functions of the Secretary of State and the appropriate minister under the above provisions are transferred to and exercised by the National Assembly for Wales²².

1 For the meaning of 'operational land' see PARA 1344 ante.

2 For the meaning of 'statutory undertakers' see PARA 1344 ante.

3 ie under the New Towns Act 1981 s 10(1) (see PARA 1333 ante) or s 11(1) (see PARA 1334 ante), as the case may be.

4 For the meaning of 'development corporation' see PARA 1322 ante.

5 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

6 ie as provided by the New Towns Act 1981 s 10(1) or s 11(1), as the case may be.

7 An application by a development corporation or local highway authority for the purposes of *ibid* s 13(1)(a) must be in such form as may be prescribed, and must describe by reference to a map the land to which the application relates: s 13(1)(a), Sch 5 para 1. For the prescribed form of application see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(f), Schedule, Form 7; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2). For the meaning of 'prescribed' see PARA 1311 note 3 ante.

8 As to the Secretary of State see PARA 19 ante.

9 For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1314 ante.

10 New Towns Act 1981 s 13(1)(a). In relation to a compulsory purchase order made as so provided, Sch 4 Pt IV (paras 12, 13) (as amended): see PARAS 1342-1343 ante) and Sch 4 Pt V (paras 14-16: see PARA 1349 post) apply accordingly, subject in the case of Sch 4 Pt V (paras 14-16) to the modifications set out in Sch 5 Pt III (para 9) (see PARA 1349 post): s 13(1).

11 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.

12 For the meaning of 'owner' see PARA 1313 note 4 ante.

13 For the prescribed form of notice see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(g), Form 8; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).

14 *Ie* under the New Towns Act 1981 s 13(1)(a).

15 *Ibid* Sch 5 para 2. As to the service of notices see PARA 1313 ante.

16 An objection is not deemed for the purposes of *ibid* s 13 or Sch 5 to be duly made unless: (1) it is made within the time and in the manner specified in the notice in that behalf; and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: Sch 5 para 3(3).

17 *Ibid* Sch 5 para 3(1).

18 *Ibid* Sch 5 para 3(2).

19 *Ibid* Sch 5 para 4.

20 For the prescribed form of notice see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(h), Form 9; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).

21 New Towns Act 1981 Sch 5 para 5.

22 As to the transfer of functions under *ibid* s 13, Sch 5, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(C) Operational Land of Statutory Undertakers/1346. Acquisitions by the Secretary of State or the Assembly.

1346. Acquisitions by the Secretary of State or the Assembly.

In the case of operational land¹ of statutory undertakers², an order³ authorising the compulsory acquisition of that land by the Secretary of State⁴ or, in relation to Wales, by the National

Assembly for Wales⁵ may, instead of being made as provided by the normal statutory provisions⁶, be made by the Secretary of State and the appropriate minister⁷ or by the Assembly in accordance with the following provisions⁸. A compulsory purchase order so made must be in such form as the Secretary of State and the appropriate minister or, as the case may be, the Assembly, may determine, and must describe by reference to a map the land to which the order relates⁹.

Where the Secretary of State and the appropriate minister propose, or the Assembly proposes, to make such an order, they or it must prepare a draft of it, and must then as soon as may be serve on every owner¹⁰, lessee and occupier of any land to which the draft relates a notice in such form as they or the Assembly may determine:

- 4840 (1) describing the land;
- 4841 (2) stating that the making of the order is proposed;
- 4842 (3) naming a place where a copy of the draft and of the map referred to in the draft may be seen at any reasonable hour; and
- 4843 (4) specifying the time, not being less than 28 days from the service of the notice, within which and the manner in which objections to the proposal may be made¹¹.

In relation to such an order the statutory provisions relating to acquisitions by development corporations and local highway authorities¹² have effect with specified¹³ modifications¹⁴.

1 For the meaning of 'operational land' see PARA 1344 ante.

2 For the meaning of 'statutory undertakers' see PARA 1344 ante.

3 Ie under the New Towns Act 1981 s 11(2) (as amended): see PARA 1334 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the New Towns Act 1981 s 13, Sch 5, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Ie made as provided by the New Towns Act 1981 s 11(2) (as amended).

7 For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1314 ante.

8 New Towns Act 1981 s 13(1)(b). In relation to a compulsory purchase order made as so provided, Sch 4 Pt IV (paras 12, 13) (as amended) (see PARAS 1342-1343 ante) and Sch 4 Pt V (paras 14-16) (see PARA 1349 post) apply accordingly, subject in the case of Sch 4 Pt V to the modifications set out in Sch 5 Pt III (para 9: see PARA 1349 post): s 13(1).

9 Ibid s 13(1)(b), Sch 5 para 6.

10 For the meaning of 'owner' see PARA 1313 note 4 ante.

11 New Towns Act 1981 Sch 5 para 7. As to the service of notices see PARA 1313 ante.

12 Ie ibid Sch 5 paras 3, 5: see PARA 1345 ante.

13 Ibid Sch 5 paras 3, 5 so have effect (1) with the substitution, for references to an application and to the making of a compulsory purchase order upon it, of references to such an order as prepared in draft and to the making of such an order; (2) with the omission of the references in Sch 5 para 3(2) to the acquiring authority: Sch 5 para 8.

14 Ibid Sch 5 para 8.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(C) Operational Land of Statutory Undertakers/1347. Special procedure in the case of objections.

1347. Special procedure in the case of objections.

If any objection to an application for a compulsory purchase order¹ to be made by the Secretary of State and the appropriate minister², or to a proposal to make such an order³, is duly made⁴ by any statutory undertakers⁵, and any of the land⁶ to which the application or proposal relates is operational land⁷ of those undertakers, then, unless that objection is withdrawn, any order made on the application or proposal is subject to special parliamentary procedure⁸. These provisions do not, however, apply to applications or proposals for compulsory purchase orders to be made by the National Assembly for Wales⁹.

1 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.

2 Ie in accordance with the New Towns Act 1981 s 13(1)(a): see PARA 1345 ante. As to the Secretary of State see PARA 19 ante.

3 Ie in accordance with *ibid* s 13(1)(b): see PARA 1346 ante.

4 As to when objections are duly made see PARA 1345 note 16 ante.

5 For the meaning of 'statutory undertakers' see PARA 1344 ante.

6 For the meaning of 'land' see PARA 1313 note 7 ante.

7 For the meaning of 'operational land' see PARA 1344 ante.

8 New Towns Act 1981 s 13(2). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

9 See the Government of Wales Act 1998 s 44; para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS. As to the transfer of functions under the New Towns Act 1981 s 13, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(C) Operational Land of Statutory Undertakers/1348. Statutory undertakers' power to challenge acquisition.

1348. Statutory undertakers' power to challenge acquisition.

Where a compulsory purchase order¹ is submitted, or is proposed to be made, in accordance with the relevant statutory provisions², and with respect to any land³, being the whole or part of the land to which the order relates, statutory undertakers⁴ make to the appropriate minister⁵ or, in relation to Wales, to the National Assembly for Wales⁶ in the prescribed manner⁷ and within the time within which objections to the order may be made, (1) a representation that the first-mentioned land is operational land⁸; and (2) a request for that land to be excluded from the order, and it is determined that that land is operational land, then:

- 4844 (a) if that land constitutes the whole of the land to which the order relates, the order may not be confirmed or made, as the case may be; and
 4845 (b) if that land forms part only of the land to which the order relates, the order must be modified so as to exclude that land⁹.

Where, however, in the case of a compulsory purchase order for the acquisition of land by a development corporation¹⁰, any land to which the order relates is within the area of a new town¹¹ and is land in relation to which the above provisions would otherwise apply, they do not apply in relation to that land if:

- 4846 (i) no representation was made¹² with respect thereto; or
 4847 (ii) such an order as is described below¹³ has come into force with respect thereto¹⁴.

Where it is proposed to make a designation order¹⁵, any statutory undertakers may, with respect to any land within the area to be designated by the order as the site of the proposed new town, make to the appropriate minister or, as the case may be, to the Assembly, in the prescribed form¹⁶ and within the time allowed for making objections to the order, a representation that that land is operational land¹⁷. Where a representation is so made with respect to any land, the Secretary of State and the appropriate minister or, as the case may be, the Assembly may make an order¹⁸ declaring that it is expedient that that land should be subject to compulsory acquisition¹⁹.

1 le under the New Towns Act 1981 s 10 (see PARA 1333 ante) or s 11 (as amended) (see PARA 1334 ante), not being an order made as provided in s 13(1)(a) (see PARA 1345 ante) or s 13(1)(b) (see PARA 1346 ante).

2 le in accordance with ibid ss 10, 11, 13, Sch 4 (as amended): see PARA 1333 et seq ante.

3 For the meaning of 'land' see PARA 1313 note 7 ante.

4 For the meaning of 'statutory undertakers' see PARA 1344 ante.

5 For the meaning of 'the appropriate minister' see PARA 1314 ante.

6 As to the transfer of functions under the New Towns Act 1981 s 13, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 For the prescribed form of representation and request by statutory undertakers see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(e), Schedule, Form 6; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2). For the meaning of 'prescribed' see PARA 1311 note 3 ante.

8 For the meaning of 'operational land' see PARA 1344 ante.

9 New Towns Act 1981 s 13(3).

10 le under ibid s 10: see PARAS 1333, 1335 ante.

11 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

12 le under the New Towns Act 1981 s 13(4): see the text and notes 14-17 infra.

13 le an order under ibid s 13(5): see the text and notes 18-19 infra.

14 Ibid s 13(6).

15 le under ibid s 1 (as amended): see PARA 1315 ante.

16 For the prescribed form of representation see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, regs 2(1), (2), 3(a), Schedule, Form 1; the Interpretation Act 1978 s 17(2)(a). A form substantially to the like effect may be used: see the New Towns (Compulsory Purchase of Land) Regulations 1977, SI 1977/549, reg 2(2).

17 New Towns Act 1981 s 13(4).

18 Such an order made by the Secretary of State and the appropriate minister is subject to special parliamentary procedure: *ibid* s 13(5). However, an order made by the Assembly is not so subject: see the Government of Wales Act 1998 s 44; para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

19 New Towns Act 1981 s 13(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(D) Validity and Date of Operation of Orders and Certificates/1349. Validity and date of operation of compulsory purchase orders and certificates.

(D) VALIDITY AND DATE OF OPERATION OF ORDERS AND CERTIFICATES

1349. Validity and date of operation of compulsory purchase orders and certificates.

If any person aggrieved¹ by a compulsory purchase order² or by a certificate given by the Secretary of State³ desires to question its validity, or the validity of any provision contained in it, on the ground:

4848 (1) that it is not within the statutory powers⁴; or

4849 (2) that any statutory requirement⁵ has not been complied with in relation to the order or certificate,

he may, within six weeks from the date on which notice of the confirmation or making of the order or of the giving of the certificate is first published⁶, apply to the High Court⁷.

On any such application the court:

4850 (a) may, by interim order, suspend the operation of the order or any of its provisions, or of the certificate, either generally or in so far as it affects the applicant's property, until the final determination of the proceedings; and

4851 (b) if satisfied that the order or any of its provisions, or the certificate, is not within the statutory powers or that the applicant's interests have been substantially prejudiced⁸ by any statutory requirement⁹ not having been complied with, may quash the order or any of its provisions, or the certificate, either generally or in so far as it affects any of the applicant's property¹⁰.

A compulsory purchase order or such a certificate becomes operative on the date on which notice is first published¹¹; and, subject to the above provisions, may not, either before or after it has been made or confirmed or given, be questioned in any legal proceedings whatsoever¹².

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.

3 le a certificate under the New Towns Act 1981 ss 10, 11, 13, Sch 4 para 13 (as amended): see PARA 1342 ante. As to the Secretary of State see PARA 19 ante. There is no requirement for the National Assembly for Wales to give such certificates: see PARA 1342 the text and note 15 ante.

4 le within the powers of the New Towns Act 1981.

5 le any requirement of the New Towns Act 1981 or of any regulations made thereunder.

6 le in accordance with the provisions of *ibid* Sch 4 (as amended): see PARA 1337 et seq ante. Schedule 4 Pt V (paras 14-16) has effect in relation to a compulsory purchase order made in pursuance of s 13(1) (see PARAS 1345-1346 ante) with the substitution, for the references to the date on which notice of the confirmation or making of the order is first published in accordance with Sch 4 (as amended), of references to the date on which the service of notices required by Sch 5 para 5 (see PARA 1345 ante) is completed: Sch 5 para 9.

7 *Ibid* Sch 4 para 14(1).

8 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

9 See note 5 *supra*.

10 New Towns Act 1981 Sch 4 para 14(2).

11 *Ibid* Sch 4 para 15(b).

12 *Ibid* Sch 4 para 15(a). Schedule 4 Pt V (paras 14-16) does not apply to an order which is confirmed by Act of Parliament under the Statutory Orders (Special Procedure) Act 1945 s 6 (see PARLIAMENT vol 34 (Reissue) PARA 925), but except for that has effect in relation to a compulsory purchase order to which that Act applies as if (1) in the New Towns Act 1981 Sch 4 para 14(1) for the reference to the date on which notice of the confirmation or making of the order is first published in accordance with Sch 4 (as amended) there were substituted a reference to the date on which the order becomes operative under the Statutory Orders (Special Procedure) Act 1945; and (2) the New Towns Act 1981 Sch 4 para 15(b) were omitted: Sch 4 para 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(E) Compensation/1350. Measure of compensation; in general.

(E) COMPENSATION

1350. Measure of compensation; in general.

The general statutory provisions relating to compensation in connection with the compulsory acquisition of land¹ in their application for the purposes of the New Towns Act 1981 have effect subject to any necessary modifications and subject to the following provisions².

The Lands Tribunal may not take into account any interest in land³ or any enhancement of the value of any interest in land by reason of any building erected, work done or improvement or alteration made, whether on the land acquired or on any other land with which the claimant is, or was at the time of the erection, doing or making of the building, works, improvement or alteration, directly or indirectly concerned, if that tribunal is satisfied that the creation of the interest, the erection of the building, the doing of the work, the making of the improvement, or the alteration, as the case may be, was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation⁴.

Compensation where permission for additional development is granted after acquisition⁵ is not payable⁶ in respect of a planning decision in so far as it relates to land acquired, whether

compulsorily or by agreement, by a development corporation or a highway authority in connection with a new town area under the New Towns Act 1981⁷.

Where statutory undertakers⁸ are entitled to compensation in respect of a compulsory acquisition⁹ of operational land¹⁰, special statutory provisions¹¹ have effect as regards the assessment of the amount of that compensation¹².

1 Ie the Land Compensation Act 1961, under which the measure of compensation is basically the value of the land if sold in the open market: see s 5 r 2. See further COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 754.

2 New Towns Act 1981 s 14(2).

3 For the meaning of 'land' see PARA 1313 note 7 ante.

4 New Towns Act 1981 s 14(2), Sch 6 para 6.

5 Ie compensation under the Land Compensation Act 1961 Pt IV (ss 23-29) (as revived and amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 781 et seq.

6 Ie by virtue of ibid s 23 (as revived and amended).

7 See ibid s 23(3)(b) (as revived and amended); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 781.

8 For the meaning of 'statutory undertakers' see PARA 1344 ante.

9 For these purposes, 'compensation in respect of a compulsory acquisition' includes compensation payable (1) in connection with the acquisition for damage sustained by reason of the severing of the land acquired from other land held therewith or otherwise injuriously affecting such other land; and (2) for disturbance or any other matter not directly based on the value of the land: New Towns Act 1981 s 15(2).

10 For the meaning of 'operational land' see PARA 1344 ante.

11 Ie the New Towns Act 1981 ss 15, 26(7), Sch 7: see PARA 1351 post.

12 Ibid s 15(1).

UPDATE

1350 Measure of compensation; in general

TEXT AND NOTE 4--Reference to the Lands Tribunal is now to the Upper Tribunal: New Towns Act 1981 Sch 6 para 6 (amended by SI 2009/1307).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(E) Compensation/1351. Assessment of compensation for statutory undertakers.

1351. Assessment of compensation for statutory undertakers.

Where statutory undertakers¹ are entitled to compensation², the amount of the compensation is³ an amount calculated in accordance with the following provisions⁴. That amount is the aggregate of the following amounts, that is to say:

- 4852 (1) the amount of any expenditure reasonably incurred in acquiring land⁵, providing apparatus, erecting buildings or doing work for the purpose of any adjustment of the carrying on of the undertaking rendered necessary by the proceeding giving rise to compensation⁶;
- 4853 (2) whichever of the following is applicable, namely:
- 416
- 6. (a) where such an adjustment is made, the estimated amount of any decrease in net receipts⁷ from the carrying on of the undertaking pending the adjustment, in so far as the decrease is directly attributable to the proceeding giving rise to compensation, together with such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as the decrease is directly attributable to the adjustment; or
 - 7. (b) where no such adjustment is made, such amount as appears reasonable compensation for any estimated decrease in net receipts from the carrying on of the undertaking which is directly attributable to the proceeding giving rise to compensation;
- 417
- 4854 (3) where the compensation is in respect of the imposition of a requirement to remove apparatus⁸, the amount of any expenditure reasonably incurred by the statutory undertakers in complying with the requirement, reduced by the value after removal of the apparatus removed⁹.

Where any such adjustment as is mentioned in head (1) above is made, the aggregate amount therein mentioned must be reduced by such amount, if any, as appears to the Lands Tribunal to be appropriate to offset:

- 4855 (i) the estimated value of any property, whether movable or immovable, belonging to the statutory undertakers and used for the carrying on of their undertaking which, in consequence of the adjustment, ceases to be so used, in so far as the value of the property has not been taken into account under head (3) above; and
- 4856 (ii) the estimated amount of any increase in net receipts from the carrying on of the undertaking in the period after the adjustment has been completed, in so far as that amount has not been taken into account under head (2) above and is directly attributable to the adjustment,

and by any further amount which appears to the Lands Tribunal to be appropriate, having regard to any increase in the capital value of immovable property belonging to the statutory undertakers which is directly attributable to the adjustment, allowance being made for any reduction made under head (ii) above¹⁰.

Where the amount of any such compensation¹¹ falls to be ascertained in accordance with the above provisions¹², the compensation must, in default of agreement, be assessed by the Lands Tribunal if it would not otherwise fall to be so assessed¹³.

Where statutory undertakers are entitled to compensation in respect of a compulsory acquisition, they may by notice¹⁴ in writing elect¹⁵ that the compensation shall be ascertained in accordance with the enactments¹⁶ which would be applicable apart from these provisions; and, if the undertakers so elect, the compensation must be ascertained accordingly¹⁷.

1 For the meaning of 'statutory undertakers' see PARA 1344 ante. See also the New Towns Act 1981 s 26(8) (as substituted); and PARA 1376 note 10 post.

- 2 le as mentioned in the New Towns Act 1981 s 15 (see PARA 1350 ante) or s 26(7) (see PARA 1376 post).
- 3 le subject to *ibid* ss 15, 26, Sch 7 para 2: see the text and notes 14-17 *infra*.
- 4 *Ibid* Sch 7 para 1(1).
- 5 For the meaning of 'land' see PARA 1313 note 7 ante.
- 6 For these purposes, 'proceeding giving rise to compensation' means the particular action, ie the acquisition, the extinguishment of a right or the imposition of a requirement, in respect of which compensation falls to be assessed, as distinct from any development or project in connection with which that action may have been taken: New Towns Act 1981 Sch 7 para 1(5).
- 7 For these purpose, references to a decrease in net receipts are to be construed as references to the amount by which a balance of receipts over expenditure is decreased, or a balance of expenditure over receipts is increased, or, where a balance of receipts over expenditure is converted into a balance of expenditure over receipts, as references to the aggregate of the two balances; and references to an increase in net receipts are to be construed accordingly: *ibid* Sch 7 para 1(4).
- 8 le under *ibid* s 26(7): see PARA 1376 post.
- 9 *Ibid* Sch 7 para 1(2).
- 10 *Ibid* Sch 7 para 1(3).
- 11 le any such compensation as is mentioned in *ibid* Sch 7 para 1(1): see the text and notes 1-4 *supra*.
- 12 le the provisions of *ibid* Sch 7 para 1: see the text and notes 1-10 *supra*.
- 13 *Ibid* Sch 7 para 3(1). For the purposes of any proceedings arising before the Lands Tribunal in respect of compensation so falling to be ascertained, the Land Compensation Act 1961 s 2 (as amended) and s 4 (see COMPULSORY ACQUISITION OF LAND) apply as they apply to proceedings on a question referred to the tribunal under s 1 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 718, 721), but with the substitution in s 4 for references to the acquiring authority of references to the person from whom the compensation is claimed: New Towns Act 1981 Sch 7 para 3(2). For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.
- 14 Any such notice must be given to the acquiring authority before the end of the period of two months from the date of service of notice to treat in respect of the interest of the statutory undertakers: *ibid* Sch 7 para 2(3). As to the service of notice to treat see PARA 1313 post.
- 15 Such an election may be made either in respect of the whole of the land comprised in the compulsory acquisition in question or in respect of part of that land: *ibid* Sch 7 para 2(2).
- 16 le other than the Land Compensation Act 1961 s 5 r 5: see COMPULSORY ACQUISITION OF LAND (2009) PARAS 754, 800. For the meaning of 'enactment' see PARA 1312 note 3 ante.
- 17 New Towns Act 1981 Sch 7 para 2(1).

UPDATE

1351 Assessment of compensation for statutory undertakers

TEXT AND NOTES 10-13--The Lands Tribunal has been abolished and its functions have been transferred to the Upper Tribunal: Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, SI 2009/1307, art 2 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 et seq). New Towns Act 1981 Sch 7 paras 1(3), 3(1), (2) amended: SI 2009/1307.

Establishment of New Towns/C. ACQUISITION OF LAND/(F) Application of Other Statutes/1352. Application of the Compulsory Purchase Act 1965.

(F) APPLICATION OF OTHER STATUTES

1352. Application of the Compulsory Purchase Act 1965.

Part I of the Compulsory Purchase Act 1965¹ applies in relation to the acquisition of land² under the New Towns Act 1981 subject to any necessary adaptations and to specified³ modifications⁴.

Nothing in Part I of the Compulsory Purchase Act 1965⁵ as so applied in relation to the acquisition of land by agreement, or in the New Towns Act 1981 as so applying, enables a local authority⁶ to sell for the purpose of the New Towns Act 1981, without the consent of any minister, any land which the authority could not otherwise have sold without that consent⁷. The acquiring authority is entitled⁸, without prejudice to any power in that behalf otherwise exercisable by that authority, to acquire one or some of two or more interests subsisting in the land without acquiring the other interest or interests subsisting in it⁹.

If the acquiring authority has, in respect of any of the land, served¹⁰ notice to treat on every owner¹¹ of that land, the authority may at any time afterwards serve a notice:

- 4857 (1) on every occupier of any of that land; and
- 4858 (2) on every person, other than such an occupier, who, having been served with a notice to treat in respect of that land, has requested the acquiring authority in writing to serve him with any notice under this provision and has given the authority an address for its service,

describing the land to which the notice relates and stating the authority's intention to enter on and take possession of it at the expiry of such period, not being less than 14 days, as may be specified in the notice¹². The acquiring authority may enter on and take possession of the land to which such notice or notices relate:

- 4859 (a) at the expiry of the period specified in the notice; or
- 4860 (b) where two or more such notices are required, and the periods specified in the several notices do not expire at the same time, at the expiry of the last of those periods; or
- 4861 (c) at any time after those expiries,

without previous consent or compliance with the relevant provisions of the Compulsory Purchase Act 1965¹³ but subject to payment of the like compensation for the land of which possession is taken, and interest on the compensation agreed or awarded, as the authority would have been required to pay if those provisions had been complied with¹⁴.

1 le the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 549 et seq.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 le subject to the modifications specified in the New Towns Act 1981 s 14(1), Sch 6 Pt I (paras 1-5). The Compulsory Purchase Act 1965 Pt I (as amended) as applied by the New Towns Act 1981 has effect as if the Compulsory Purchase Act 1965 s 27 (now repealed) and s 32 (commencement) were omitted: New Towns Act 1981 Sch 6 para 1(1). In construing the 1965 Act as applied by the 1981 Act:

76 (1) the 1981 Act or, in relation to a compulsory acquisition, the 1981 Act and the compulsory purchase order, are deemed to be the special Act (New Towns Act 1981 Sch 6 para 1(2)(a));

- 77 (2) 'the acquiring authority' has the meaning given by the 1981 Act (see PARA 1335 note 2 ante) (Sch 6 para 1(2)(b));
- 78 (3) 'subject to compulsory purchase', in relation to a compulsory acquisition, means land the compulsory purchase of which is authorised by the compulsory purchase order and, in relation to the acquisition of land by agreement, means land which may be purchased by agreement under the 1981 Act (Sch 6 para 1(2)(c));
- 79 (4) references to the execution of the works are to be construed as including references to any erection, construction or carrying out of buildings or works authorised by the 1981 Act (Sch 6 para 1(2)(d));
- 80 (5) in relation to any erection, construction or carrying out of any building or works so authorised, references in the Compulsory Purchase Act 1965 s 10 (as amended) (compensation for injurious affection: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 718) to the promoters of the undertaking are to be construed as references to the person by whom the buildings or works in question are erected, constructed or carried out (New Towns Act 1981 Sch 6 para 1(2)(e)); and
- 81 (6) references to the execution of the works are to be construed as including also references to any erection, construction or carrying out of buildings or works on behalf of the Secretary of State or, in relation to Wales, on behalf of the Assembly on land acquired by him or by it under the New Towns Act 1981 s 11 (as amended) (see PARA 1334 ante), where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired (Sch 6 para 1(2)).

As to the transfer of functions under Sch 6, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

- 4 New Towns Act 1981 s 14(1).
- 5 See note 1 supra.
- 6 For the meaning of 'local authority' see PARA 1315 note 4 ante.
- 7 New Towns Act 1981 Sch 6 para 2.
- 8 Ie notwithstanding anything in the Compulsory Purchase Act 1965 s 5 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616) or in any other provision of that Act.
- 9 New Towns Act 1981 Sch 6 para 3.
- 10 The Compulsory Purchase Act 1965 s 30 (as substituted) (service of notices in accordance with the Acquisition of Land Act 1981: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 618) does not apply but notice required to be served by the acquiring authority may, notwithstanding anything in the Compulsory Purchase Act 1965 s 30 (as substituted), be served and addressed in the manner specified in the New Towns Act 1981 s 75 (see PARA 1313 ante) in relation to notices to be served under the New Towns Act 1981: Sch 6 para 5; Interpretation Act 1978 s 17(2)(a).
- 11 For the meaning of 'owner' see PARA 1313 note 4 ante.
- 12 New Towns Act 1981 Sch 6 para 4(1).
- 13 Ie the Compulsory Purchase Act 1965 s 11 (as amended): see COMPULSORY ACQUISITION OF LAND.
- 14 New Towns Act 1981 Sch 6 para 4(2). The provisions of Sch 6 para 4 have effect instead of the Compulsory Purchase Act 1965 s 11(1) (as amended): New Towns Act 1981 Sch 6 para 4(3).

Establishment of New Towns/C. ACQUISITION OF LAND/(F) Application of Other Statutes/1353.
Application of other statutes.

1353. Application of other statutes.

A compulsory purchase order¹ may provide for the incorporation with the New Towns Act 1981 of specified provisions² of the Railways Clauses Consolidation Act 1845³; and such provision may be made as to all or any of the land⁴ to which the compulsory purchase order relates and may include such modifications of references in those provisions to the railway or works, or to the company, as may be specified in the order⁵.

The Land Compensation Act 1961, in its application for the purposes of the New Towns Act 1981, has effect subject to any necessary adaptations and to certain modifications⁶.

1 For the meaning of 'compulsory purchase order' see PARA 1337 note 1 ante.

2 I.e. the Railways Clauses Consolidation Act 1845 s 77 (exception of minerals from purchases: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 144) and ss 78-85 (restrictions on the working of minerals: see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 156 et seq), as originally enacted and not as amended for certain purposes by the Mines (Working Facilities and Support) Act 1923 s 15, or the Railways Clauses Consolidation Act 1845 s 77 only. As to such incorporation see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 137 et seq.

3 New Towns Act 1981 s 14(3).

4 For the meaning of 'land' see PARA 1313 note 7 ante.

5 New Towns Act 1981 s 14(4). For the purposes of any such incorporation of the specified provisions, the New Towns Act 1981 and the compulsory purchase order are deemed to be the special Act: New Towns Act 1981 s 14(4).

6 New Towns Act 1981 s 14(2). As to the specified modifications see s 14(2), Sch 6 Pt II (para 6); and PARA 1350 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(F) Application of Other Statutes/1354.
Purchase orders providing for a general vesting declaration.

1354. Purchase orders providing for a general vesting declaration.

An acquiring authority¹ may vest in itself by declaration land which it is authorised to acquire by a compulsory purchase order².

1 These provisions apply to any minister or local or other public authority authorised to acquire land by means of a compulsory purchase order: Compulsory Purchase (Vesting Declarations) Act 1981 s 1(2). As to the transfer of ministerial functions under s 1, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

2 See the Compulsory Purchase (Vesting Declarations) Act 1981 s 1(1). As to the procedure for making such a vesting declaration see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(F) Application of Other Statutes/1355. Application of statutory provisions relating to blighted land.

1355. Application of statutory provisions relating to blighted land.

Land¹ within an area:

- 4862 (1) described as the site of a proposed new town in the draft of an order in respect of which a notice² has been published³; or
- 4863 (2) within an area designated as the site of a proposed new town by an order⁴ which has come into operation⁵,

is blighted land in relation to which the relevant provisions of the Town and Country Planning Act 1990⁶ apply⁷.

Where a blight notice⁸ has been served in respect of such land, then, until such time as a development corporation is established for the new town, the Secretary of State⁹ or, in relation to Wales, the National Assembly for Wales¹⁰ has power to acquire compulsorily any interest in the land in pursuance of the blight notice so served¹¹. If the land is or becomes land within head (2) above, the interest must be transferred by him or by the Assembly to the development corporation established for the new town¹².

1 For the meaning of 'land' for these purposes see PARA 2 note 10 ante.

2 Ie under the New Towns Act 1981 s 1(4), Sch 1 para 2 (as amended): see PARA 1316 ante.

3 See the Town and Country Planning Act 1990 s 149(1), Sch 13 para 7; and PARA 981 ante.

4 Ie under the New Towns Act 1981 s 1 (as amended): see PARA 1315 ante.

5 See the Town and Country Planning Act 1990 Sch 13 para 8; and PARA 981 ante.

6 Ie *ibid* Pt VI Ch II (ss 149-171) (as amended): see PARA 979 et seq ante.

7 *Ibid* s 149(1).

8 For the meaning of 'blight notice' see PARA 990 note 20 ante.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Town and Country Planning Act 1990 s 165, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 Town and Country Planning Act 1990 s 165(1). The Land Compensation Act 1961 has effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State or by the Assembly under the Town and Country Planning Act 1990 s 165(1) as if (1) the acquisition were by a development corporation under the New Towns Act 1981 (see PARA 1333 et seq ante); and (2) in the case of land falling within the Town and Country Planning Act 1990 Sch 9 para 7 (see head (1) in the text), the land formed part of an area designated as the site of a new town by an order which has come into operation under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 ante): Town and Country Planning Act 1990 s 165(3) (a), (b). As to compensation see PARA 1008 ante.

12 *Ibid* s 165(2)(a) (as modified: see note 11 supra). In any other case the interest may be disposed of by the Secretary of State or the Assembly in such manner as he or it thinks fit: s 165(2)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(ii) Establishment of New Towns/C. ACQUISITION OF LAND/(G) Extinguishment of Rights; in general/1356. Extinguishment of rights over land compulsorily acquired.

(G) EXTINGUISHMENT OF RIGHTS; IN GENERAL

1356. Extinguishment of rights over land compulsorily acquired.

Upon the completion by the acquiring authority¹ of a compulsory acquisition of land² under the New Towns Act 1981, all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished, and any such apparatus vests in the acquiring authority³.

Any person who suffers loss by the extinguishment of such a right or the vesting of any such apparatus is, however, entitled to compensation from the acquiring authority⁴.

1 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 New Towns Act 1981 s 16(1). Section 16(1) does not, however, apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking or to any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network or to an electronic communications code network or to any electronic communications apparatus kept installed for the purposes of any such network: s 16(2) (amended by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(2); the Communications Act 2003 s 406(1), Sch 17 para 57(1)(a), (2)). In respect of any right or apparatus not falling within the New Towns Act 1981 s 16(2) (as so amended), s 16(1) has effect subject (1) to any direction given by the acquiring authority before the completion of the acquisition that s 16(1) shall not apply to any right or apparatus specified in the direction; and (2) to any agreement which may be made, whether before or after the completion of the acquisition, between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs: s 16(3). For the meaning of 'statutory undertakers' see PARA 1344 ante.

As to the power to override easements and other rights over land acquired by a development corporation or by the highway authority see the New Towns Act 1981 s 19 (as amended); and PARA 1367 post; as to the extinguishment of public rights of way see s 23 (as amended); and PARA 1374 post; and as to the extinguishment of statutory undertakers' rights of way see s 26 (as amended); and PARA 1376 post.

4 Ibid s 16(4). Any compensation so payable must be determined in accordance with the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND): New Towns Act 1981 s 16(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1357. Planning control.

(iii) Development of New Towns

A. CONTROL OF DEVELOPMENT

1357. Planning control.

In relation to a new town¹, the development corporation² must from time to time submit to the Secretary of State³ or, in relation to Wales, to the National Assembly for Wales⁴, in accordance with any directions given by him or by the Assembly in that behalf, its proposals for the development⁵ of land⁶ within the area of the new town⁷.

After consultation⁸ with the district or other appropriate planning authority⁹ within whose area the land is situated and with any other local authority¹⁰ which appears to be concerned, the Secretary of State or the Assembly may approve any such proposals, either with or without modification¹¹.

A special development order made¹² by the Secretary of State or the Assembly with respect to the area of a new town may grant permission for any development of land in accordance with proposals so approved; and such permission is subject to such conditions, if any, including conditions requiring details of any proposed development to be submitted to the district or other appropriate planning authority¹³, as may be specified in the order¹⁴.

1 For the meaning of 'new town' see PARA 1315 note 9 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the New Towns Act 1981 s 7, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'development' see PARA 1320 note 4 ante.

6 For the meaning of 'land' see PARA 1313 note 7 ante.

7 New Towns Act 1981 s 7(1)(a).

8 For the meaning of 'consult' para 2 note 1 ante.

9 The statutory wording is 'district planning authority'; but for these purposes, the references to a district planning authority are to be construed: (1) in relation to proposals for development of land in Wales or in a metropolitan county, as references to the local planning authority; and (2) in relation to proposals for any development which is a county matter as defined in the Town and Country Planning Act 1990 s 1(5), Sch 1 para 1 (as amended) (see PARA 38 ante) and which is of land in a non-metropolitan county, as references to the county planning authority: New Towns Act 1981 s 7(3) (amended by the Local Government Act 1985 s 16, Sch 8 para 9(1); the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 51; and the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(2)). As to district and county planning authorities see PARA 28 ante; and as to metropolitan and non-metropolitan counties see PARA 28 note 1 ante.

10 For the meaning of 'local authority' see PARA 1315 note 4 ante.

11 New Towns Act 1981 s 7(1)(b). As to the requirement for the purposes of advances that the proposals must be likely to secure a reasonable return in comparison with cost see PARA 1396 note 6 post.

12 Ie under the Town and Country Planning Act 1990 s 59: see PARA 252 ante. See the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665 (as amended), which applies to land in England and Wales within any area for the time being designated as the site of a new town: art 1(1) (amended by virtue of the Government of Wales Act 1998 s 152, Sch 18 Pt IV; applying by virtue of the Interpretation Act 1978 s 17(2)). See further PARAS 1360-1363 post.

13 See note 9 supra.

14 New Towns Act 1981 s 7(2) (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 51). The New Towns Act 1981 s 7(2) (as so amended) is without prejudice to the generality of the powers conferred by the Town and Country Planning Act 1990 ss 59-61 (as amended) (see PARAS 252, 254 ante); New Towns Act 1981 s 7(2) (as so amended).

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1358. Features of special architectural or historic interest.

It is the Secretary of State's¹ duty, or, in relation to Wales, the duty of the National Assembly for Wales², to give to a development corporation³ such directions with respect to the disposal⁴ of land⁵ acquired by the corporation under the New Towns Act 1981 and with respect to the development⁶ by the corporation of that land as appear to him or to the Assembly to be necessary or expedient for securing, so far as practicable, the preservation of any features of special architectural or historic interest, and in particular of buildings included in any list compiled or approved, or having effect as if compiled or approved, under the relevant⁷ statutory provisions⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 8 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 For the meaning of 'disposal' see PARA 1313 note 4 ante.

5 For the meaning of 'land' see PARA 1313 note 7 ante.

6 For the meaning of 'development' see PARA 1320 note 4 ante.

7 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

8 New Towns Act 1981 s 8 (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 51(2)).

UPDATE

1358 Features of special architectural or historic interest

NOTES--Certain persons or indorsements mentioned in this paragraph are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1359. Frontages and abutments.

1359. Frontages and abutments.

In the case of land¹ which forms a frontage to a road, or which abuts on or is adjacent to a road, a local highway authority² or the Secretary of State³ (or, in relation to Wales, the National

Assembly for Wales⁴) may enter into an agreement with any owner⁵ of the land imposing on the land, so far as that owner's interest in the land enables him to bind it, restrictions for controlling the development⁶ of the land⁷.

Any restrictions imposed by such an agreement may be enforced by the local highway authority or the Secretary of State or the Assembly, as the case may be, against the owner and any person deriving title under him in the like manner and to the like extent as if that authority or the Secretary of State or the Assembly were possessed of, or interested in, adjacent land, and as if that agreement had been entered into for the benefit of that land⁸.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the New Towns Act 1981 s 9, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 For the meaning of 'owner' see PARA 1313 note 4 ante.

6 For the meaning of 'development' see PARA 1320 note 4 ante.

7 New Towns Act 1981 s 9(1).

8 Ibid s 9(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1360. Permitted development.

1360. Permitted development.

The carrying out by a development corporation¹ within its area² of development in accordance with proposals approved³ by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵, not being development for which permission under the statutory provisions relating to control of development generally⁶ is otherwise granted or deemed to be granted⁷, is permitted subject:

4864 (1) to such of the specified limitations and conditions⁸ as are applicable to the development⁹; and

4865 (2) in the case of the carrying out of development which is deemed¹⁰ to be the carrying out of development by a development corporation, to the development being commenced within a period of five years from the date on which the development corporation disposed of the land¹¹.

1 For these purposes, unless the context otherwise requires, 'development corporation' means a development corporation established by an order under the New Towns Act 1981 s 3 (as amended) (see PARA 1322 ante); Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

2 For these purposes, unless the context otherwise requires, 'its area', in relation to any development corporation, means the area designated by an order under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 ante) made in respect of the new town for the purposes of which the corporation was established: Town

and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

3 le under the New Towns Act 1981 s 7 (as amended): see PARA 1357 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the New Towns Act 1981, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 le the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

7 As to when permission is deemed to be granted see PARA 238 ante.

8 le the limitations and conditions set out in the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, arts 6-8 (as amended): see PARAS 1361, 1363 post.

9 Ibid art 3(1)(b); Interpretation Act 1978 s 17(2)(a).

10 le by the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 3(2). For these purposes, the carrying out of development on land held or formerly held by a development corporation by a person coming within either of the specified descriptions is deemed to be the carrying out of such development by the development corporation where (1) the development is authorised development; (2) the development corporation had, before disposing of the land, complied with any requirements of art 8 (as amended) (see PARA 1363 post) which were applicable to the development; (3) the development corporation has sent a copy of the authorisation to the district planning authority or, where the land is in Wales or in a metropolitan county in England, the local planning authority, in whose area the land is situated: art 3(2) (amended by SI 1986/435; and by virtue of the Local Government (Wales) Act 1994, s 66(6), Sch 16 para 63(2)). The Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 3(2) (as so amended) applies to any person coming within either of the following descriptions, ie (a) a person to whom a development corporation has disposed of land; or (b) a successor in title or lessee of such a person as is referred to in head (a) supra: art 3(3) (amended by SI 1985/1579). Unless the context otherwise requires, 'authorised development' means development of land which has been authorised in writing by a development corporation at the time when it disposes of the land on which the development is to be carried out; and references in the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8 (as amended) to the authorising of development by a development corporation are to be construed accordingly: art 2(1). As to district planning authorities and metropolitan counties see PARA 28 ante.

11 Ibid art 3(1)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1361. Exceptions from permitted development.

1361. Exceptions from permitted development.

Where planning permission for development has been granted¹ and that permission has subsequently been revoked², nothing in the special development order³ operates so as to permit the carrying out of development of the same description as that which was authorised by the revoked permission on the land to which the revoked permission applied⁴. Where the use of land for any purpose is required⁵ to be discontinued, or any conditions are imposed on the continuance of it, or where any buildings⁶ or works are required⁷ to be altered or removed, nothing in the special development order operates to permit the carrying out of any development which would result in the resumption of the use of the land or the replacement or restoration of the buildings or works, as the case may be, as they were before the order for discontinuance, alteration or removal took effect⁸.

- 1 le under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.
- 2 le by an order made under *ibid* s 97 (as amended): see PARA 541 ante.
- 3 le the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665 (as amended): see PARA 1360 ante; the text and notes 4-8 *infra*; and PARAS 1362-1363 post.
- 4 *Ibid* art 6; Interpretation Act 1978 s 17(2)(a).
- 5 le by virtue of an order under the Town and Country Planning Act 1990 s 102 (as amended): see PARAS 546-547 ante.
- 6 For these purposes, unless the context otherwise requires, 'building' does not include plant or machinery or a structure or erection of the nature of plant or machinery but includes any other structure or erection and any part of a building as so defined: Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1).
- 7 See note 5 *supra*.
- 8 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 7; Interpretation Act 1978 s 17(2)(a).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1362. Directions restricting permitted development.

1362. Directions restricting permitted development.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that it is expedient that any development of the specified class³ should not be undertaken unless permission is granted on an application in that behalf, he or the Assembly may direct⁴ that the general permission⁵ is not to apply to that development⁶. Notice of a direction so given must, except in the case of development to be carried out by the development corporation⁷, be served by the corporation on the owner and occupier of every part of the land affected; and such direction comes into force in respect of any part of the land on the date on which notice of it is served on the occupier of that part or, if there is no occupier, on the owner⁸.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the New Towns Act 1981, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 le of the class specified in the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 3(1) (as amended): see PARA 1360 ante.
- 4 Any power conferred by the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665 (as amended), to give a direction is to be construed as including power to cancel or vary the direction by a subsequent direction: art 10(1).
- 5 le the permission granted by *ibid* art 3 (as amended): see PARA 1360 ante.
- 6 *Ibid* art 9(1).
- 7 For the meaning of 'development corporation' for these purposes see PARA 1360 note 1 ante.

8 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 9(2). Any notice to be served or given under the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665 (as amended), may be served or given in the manner prescribed by the Town and Country Planning Act 1990 s 329 (as amended) and by any regulations for the time being in force thereunder (see PARA 54 ante): Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 10(2); Interpretation Act 1978 s 17(2)(a).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1363. Consultation before development.

1363. Consultation before development.

In any of the following cases, it is a condition of permission granted by the special development order¹ that, before the development corporation² undertakes or authorises³ any development, it must consult⁴ with the following authorities or persons, namely:

- 4866 (1) in the case of development consisting of the formation, laying out or alteration of an unapproved means of access⁵ to a trunk road⁶, with the Secretary of State⁷ or, in relation to Wales, with the National Assembly for Wales⁸ at such office or address as he or it may appoint⁹;
 - 4867 (2) in the case of development consisting of the formation, laying out or alteration of an unapproved means of access to a classified road¹⁰, or to a highway¹¹ shown in a proposal approved¹² by the Secretary of State or the Assembly as a highway access to which is required to be the subject of such consultation, with the local highway authority¹³;
 - 4868 (3) in the case of development consisting of the laying out or construction of a new street¹⁴, with the local highway authority¹⁵;
 - 4869 (4) in the case of development which appears to the development corporation likely to affect land outside its area¹⁶, with the district planning authority¹⁷ or, where the land is in Wales or in a metropolitan county¹⁸, with the local planning authority¹⁹ for the area in which the land is situated, unless that authority has already been formally consulted²⁰;
 - 4870 (5) where the development consists of the erection of a building²¹, other than an alteration, extension or re-erection of an existing building or the erection of a building of a temporary character, in an area of coal working notified by the former British Coal Corporation or by the Coal Authority to the appropriate local planning authority, with the Coal Authority²²;
 - 4871 (6) where the development is of land which is situated within 3 kilometres from Windsor Great Park or Windsor Home Park or which is within 800 metres of any royal palace or from any other royal park, and might affect the amenities of that palace or park, with the Secretary of State at such office or address as he may appoint²³;
 - 4872 (7) where the development consists of or includes:
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- 8. (a) the carrying out of works or operations in the bed or on the banks of a river or stream;
 - 9. (b) the carrying out of building or other operations or use of land for the purpose of refining or storing mineral oils and their derivatives;
 - 10. (c) the use of land for the deposit of any kind of refuse or waste;

- 11. (d) the carrying out of building or other operations, other than the laying of sewers, the construction of pump houses in a line of sewers, the construction of septic tanks and cesspools serving single dwelling houses or single buildings in which not more than ten people will normally reside, work or congregate and works ancillary thereto, on land, or use of land, for the retention, treatment or disposal of sewage, trade waste or sludge; or
- 12. (e) the use of land as a cemetery,

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4873 with the Environment Agency²⁴;

4874 (8) where the development is of land in a site of special scientific interest notified²⁵ to the appropriate planning authority by English Nature or the Countryside Council for Wales²⁶, with that body or council, except where that body or council dispenses with the requirement²⁷;

4875 (9) where the development is of any land on which there is a theatre²⁸, with the Theatres Trust²⁹; and

4876 (10) in the case of development of a class of development specified in any direction³⁰ for the time being in force by which a local planning authority is required to consult with any authority or person other than the development corporation in respect of applications for planning permission, with that authority or person³¹.

When it is so required to consult with any authority or other person, the development corporation must:

- 4877 (i) give to such authority or person not less than 21 days' notice in writing, specifying the site of the proposed development and giving particulars sufficient to describe it, and may not undertake or authorise the development until after the expiration of the period of such notice; and
- 4878 (ii) take into account any objections or representations received from such authority or person³².

Where any objection or representation has been made by an authority or person so consulted and has not been withdrawn, the development corporation must send particulars in writing of the proposal and of the objection or representation to the Secretary of State or to the Assembly, and may not undertake or authorise the development in pursuance of the special development order until he or the Assembly has notified it that he or the Assembly does not intend to give a direction³³ in respect of the development³⁴.

1 le under the Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 3 (as amended): see PARA 1360 ante.

2 For the meaning of 'development corporation' for these purposes see PARA 1360 note 1 ante.

3 For the meaning of references to the authorising of development see PARA 1360 note 10 ante.

4 For the meaning of 'consult' see PARA 2 note 1 ante.

5 For these purposes, except in so far as the context otherwise requires, 'unapproved means of access' means a means of access which is not shown in a proposal approved by the Secretary of State or, in relation to Wales, by the National Assembly for Wales under the New Towns Act 1981 s 7 (as amended) (see PARA 1357 ante): Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

6 For these purposes, unless the context otherwise requires, 'trunk road' has the meaning assigned to it by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) (see PARA 255 note 16 ante): Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the New Towns Act 1981, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(a).

10 For these purposes, unless the context otherwise requires, 'classified road' has the meaning assigned to it by the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended) (see PARA 255 note 17 ante): Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

11 For these purposes, unless the context otherwise requires, 'highway' has the meaning assigned to it by the Highways Act 1980 s 328 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 7): Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 2(1); Interpretation Act 1978 s 17(2)(a).

12 Ie approved under the New Towns Act 1981 s 7 (as amended): see PARA 1357 ante.

13 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(b); Interpretation Act 1978 s 17(2)(a).

14 'New street' is not defined in the Highways Act 1980.

15 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(c).

16 For the meaning of 'its area' see PARA 1360 note 2 ante.

17 As to district planning authorities see PARA 28 ante.

18 As to metropolitan counties see PARA 28 note 1 ante.

19 As to local planning authorities see PARA 28 et seq ante.

20 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(d) (amended by SI 1986/435; and by virtue of the Local Government (Wales) Act 1994, s 66(6), Sch 16 para 63(2)).

21 For the meaning of 'building' for these purposes see PARA 1361 note 6 ante.

22 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(e) (amended by SI 1986/435); Coal Industry Act 1987 s 1(3); Coal Industry Act 1994 s 1. As to the vesting of assets etc of the former British Coal Corporation (formerly known as the National Coal Board) in the Coal Authority see MINES, MINERALS AND QUARRIES vol 31 (2003 Reissue) PARA 67 et seq.

23 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(f).

24 Ibid art 8(1)(g) (amended by the Environment Act 1995 s 120, Sch 22 para 233(1); and by SI 1989/1968). As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

25 Ie notified under the Wildlife and Countryside Act 1981 s 28 (as substituted): see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 674.

26 As to English Nature and the Countryside Council for Wales see **OPEN SPACES AND COUNTRYSIDE** vol 78 (2010) PARA 523 et seq.

27 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(h); Interpretation Act 1978 s 17(2)(a).

28 Ie as defined in the Theatres Trust Act 1976: see LICENSING AND GAMBLING vol 67 (2008) PARA 21.

29 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(i). As to the Theatres Trust see LICENSING AND GAMBLING vol 67 (2008) PARAS 21-22.

30 Ie any direction in force under the Town and Country Planning (General Permitted Development) Order 1995, SI 1995/418 (as amended): see PARA 475 ante.

31 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(1)(j); Interpretation Act 1978 s 17(2)(a).

32 Town and Country Planning (New Towns) Special Development Order 1977, SI 1977/665, art 8(2). As to the giving of notice see PARA 1362 note 6 ante.

33 Ie a direction under ibid art 9: see PARA 1362 ante.

34 Ibid art 8(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/A. CONTROL OF DEVELOPMENT/1364. Rights of entry.

1364. Rights of entry.

Any person, being an officer of the Valuation Office¹ or a person authorised in writing by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³, may at any reasonable time enter upon any land⁴ for the purpose of surveying it or estimating its value in connection with any proposals relating to the land submitted or to be submitted under the statutory provisions⁵ relating to planning control⁶.

A person so authorised to enter upon any land must, if so required, produce evidence of his authority before entering, and may not demand admission as of right to any land which is occupied unless 24 hours' notice of the intended entry has been given to the occupier⁷.

Any person who obstructs a person acting in the exercise of such powers is liable on summary conviction to a fine not exceeding level 2 on the standard scale⁸.

1 For the meaning of 'Valuation Office' see PARA 1336 note 8 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 73 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 1313 note 7 ante.

5 Ie the New Towns Act 1981 s 7(1): see PARA 1357 ante.

6 Ibid s 73(2).

7 Ibid s 73(3).

8 Ibid s 73(4) (amended by the Criminal Justice Act 1982 s 46). For the meaning of 'the standard scale' para 53 note 10 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/B. DISPOSAL OF LAND BY DEVELOPMENT CORPORATION/1365. Conditions as to disposal.

B. DISPOSAL OF LAND BY DEVELOPMENT CORPORATION

1365. Conditions as to disposal.

In relation to any land¹ acquired by a development corporation², whether or not, in the case of land within the area of the new town³, the development⁴ of that particular land has been proposed or approved⁵, the development corporation may dispose⁶ of that land to such persons, in such manner and subject to such covenants or conditions as it considers expedient for securing the development of the new town in accordance with proposals approved⁷ by the Secretary of State⁸ or, in relation to Wales, by the National Assembly for Wales⁹, or for purposes connected with the development of the new town¹⁰. The power so to dispose of land is, however, subject to any direction given¹¹ by the Secretary of State or the Assembly¹²; and a development corporation has no power:

- 4879 (1) to dispose of land by way of mortgage or charge¹³;
 4880 (2) except with the Secretary of State's or the Assembly's consent, given generally or specially:

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13. (a) to transfer the freehold of any land; or
 14. (b) to grant a lease of any land for a term of more than 99 years; or
 15. (c) to dispose of any land by way of gift¹⁴.

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1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

4 For the meaning of 'development' see PARA 1320 note 4 ante.

5 Ie under the New Towns Act 1981 s 7(1): see PARA 1357 ante.

6 For the meaning of 'dispose' see PARA 1313 note 4 ante.

7 See note 5 supra.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the New Towns Act 1981 s 17 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 New Towns Act 1981 s 17(1).

11 Ie under the New Towns Act 1981.

12 Ibid s 17(1)(a).

13 Ibid s 17(4) (substituted by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 2(b)).

14 New Towns Act 1981 s 17(2) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 para 2(a)). Where a development corporation purports to dispose of land by virtue of the New Towns Act 1981 s 17 (as amended): (1) in favour of any person claiming under the corporation, the disposal so purporting to be made is not invalid by reason that any consent which is so required has not been given; and (2) a person dealing with the corporation or a person claiming under the corporation is not to be concerned to see or inquire whether any such consent has been given: s 17(3). Nothing in s 17(3) affects a transaction or purported disposal made before 13 November 1980, ie the date of the coming into force of the Local Government, Planning and Land Act 1980 Sch 25 Pt I (repealed): New Towns Act 1981 s 81, Sch 11 para 13(1) (b).

Nothing in the New Towns (Transfer of Housing Stock) Regulations 1990, SI 1990/1700 (as amended) (see PARA 1382 post) prevents a new town corporation making a disposal in exercise of its powers under the New Towns Act 1981 s 17 (as amended); and, where a corporation transfers an estate or interest in housing stock under s 17 (as amended), the New Towns (Transfer of Housing Stock) Regulations 1990, SI 1990/1700 (as amended) cease to apply for the disposal of that estate or interest: reg 2(4)(a) (added by SI 1990/2366).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/B. DISPOSAL OF LAND BY DEVELOPMENT CORPORATION/1366. Disposal to pre-acquisition occupiers.

1366. Disposal to pre-acquisition occupiers.

In relation to land¹ acquired² by a development corporation³, if persons who were living or carrying on business or other activities on land so acquired:

- 4881 (1) desire to obtain accommodation on land belonging to the corporation; and
- 4882 (2) are willing to comply with any requirements of the corporation as to its development⁴ and use,

the corporation's powers with respect to the disposal of that land must be so exercised as to secure, so far as practicable, that those persons have an opportunity to obtain such accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which such land has been acquired from them⁵.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 Ie under the New Towns Act 1981: see PARA 1333 et seq ante.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 For the meaning of 'development' see PARA 1320 note 4 ante.

5 New Towns Act 1981 s 18(1), (2). In the case of a person who was carrying on a business of selling (1) at the date at which this title states the law, intoxicating liquor (having the meaning given in the Licensing Act 1964 s 201(1) (as amended; prospectively repealed); or (2) as from a day to be appointed under the Licensing Act 2003 s 201(2), alcohol (within the meaning of s 191), in either case by retail on land acquired by a development corporation under the New Towns Act 1981, the corporation is not, however, under any duty to afford him an opportunity of obtaining alternative accommodation for such a business: s 18(3) (as originally enacted (see head (1) supra); prospectively amended by the Licensing Act 2003 s 198(1), Sch 6 para 81 (see head (2) supra)).

UPDATE

1366 Disposal to pre-acquisition occupiers

NOTE 5--Head (2). Day now appointed: SI 2005/3056.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii)

Development of New Towns/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1367.
Power to override easements and other rights.

C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND

1367. Power to override easements and other rights.

The erection, construction or carrying out, or maintenance, of any building or work on land¹ which has been acquired² by a development corporation³ or local highway authority⁴, whether done by the corporation or authority or by any other person, is authorised by virtue of the following provisions if it is done in accordance with planning permission⁵, notwithstanding that it involves:

- 4883 (1) interference with any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support⁶;
- 4884 (2) a breach of a restriction as to the user of land arising by virtue of a contract⁷.

Compensation is payable⁸ in respect of any such interference or breach⁹.

Nothing in head (1) or head (2) above authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land, being a right vested in or belonging to statutory undertakers¹⁰ for the purpose of the carrying on of their undertaking or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network¹¹; and nothing in the above provisions is to be construed as authorising any act or omission:

- 4885 (a) on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in heads (1) and (2) above¹²;
- 4886 (b) on the part of a development corporation or local highway authority, or of any body corporate, in contravention of any limitation imposed by law on its capacity by virtue of the constitution of the corporation, authority or body¹³.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 Ie for the purposes of the New Towns Act 1981: see PARA 1333 et seq ante.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

5 For these purposes, except in so far as the context otherwise requires, 'planning permission' means permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante): New Towns Act 1981 s 80(1) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 51(3)).

6 New Towns Act 1981 s 19(1)(a), (3).

7 Ibid s 19(1)(b).

8 Ie under the Compulsory Purchase Act 1965 s 7 or s 10 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 718, 810, 878.

9 New Towns Act 1981 s 19(4). Compensation must be assessed in the same manner and subject to the same rules as in the case of other compensation under the Compulsory Purchase Act 1965 s 7 or s 10 (as amended) in respect of injurious affection where: (1) the compensation is to be estimated in connection with a

purchase by a development corporation or local highway authority; or (2) the injury arises from the execution of works on land acquired by such a corporation or authority: New Towns Act 1981 s 19(4).

Where a person other than the development corporation or local highway authority by which the land in question was acquired is liable to pay compensation by virtue of s 19(4) and fails to discharge that liability, the liability is enforceable against that corporation or authority (s 19(5)); but nothing in s 19(5) is to be construed as affecting any agreement between that corporation or authority and any other person for indemnifying the corporation or authority against any liability under s 19(5) (s 19(6)).

10 For the meaning of 'statutory undertakers' see PARA 1344 ante.

11 New Towns Act 1981 s 19(2) (amended by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(3); the Communications Act 2003 s 406(1), Sch 17, PARA 57(1)(b), (2)). As to the extinguishment of rights of statutory undertakers and the payment of compensation for such extinguishment see PARA 1376 et seq post.

12 New Towns Act 1981 s 19(7).

13 Ibid s 19(8).

UPDATE

1367 Power to override easements and other rights

TEXT AND NOTES--New Towns Act 1981 s 19 further amended: Planning Act 2009 Sch 9 para 2.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1368. Power to use consecrated land.

1368. Power to use consecrated land.

Any consecrated land, other than land which consists of or forms part of a burial ground¹, whether including a building or not, which has been acquired² by a development corporation³ or local highway authority⁴ or which has been acquired⁵ by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷ may be used:

- 4887 (1) in the case of land acquired by such a corporation or authority, by that corporation or authority or by any other person in any manner in accordance with planning permission⁸; and
- 4888 (2) in the case of land acquired by the Secretary of State or the Assembly, in any manner by him or by the Assembly or on his or its behalf for any purpose for which he or it acquired the land,

notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land⁹.

Any use of consecrated land so authorised is subject to:

- 4889 (a) compliance with the prescribed¹⁰ requirements with respect to the removal and reinterment of any human remains and the disposal¹¹ of monuments¹² and fixtures and furnishings; and
- 4890 (b) such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so

long as any church or other building used or formerly used for religious worship, or any part of it, remains on the land¹³.

The use of any land, not being consecrated land, so acquired which at the time of acquisition included a church or other building used or formerly used for religious worship, or its site, is subject to compliance with the requirements mentioned in head (a) above¹⁴.

1 For these purposes, 'burial ground' includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment: New Towns Act 1981 s 20(11). As to the use of burial grounds see PARA 1369 post. 'Consecrated land' is not defined for these purposes. As to consecration according to the rites of the Church of England see CREMATION AND BURIAL vol 10 (Reissue) PARA 1019 et seq; and ECCLESIASTICAL LAW. As to the area subject to the Welsh Church Act 1914, in which area the Church of England was disestablished, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1022 note 8; and ECCLESIASTICAL LAW.

2 le for the purposes of the New Towns Act 1981: see PARA 1333 et seq ante.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

5 le under the New Towns Act 1981: see PARA 1334 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the New Towns Act 1981 s 20, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to consecrated land in Wales see note 1 supra.

8 For the meaning of 'planning permission' see PARA 1367 note 5 ante.

9 New Towns Act 1981 s 20(1). Any power so conferred to use land in the manner so provided is to be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not: s 20(8). Nothing in s 20 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in s 20(1) or s 20(4) (see PARA 1369 post) (s 20(9)); and s 19(8) (see PARA 1367 ante) applies in relation to s 20 as it applies in relation to s 19 (as amended) (s 20(10)).

10 For the meaning of 'prescribed' see PARA 1311 note 3 ante; and as to the power to make regulations for these purposes see PARA 1370 post.

11 For the meaning of 'disposal' see PARA 1313 note 4 ante.

12 For these purposes, 'monument' includes a tombstone or other memorial: New Towns Act 1981 s 20(11).

13 Ibid s 20(2)(a), (b). Subject to any regulations so made, no faculty is required for the removal or reinterment in accordance with the regulations of any human remains, or for the removal or disposal of any monuments: s 20(7)(b). See further PARA 1370 post. As to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq.

14 Ibid s 20(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1369. Power to use burial grounds.

1369. Power to use burial grounds.

Any land¹ consisting of a burial ground² or part of a burial ground which has been acquired³ by a development corporation⁴ or local highway authority⁵, or which has been acquired⁶ by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸, may be used:

- 4891 (1) in the case of land acquired by a development corporation or local highway authority, by that corporation or authority in any manner in accordance with planning permission⁹; and
- 4892 (2) in the case of land acquired by the Secretary of State or the Assembly, in any manner by him or by it or on his or its behalf for any purpose for which he or it acquired the land,

notwithstanding anything in any enactment¹⁰ relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds¹¹. These provisions do not, however, have effect in respect of any land which has been used for the burial of the dead until the prescribed¹² requirements with respect to the removal and reinterment of human remains, and the disposal¹³ of monuments¹⁴, in and upon the land have been complied with¹⁵.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 For the meaning of 'burial ground' see PARA 1368 note 1 ante.

3 Ie for the purposes of the New Towns Act 1981: see PARA 1333 et seq ante.

4 For the meaning of 'development corporation' see PARA 1322 ante.

5 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

6 Ie under the New Towns Act 1981: see PARA 1334 ante.

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the New Towns Act 1981 s 20, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 For the meaning of 'planning permission' see PARA 1367 note 5 ante.

10 For the meaning of 'enactment' see PARA 1312 note 3 ante.

11 New Towns Act 1981 s 20(4). Any power so conferred to use land in the manner so provided is to be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not: s 20(8). Nothing in s 20 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in s 20(1) (see PARA 1368 ante) or s 20(4) (s 20(9)); and s 19(8) (see PARA 1367 ante) applies in relation to s 20 as it applies in relation to s 19 (as amended) (s 20(10)).

12 For the meaning of 'prescribed' see PARA 1311 note 3 ante.

13 For the meaning of 'disposal' see PARA 1313 note 4 ante.

14 For the meaning of 'monument' see PARA 1368 note 12 ante.

15 New Towns Act 1981 s 20(5). As to the power to make regulations for these purposes see PARA 1370 post. At the date at which this title states the law no such regulations had been made; but it is apprehended that, by virtue of the Interpretation Act 1978 s 17(2)(b), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792 (as amended), partly have effect for these purposes. See CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1370. Power to make regulations.

1370. Power to make regulations.

Provision must be made by any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land and burial grounds¹ for:

- 4893 (1) requiring the persons in whom the land² is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal³ of any monuments⁴;
- 4894 (2) enabling the personal representatives or relatives of any deceased person themselves to undertake:
- 422 16. (a) the removal and reinterment of the remains of the deceased; and
- 17. (b) the disposal of any monument commemorating the deceased,
- 423

and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed;

- 4895 (3) requiring compliance with:
- 424 18. (a) such reasonable conditions, if any, as may be imposed in the case of consecrated land by the bishop of the diocese with respect to the manner of removal and the place and manner of reinterment of any human remains and the disposal of any monuments; and
- 19. (b) any directions given in any case by the Secretary of State⁵ or, in relation to Wales, by the National Assembly for Wales⁶ with respect to the removal and reinterment of any human remains⁷.
- 425

Subject, however, to the provisions of any such regulations, no faculty⁸ is required for the removal and reinterment in accordance with the regulations of any human remains or for the removal or disposal of any monuments⁹.

Any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land and land including a church or other building used for religious worship¹⁰:

- 4896 (i) must contain such provisions as appear to the Secretary of State or the Assembly to be requisite for securing that any use of land which is subject to compliance with the regulations is, as nearly as may be, subject to the like control as is imposed by law in the case of a similar use authorised by an enactment¹¹ or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;
- 4897 (ii) must contain such requirements relating to the disposal of any consecrated land or other relevant land¹² as appear to the Secretary of State or the Assembly

requisite for securing that the relevant statutory provisions¹³ are complied with in relation to the use of the land; and
 4898 (iii) may contain such incidental and consequential provisions, including provision as to the closing of registers, as appear to the Secretary of State or the Assembly to be expedient for the purposes of the regulations¹⁴.

1 Ie the New Towns Act 1981 s 20(2), (5): see PARAS 1368-1369 ante.

2 For the meaning of 'land' see PARA 1313 note 7 ante.

3 For the meaning of 'disposal' see PARA 1313 note 4 ante.

4 For the meaning of 'monument' see PARA 1368 note 12 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the New Towns Act 1981, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 New Towns Act 1981 s 20(6)(a)-(c). At the date at which this title states the law, no such regulations had been made; but it is apprehended that, by virtue of the Interpretation Act 1978 s 17(2)(b), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792 (as amended), partly have effect for these purposes. See PARAS 959-961 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172.

8 As to the normal requirement for a faculty to remove human remains etc from consecrated ground see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125; and as to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq. As to land subject to the Welsh Church Act 1914 see PARA 1368 note 1 ante.

9 New Towns Act 1981 s 20(7). The Burial Act 1857 s 25 (as amended) (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1123) does not apply to a removal carried out in accordance with the regulations: New Towns Act 1981 s 20(7).

10 Ie the New Towns Act 1981 s 20(2): see PARA 1368 ante.

11 Ie an enactment not contained in the New Towns Act 1981. For the meaning of 'enactment' see PARA 1312 note 3 ante.

12 Ie any such land as is mentioned in *ibid* s 20(2): see PARA 1368 ante.

13 Ie *ibid* s 20(2).

14 *Ibid* s 20(3). At the date at which this title states the law, no such regulations had been made; but it is apprehended that, by virtue of the Interpretation Act 1978 s 17(2)(b), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792 (as amended), partly have effect for these purposes. See further PARAS 959-961 ante. As to the making of regulations generally see PARA 1311 ante.

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1371. Power to use open spaces etc.

Any land¹ being, or forming part of, a common², open space³ or fuel or field garden allotment⁴, which has been acquired⁵ by a development corporation⁶ or local highway authority⁷, or which has been acquired⁸ by the Secretary of State⁹ or, in relation to Wales, by the National Assembly for Wales¹⁰, may be used:

- 4899 (1) in the case of land acquired by such a corporation or authority, by that corporation or authority or by any other person in any manner in accordance with planning permission¹¹; and
- 4900 (2) in the case of land acquired by the Secretary of State or the Assembly, in any manner by him or it or on his or its behalf for any purpose for which he or it acquired the land,

notwithstanding anything in any enactment¹² relating to land of that kind, or in any enactment by which the land is specially regulated¹³. Nothing in these provisions is, however, to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned above¹⁴.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 For the meaning of 'common' see PARA 1335 note 4 ante.

3 For the meaning of 'open space' see PARA 1335 note 5 ante.

4 For the meaning of 'fuel or field garden allotment' see PARA 1335 note 6 ante.

5 In the purposes of the New Towns Act 1981: see PARA 1333 et seq ante.

6 For the meaning of 'development corporation' see PARA 1322 ante.

7 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

8 In the case of the Secretary of State: see PARA 1334 ante.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the New Towns Act 1981 s 21, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 For the meaning of 'planning permission' see PARA 1367 note 5 ante.

12 For the meaning of 'enactment' see PARA 1312 note 3 ante.

13 New Towns Act 1981 s 21(1).

14 Ibid s 21(2). Section 19(8) (see PARA 1367 ante) applies in relation to s 21 as it applies in relation to s 19 (as amended): s 21(3).

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1372. Possession of houses.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² certifies that possession of a house³ which has been acquired⁴ by a development corporation⁵ or local highway authority⁶ and which is for the time being held by that corporation or authority for the purposes for which it was acquired is immediately required for those purposes, nothing in the specified statutory provisions⁷ prevents that corporation or authority from obtaining possession of the house⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 22 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 There is no statutory definition of 'house' for these purposes.

4 Ie for the purposes of the New Towns Act 1981: see PARA 1333 et seq ante.

5 For the meaning of 'development corporation' see PARA 1322 ante.

6 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

7 Ie the Rent (Agriculture) Act 1976; the Rent Act 1977; or the Housing Act 1988 Pt I (ss 1-45) (as amended): see LANDLORD AND TENANT.

8 New Towns Act 1981 s 22 (amended by the Housing Act 1988 s 140(1), Sch 17 para 31). Tenancies granted after 15 January 1989 are subject to the Housing Act 1988 which excludes security of tenure where the landlord is the Commission for the New Towns or a development corporation: see s 1(2), Sch 1 para 12(1)(b), (e). There is no similar provision enabling the corporation or authority to overcome the protection afforded to a secure tenant of a council house or one owned by a housing association under the Housing Act 1985 Pt IV (ss 79-117) (as amended).

Nothing in the New Towns Act 1981 is to be taken as prejudicing the provisions of the Local Government, Planning and Land Act 1980 Pt X (ss 93-100) (as amended) (land held by public bodies: see LOCAL GOVERNMENT vol 69 (2009) PARAS 525-526): New Towns Act 1981 s 80(4)(b) (amended by the Housing (Consequential Provisions) Act 1985 s 3(1), Sch 1). As to the Commission for the New Towns see PARA 1383 et seq post.

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1373. Special power to create trunk roads.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may direct that any road constructed by him or by the Assembly on land³ transferred to or acquired by him or the Assembly under the New Towns Act 1981 shall, on such date as may be specified in the direction, become a trunk road⁴; and the statutory provisions relating to trunk roads⁵ apply to the road accordingly⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 25, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'land' see PARA 1313 note 7 ante.

4 le within the meaning of the Highways Act 1980: see s 329(1); and HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 50 note 2.

5 le the provisions of the Highways Act 1980: see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 702 et seq.

6 New Towns Act 1981 s 25.

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1374. Extinguishment of public rights of way.

Where any land¹ has been acquired for the statutory purposes²:

4901 (1) by a development corporation³ or local highway authority⁴ and is for the time being held by that corporation or authority for those purposes; or

4902 (2) by the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ and is for the time being held for the purposes for which he or the Assembly acquired it,

the Secretary of State or the Assembly may by order extinguish any public right of way over the land⁷.

Where the Secretary of State or the Assembly proposes to make such an order, he or it must publish in such manner as appears to him or to it to be requisite a notice stating the effect of the order and specifying the time, not being less than 28 days from the publication of the notice, within which and the manner in which objections to the proposal may be made, and must serve a like notice on the district planning authority⁸ or, in the case of Wales, on the local planning authority⁹ in whose area the land is situated and, if different, on the relevant highway authority¹⁰. Where an objection to a proposal to make such an order is duly made¹¹ and is not withdrawn, the statutory procedure for dealing with objections¹² has effect in relation to the proposal¹³.

Where it is proposed to make such an order extinguishing a public right of way over a road on land acquired¹⁴ by a development corporation and compensation in respect of restrictions¹⁵ has been paid by the highway authority¹⁶, the order may provide for the payment by the development corporation to that authority, in respect of the compensation so paid, of such sums as the Secretary of State, with the Treasury's consent, or as the Assembly may determine¹⁷.

Where the Secretary of State or the Assembly is satisfied that the construction or improvement of a road is or will be needed in consequence of the extinguishment of a public right of way under these provisions, the statutory provisions relating to acquisition of land for highways¹⁸ apply as they apply where he or the Assembly is satisfied that the construction or improvement of a road is needed¹⁹ as mentioned therein²⁰.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 le for the purposes of the New Towns Act 1981.

3 For the meaning of 'development corporation' see PARA 1322 ante.

- 4 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.
- 5 As to the Secretary of State see PARA 19 ante.
- 6 As to the transfer of functions under the New Towns Act 1981 s 23 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 7 New Towns Act 1981 s 23(1). Where such an order is made, special provisions apply in relation to electronic communications apparatus (see the New Towns Act 1981 s 24(1) (as substituted and amended); and PARA 1375 post); and the Secretary of State or the Assembly must, where he or it makes an order under s 23 (as amended) to which s 24(1) (as substituted and amended) applies in relation to the operator of an electronic communications code network, send a copy of the order to the operator (s 24(2) (substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(4), (5); amended by the Communications Act 2003 s 406(1), Sch 17 para 57(10)(c), (2)(b)). The New Towns Act 1981 s 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 23 (as amended): see s 77(3) (as amended) and PARA 1311 ante.
- 8 As to district planning authorities see PARA 28 ante.
- 9 As to local planning authorities see PARA 28 et seq ante.
- 10 New Towns Act 1981 s 23(2) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(3)). As to the service of notices see PARA 1313 ante. For these purposes, 'the relevant highway authority' means any authority which is a highway authority in relation to the right of way proposed to be extinguished by the order, other than an authority which has applied for the order to be made: New Towns Act 1981 s 23(2).
- 11 For these purposes, an objection to such a proposal is not treated as duly made unless (1) it is made within the time and in the manner specified in the notice required by *ibid* s 23 (as amended); and (2) a statement in writing of the grounds of the objection is comprised in, or submitted with, the objection: s 23(4).
- 12 *Ie* *ibid* s 23(3), Sch 8: see PARA 1380 post.
- 13 *Ibid* s 23(3).
- 14 See note 2 *supra*.
- 15 *Ie* imposed in respect of that road under the Restriction of Ribbon Development Act 1935 ss 1 or 2 (repealed).
- 16 Or in the case of a trunk road, by the authority which, when the compensation was paid, was the authority for the purposes of the Trunk Roads Act 1936 s 4 (repealed).
- 17 New Towns Act 1981 s 23(5).
- 18 *Ie* *ibid* s 11 (as amended): see PARA 1334 ante.
- 19 *Ie* as mentioned in *ibid* s 11(1): see PARA 1334 ante.
- 20 *Ibid* s 23(6).

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1375. Electronic communications apparatus.

Where an order¹ extinguishing a public right of way is made on the application of a development corporation² or local highway authority³, and at the time of the publication of the

required notice⁴ any electronic communications apparatus was kept installed for the purposes of an electronic communications code network under, in, over, along or across the land⁵ over which the right of way subsisted:

- 4903 (1) the power of the operator of the network to remove the apparatus is exercisable, notwithstanding the making of the order, at any time not later than the end of the period of three months from the date on which the right of way is extinguished and is exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the network has given notice to the corporation or authority of his intention to remove the apparatus or that part of it, as the case may be;
- 4904 (2) the operator of the network may by notice given in that behalf to the corporation or authority not later than the end of that period of three months abandon the telecommunication apparatus or any part of it;
- 4905 (3) subject to head (2) above, the operator of the network is deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;
- 4906 (4) the operator of the network is entitled to recover from the corporation or authority the expenses of providing, in substitution for the apparatus and any other electronic communications apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any electronic communications apparatus in such other place as the operator may require;
- 4907 (5) where under the above provisions the operator of the network has abandoned the whole or any part of any electronic communications apparatus, that apparatus or that part of it vests in the corporation or authority and is deemed, with its abandonment, to cease to be kept installed for the purposes of an electronic communications code network⁶.

1 le under the New Towns Act 1981 s 23 (as amended): see PARA 1374 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

4 le the notice required by the New Towns Act 1981 s 23(2) (as amended): see PARA 1374 ante.

5 For the meaning of 'land' see PARA 1313 note 7 ante.

6 New Towns Act 1981 s 24(1) (substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(4), (5); amended by the Communications Act 2003 s 406(1), Sch 17 para 57(1)(c), (2)). See also s 24(2) (as substituted and amended); and PARA 1374 note 7 ante.

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D. STATUTORY UNDERTAKERS

1376. Extinguishment of rights of way and removal of apparatus.

Where, in the case of any land¹ which has been acquired:

- 4908 (1) for the purposes of the New Towns Act 1981 by a development corporation² or local highway authority³ and is for the time being held by that corporation or authority for those purposes; or
- 4909 (2) under that Act by the Secretary of State⁴ or, in relation to Wales, by the National Assembly for Wales⁵ and is for the time being held for the purposes for which he or the Assembly acquired it⁶,

there subsists over that land a right, being a right of way or a right of laying down, erecting, continuing or maintaining apparatus⁷, or there is on, under or over the land, apparatus⁸ vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking, then the acquiring authority⁹ may serve on the statutory undertakers¹⁰ a notice stating that, at the end of such period as may be specified in the notice, the right will be extinguished, or requiring that, before the end of such period as may be so specified, the apparatus shall be removed¹¹.

The statutory undertakers on whom a notice is so served may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the acquiring authority stating that they object to all or any of the provisions of the notice, and specifying the grounds of their objection¹². If no counter-notice is so served:

- 4910 (a) any right to which the notice relates is extinguished at the end of the period specified in that behalf in the notice; and
- 4911 (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to removal of the apparatus has not been complied with, the acquiring authority may remove the apparatus and dispose¹³ of it in any way the authority may think fit¹⁴.

If a counter-notice is so served:

- 4912 (i) on a development corporation or local highway authority, the corporation or authority may either withdraw the notice, without prejudice to the service of a further notice, or may apply to the Secretary of State and the appropriate minister¹⁵ or, in relation to Wales, to the Assembly for an order¹⁶ embodying the provisions of the notice, with or without modification; and, if such an application is made, the Secretary of State and the appropriate minister or the Assembly may make such an order accordingly¹⁷;
- 4913 (ii) on the Secretary of State or the Assembly, he or it may withdraw the notice, without prejudice to the service of a further notice, or he and the appropriate minister, or, in relation to Wales, the Assembly, may make an order¹⁸ embodying the provisions of the notice, with or without modification¹⁹.

Where any right vested in or belonging to statutory undertakers is so extinguished, or any such requirement is imposed on statutory undertakers, those undertakers are entitled to compensation from the acquiring authority at whose instance the right was extinguished or the requirement imposed²⁰.

1 For the meaning of 'land' see PARA 1313 note 7 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 For the meaning of 'local highway authority' see PARA 1334 note 7 ante.

4 As to the Secretary of State see PARA 19 ante; and as to the acquisition of land by him under the New Towns Act 1981 see PARA 1334 ante.

5 As to the transfer of functions under *ibid* s 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); as to the Assembly see PARA 20 ante; and as to the acquisition of land by the Assembly under the New Towns Act 1981 see PARA 1334 ante.

6 *Ibid* s 26(1).

7 Except in a case in which *ibid* s 24 (as substituted and amended) (see PARA 1375 ante) has effect, the reference in s 26(2)(a) to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking includes a reference to a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications telecommunications code network: s 26(8)(a) (s 26(8) substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(6); amended by the Communications Act 2003 s 406(1), Sch 17 para 57(1)(d), (2)). For the meaning of 'statutory undertakers' see note 10 *infra*; and PARA 1344 ante.

8 Except in a case in which the New Towns Act 1981 s 24 (as substituted and amended) (see PARA 1375 ante) has effect, the reference in s 26(2)(b) to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking includes a reference to electronic communications apparatus kept installed for the purposes of any electronic communications code network: s 26(8)(b) (as substituted and amended: see note 7 *supra*).

9 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.

10 For the purposes of the New Towns Act 1981 s 26(8) (as substituted and amended) (see notes 7-8 *supra*, note 15 *infra*), references in the New Towns Act 1981 s 26 (as amended), except in s 26(2)(a), (b) (see the text and notes 7-9 *supra*, 11 *infra*), and in s 27 (see PARA 1377 post) and Sch 7 (see PARA 1351 ante), to statutory undertakers have effect as references to the operator of any electronic communications code network; and references, in relation to such an operator, to the carrying on of his undertaking have effect as references to the provision running of the electronic communications code network in question: s 26(8) (as substituted and amended: see note 7 *supra*). For the meaning of 'statutory undertakers' generally see PARA 1344 ante.

11 *Ibid* s 26(2). As to the service of notices see PARA 1313 ante.

12 *Ibid* s 26(3).

13 For the meaning of 'dispose' see PARA 1313 note 4 ante.

14 New Towns Act 1981 s 26(4).

15 For the purposes of *ibid* s 26(8) (as substituted and amended: see note 7 *supra*), references to the appropriate minister have effect as references to the Secretary of State for Trade and Industry or, in Wales, to the Assembly: see s 26(8) (as so substituted). For the meaning of 'the appropriate minister' generally see PARA 1314 ante.

16 *Ie* under *ibid* s 26 (as amended). Section 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 26 (as modified and amended): see s 77(3) (as amended); and PARA 1311 ante. As to the making of orders see PARA 1377 post.

17 *Ibid* s 26(5).

18 See note 16 *supra*.

19 New Towns Act 1981 s 26(6).

20 *Ibid* s 26(7). Section 26(7), Sch 7 (see PARA 1351 ante) has effect as regards the assessment of the amount of that compensation: s 26(7).

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1377. Orders for extinguishment of rights and removal of apparatus.

Where the Secretary of State¹ and the appropriate minister², or, in relation to Wales, the National Assembly for Wales³, propose or proposes to make an order for the extinguishment of rights of way or removal of apparatus after service of a counter-notice on them or on the Assembly⁴, they or the Assembly must prepare a draft of the order⁵.

Before making an order for the extinguishment of rights of way or removal of apparatus in the circumstances described above or on the application of a development corporation or local highway authority⁶, the ministers proposing to make the order or the Assembly:

- 4914 (1) must afford to the statutory undertakers⁷ on whom notice was served⁸ an opportunity of objecting to the application for, or proposal to make, the order; and
- 4915 (2) if any objection is made, must consider the objection and afford to those statutory undertakers, and, in a relevant case⁹, to the development corporation or local highway authority on whom the counter-notice was served, an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State and the appropriate minister, or by the Assembly, for the purpose,

and may then, if they think fit or if the Assembly thinks fit, make the order in accordance with the application or in accordance with the draft order, as the case may be, either with or without modification¹⁰.

Where an objection to such an order is duly made and is not withdrawn before the making of the order, the order is subject to special parliamentary procedure unless made by the Assembly¹¹; and, subject thereto, where such an order is made:

- 4916 (a) any right to which the order relates is extinguished at the end of the period specified in that behalf in the order; and
- 4917 (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the acquiring authority¹² may remove the apparatus and dispose¹³ of it in any way the authority may think fit¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'the appropriate minister' for these purposes see PARA 1376 note 15 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 27, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ie an order under the New Towns Act 1981 s 26(6): see PARA 1376 ante.

5 Ibid s 27(1).

6 Ie an order under the New Towns Act 1981 s 26(5) or (6): see PARA 1376 ante. For the meaning of 'development corporation' see PARA 1322 ante; and for the meaning of 'local highway authority' see PARA 1334 note 7 ante.

7 For the meaning of 'statutory undertakers' for these purposes see PARA 1376 note 10 ante.

8 Ie under the New Towns Act 1981 s 26(2): see PARA 1376 ante.

9 Ie in a case falling within ibid s 26(5).

10 New Towns Act 1981 s 27(2). Section 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 27: see s 77(3) (as amended) and PARA 1311 ante.

11 Ibid s 27(3); Government of Wales Act 1998 s 44(1), (2), (3)(e). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

12 For the meaning of 'acquiring authority' see PARA 1335 note 2 ante.

13 For the meaning of 'dispose' see PARA 1313 note 4 ante.

14 New Towns Act 1981 s 27(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/D. STATUTORY UNDERTAKERS/1378. Extension or modification of functions.

1378. Extension or modification of functions.

The powers conferred by the following provisions are exercisable where, on a representation made by statutory undertakers¹, it appears to the Secretary of State² and the appropriate minister³, or, in relation to Wales, to the National Assembly for Wales⁴, to be expedient that the powers and duties of those undertakers should be extended or modified, in order:

4918 (1) to secure the provision of services which would not otherwise be provided, or satisfactorily provided, for the purposes of a new town⁵; or

4919 (2) to facilitate an adjustment of the undertaking necessitated by:

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20. (a) the acquisition⁶ of any land⁷ in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question;

21. (b) the extinguishment of a right or the imposition of any requirement by virtue of the relevant⁸ statutory provisions⁹.

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The powers so conferred are also exercisable where, on a representation made by a development corporation¹⁰, it appears to the Secretary of State and the appropriate minister, or to the Assembly, to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or to secure the extension of existing services, for the purposes of a new town¹¹.

As soon as may be after making such a representation¹², the statutory undertakers or the development corporation, as the case may be, must publish, in such form and manner as may be directed by the Secretary of State and the appropriate minister or by the Assembly, a notice:

4920 (i) giving such particulars as may be so directed of the matters to which the representation relates; and

4921 (ii) specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made¹³,

and must also, if it is so directed by the Secretary of State and the appropriate minister or by the Assembly, serve a like notice on such persons, or persons of such classes, as may be so directed¹⁴.

Where the powers so conferred are exercisable, the Secretary of State and the appropriate minister or the Assembly may, if they think or it thinks fit, by order¹⁵ provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them or to the Assembly to be requisite in order to secure the provision of the services¹⁶ or the adjustment¹⁷ in question, as the case may be¹⁸. Such an order may provide¹⁹:

- 4922 (A) for empowering the statutory undertakers to acquire, whether compulsorily or by agreement, any land specified in the order, and to erect or construct any buildings or works so specified;
- 4923 (B) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments²⁰ relating to the acquisition of land and the construction of works;
- 4924 (C) where it has been represented that the making of the order is expedient for specified purposes²¹, for giving effect to such financial arrangements between the development corporation and the statutory undertakers as they may agree or, in default of agreement, as may be determined to be equitable in such manner and by such tribunal as may be specified in the order;
- 4925 (D) for such incidental and supplemental matters as appear to the Secretary of State and the appropriate minister or to the Assembly to be expedient for the purposes of the order²².

1 For the meaning of 'statutory undertakers' see PARA 1344 ante.

2 As to the Secretary of State see PARA 19 ante.

3 For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1314 ante.

4 As to the transfer of functions under the New Towns Act 1981 ss 28, 29, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Ie under the New Towns Act 1981: see PARA 1315 et seq ante, PARA 1379 et seq post. For the meaning of 'new town' see PARA 1315 note 9 ante.

6 Ie under the New Towns Act 1981: see PARA 1333 et seq ante.

7 For the meaning of 'land' see PARA 1313 note 7 ante.

8 Ie the Towns Act 1981 s 26 (as amended): see PARA 1376 ante.

9 Ibid s 28(1), (2).

10 For the meaning of 'development corporation' see PARA 1322 ante.

11 New Towns Act 1981 s 28(3).

12 Ie such as is mentioned in ibid s 28(1) or (3): see the text and notes 1-11 supra.

13 For these purposes, an objection to the making of an order is not treated as duly made unless (1) the objection is made within the time and in the manner specified in the notice required by ibid s 28; and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: s 31(1).

14 Ibid s 29(1). Where an objection to the making of such an order is duly made and is not withdrawn, s 31(2), Sch 8 (see PARA 1380 post) has effect in relation to the objection: s 31(2). As to the service of notices see PARA 1313 ante.

15 Orders under *ibid* s 28 are subject to special parliamentary procedure (s 29(2)) unless made by the Assembly (Government of Wales Act 1998 s 44(1), (2), (3)(e)); and the New Towns Act 1981 s 77(3) (as amended) (orders to be made by statutory instrument) does not apply to such orders (see s 77(3) (as amended); and PARA 1311 ante). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

16 *Ie* as mentioned in *ibid* s 28(1)(a) or (3): see the text and notes 1-5, 10-11 supra.

17 *Ie* as mentioned in *ibid* s 28(1)(b): see head (2) in the text.

18 *Ibid* s 28(4).

19 *Ie* without prejudice to the generality of *ibid* s 28(4).

20 For the meaning of 'enactment' see PARA 1312 note 3 ante.

21 *Ie* for the purposes mentioned in the New Towns Act 1981 s 28(1)(a) or (3).

22 *Ibid* s 28(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/D. STATUTORY UNDERTAKERS/1379. Relief from obligations rendered impracticable.

1379. Relief from obligations rendered impracticable.

Where, on a representation made by statutory undertakers¹, the appropriate minister² or, in relation to Wales, the National Assembly for Wales³ is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by:

4926 (1) the compulsory acquisition⁴ of any land⁵ in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers; or

4927 (2) the extinguishment of a right or the imposition of any requirement by virtue of the relevant statutory provisions⁶,

the appropriate minister or the Assembly may, if he or it thinks fit, by order direct that the statutory undertakers shall be relieved of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order⁷.

As soon as may be after so making a representation to the appropriate minister or the Assembly, the statutory undertakers must, as may be directed by the appropriate minister or by the Assembly, either:

4928 (a) publish, in such form and manner as may be so directed, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made; or

4929 (b) serve such a notice on such persons, or persons of such classes, as may be so directed; or

4930 (c) both publish and serve such notices⁸;

and, if any objection to the making of such an order is duly made⁹ and is not withdrawn before the order is made, the order is subject to special parliamentary procedure¹⁰ unless made by the Assembly¹¹.

As soon as may be after an order has been so made, the appropriate minister or the Assembly must publish in such form and manner as he or it thinks fit a notice stating that the order has been made¹².

1 For the meaning of 'statutory undertakers' see PARA 1344 ante.

2 For the meaning of 'the appropriate minister' see PARA 1314 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 30, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Ie under the New Towns Act 1981: see PARA 1333 et seq ante.

5 For the meaning of 'land' see PARA 1313 note 7 ante.

6 Ie the New Towns Act 1981 s 26 (as amended): see PARA 1376 ante.

7 Ibid s 30(1), (2). Section s 77(3) (as amended) (orders to be made by statutory instrument) does not apply to orders under s 30 (as so modified): see s 77(3) (as amended); and PARA 1311 ante.

8 Ibid s 30(3). As to the service of notices see PARA 1313 ante.

9 For these purposes, an objection to the making of an order is not treated as duly made unless (1) the objection is made within the time and in the manner specified in the notice required by ibid s 30; and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: s 31(1). Where an objection to the making of such an order is duly made and is not withdrawn, s 31(2), Sch 8 (see PARA 1380 post) has effect in relation to the objection: s 31(2).

10 Ibid s 30(4). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

11 Government of Wales Act 1998 s 44(1), (2), (3)(e).

12 New Towns Act 1981 s 30(5). The provisions of ss 10(4), 11(5), 13(1), Sch 4 Pt V (paras 14-16) (see PARA 1349 ante) as to the validity and date of operation of compulsory purchase orders have effect in relation to an order under s 30 with the substitution (1) for references to a compulsory purchase order of references to an order under s 30; and (2) for references to publication in accordance with Sch 4 (as amended) of references to publication in accordance with s 30(5): s 30(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iii) Development of New Towns/E. PROCEDURE FOR DEALING WITH OBJECTIONS TO CERTAIN ORDERS/1380. Procedure for dealing with objections to orders relating to statutory undertakers and orders extinguishing public rights of way.

E. PROCEDURE FOR DEALING WITH OBJECTIONS TO CERTAIN ORDERS

1380. Procedure for dealing with objections to orders relating to statutory undertakers and orders extinguishing public rights of way.

Unless the relevant minister¹ or, in relation to Wales, the National Assembly for Wales² decides, apart from the objection, not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the relevant minister or the Assembly:

- 4931 (1) must, before making a final decision³, consider the grounds of the objection as set out in the statement comprised in or submitted with the objection; and
- 4932 (2) may, if he or the Assembly thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates⁴.

In so far as the relevant minister or the Assembly, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation⁵, he or it may treat the objection as irrelevant for the purpose of making a final decision⁶. If:

- 4933 (a) after considering the grounds of the objection as set out in the original statement and in any such further statement, the relevant minister or the Assembly is satisfied that, for the purpose of making a final decision, he or it is sufficiently informed as to the matters to which the objection relates; or
- 4934 (b) where a further statement has been required, it is not submitted within the specified period,

the relevant minister or the Assembly may make a final decision without further investigation as to those matters⁷.

The relevant minister or the Assembly must⁸:

- 4935 (i) before making a final decision, afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the relevant minister or by the Assembly; and
- 4936 (ii) if the objector avails himself of that opportunity, afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers⁹, development corporation¹⁰ or other person, if any, on whose representation the order is proposed to be made, and to any other person to whom it appears to the relevant minister or the Assembly to be expedient to afford such an opportunity¹¹.

Notwithstanding anything in the above provisions, if it appears to the relevant minister or to the Assembly that the matters to which the objection relates are such as to require investigation by public local inquiry¹² before he or it makes a final decision, he or it must cause an inquiry to be held; and, where he or the Assembly determines to cause such an inquiry to be held, any of the requirements of the above provisions to which effect has not been given at the time of that determination must be dispensed with¹³.

1 For these purposes, 'the relevant minister' means: (1) in relation to an order under the New Towns Act 1981 s 23 (as amended) (see PARA 1374 ante), the Secretary of State; (2) in relation to an order under s 28 (see PARA 1378 ante), the Secretary of State and the appropriate minister; (3) in relation to an order under s 30 (see PARA 1379 ante), the appropriate minister: ss 23(3), 31(2), Sch 8 para 1(a)-(c). For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1314 ante; and as to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 Sch 8, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification, if any, ought to be made: New Towns Act 1981 Sch 8 para 1.

4 Ibid Sch 8 para 2.

- 5 As to assessment of compensation see PARA 1351 ante.
- 6 New Towns Act 1981 Sch 8 para 3.
- 7 Ibid Sch 8 para 4.
- 8 Ie subject to ibid Sch 8 paras 3, 4: see the text and notes 5-7 supra.
- 9 For the meaning of 'statutory undertakers' see PARA 1344 ante.
- 10 For the meaning of 'development corporation' see PARA 1322 ante.
- 11 New Towns Act 1981 Sch 8 para 5.
- 12 As to local inquiries see PARA 1312 ante; and as to public local inquiries see PARA 651 et seq ante.
- 13 New Towns Act 1981 Sch 8 para 6.

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F. MISCELLANEOUS FUNCTIONS

1381. Performance of sewerage undertaker's functions.

A development corporation for a new town¹ may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions² on that undertaker's behalf in relation to such area, comprising the whole or any part of that corporation's relevant area³, as may be specified in the arrangements⁴. Arrangements so entered into may contain any such provision as may be agreed between the corporation and the undertaker but do not affect the availability to any person, other than the corporation, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out⁵.

If arrangements entered into for these purposes so provide, a development corporation is entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment⁶ is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions⁷.

1 For these purposes, 'new town' has the same meaning as in the New Towns Act 1981 (see PARA 1315 note 9 ante): Water Industry Act 1991 s 97(5).

2 For these purposes, 'sewerage functions', in relation to a sewerage undertaker, means any of the functions of the undertaker by virtue of its appointment under the Water Industry Act 1991 Pt II Ch 1 (ss 6-17) as a sewerage undertaker, other than its functions relating to sewage disposal and its functions by virtue of Pt IV Ch III (ss 118-141) (as amended): s 97(5).

3 For these purposes, 'relevant area', in relation to the development corporation for any new town, means that new town: ibid s 97(5).

4 Ibid s 97(1), (5) (s 97(5) amended by the Government of Wales Act 1998 s 129, Sch 15 para 17). As to sewerage undertakers see generally ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq.

5 Water Industry Act 1991 s 97(2).

6 For these purposes, 'enactment' includes an enactment contained in the Water Industry Act 1991 or in any Act passed after that Act: s 219(1).

7 Ibid s 97(3). The Commission for the New Towns has similar powers in relation to any new town: see s 97(1), (5) (as amended: see note 4 supra). As to the Commission for the New Towns see PARA 1383 et seq post.

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1382. Housing; in general.

A development corporation has power to provide houses under its general powers of acquiring, managing and disposing of land and carrying out building operations¹; and has the same duties and powers in relation to rents for its dwellings as a local authority². Certain housing subsidies³ and housing and council tax benefit subsidies⁴ are payable to development corporations. These subsidies are also payable to the Commission for the New Towns⁵.

The Secretary of State⁶ or, in relation to Wales, the National Assembly for Wales⁷ may by regulations make provision for requiring and authorising each new town corporation⁸ to take such steps as may be prescribed⁹ for making and giving effect to proposals for disposing of its housing stock, either by transferring it as a whole to a prescribed person or by transferring different parts of it to different prescribed persons¹⁰.

1 See PARA 1323 ante. As to permitted development see PARA 1360 ante. The tenant of a separate dwelling of which the landlord is a new town development corporation (ie the Commission for the New Towns or a development corporation) is a secure tenant for the purposes of the Housing Act 1985 (see ss 4(a)-(c), 80(1) (as amended)), and therefore has the right to purchase the dwelling and the right of security of tenure afforded to him by that Act (see Pt IV (ss 79-117) (as amended) (security of tenure) and Pt V (ss 118-188) (as amended) (right to buy); LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARAS 1300 et seq; and LANDLORD AND TENANT vol 27(6) (2006 Reissue) 1795 et seq). Such a dwelling is exempt from Rent Act control over private sector housing: see PARA 1372 ante. As to the Commission for the New Towns see PARA 1383 et seq post.

2 As to the variation of rent of a secure tenant see the Housing Act 1985 s 103; and LANDLORD AND TENANT vol 27(2) (2006 Reissue) PARA 1338.

3 Ie subsidies under ibid Pt XIII (ss 421-434) (as amended): see HOUSING vol 22 (2006 Reissue) PARA 137.

4 Ie subsidies under the Social Security Administration Act 1992 ss 140A-140G (as added): see HOUSING vol 22 (2006 Reissue) PARA 180 et seq.

5 See the Housing Act 1985 ss 4(b), 421 (as amended); the Social Security Administration Act 1992 s 191 (as amended); and HOUSING vol 22 (2006 Reissue) PARA 137.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government and Housing Act 1989 s 172 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 For these purposes, 'new town corporation' means the Commission for the New Towns or a development corporation within the meaning of the New Towns Act 1981: Local Government and Housing Act 1989 s 172(8) (definition amended by the Government of Wales Act 1998 s 152, Sch 18 Pt IV).

9 For these purposes, 'prescribed' means prescribed by or determined under regulations under the Local Government and Housing Act 1989 s 172(1): s 172(8).

10 Ibid s 172(1). As to the provision that may be made by such regulations see s 172(2)-(9) (as amended); and as to the exercise of the power to make such regulations see the New Towns (Transfer of Housing Stock)

Regulations 1990, SI 1990/1700 (as amended), applying in relation to the disposal of dwellings in England and of relevant property, wherever situated, relating to such dwellings (reg 1(2)). As to the consent required for subsequent disposals see the Local Government and Housing Act 1989 s 173 (as amended).

UPDATE

1382 Housing; in general

NOTE 8--Definition of 'new town corporation' in Local Government and Housing Act 1989 s 172(8) further amended: Housing and Regeneration Act 2008 Sch 8 para 51, Sch 16.

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(iv) The Commission for the New Towns

A. ESTABLISHMENT, FUNCTIONS AND GENERAL POWERS

1383. Establishment of the Commission.

The body corporate established¹ by the name of the Commission for the New Towns ('the Commission') continues in being² and in England now forms part of English Partnerships³. In relation to the Commission:

- 4937 (1) it is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and
- 4938 (2) its property is not to be regarded as property of, or held on behalf of, the Crown,

and, except for the express provision relating to stamp duty⁴, nothing in the New Towns Act 1981 is to be construed as exempting the Commission from liability to any tax, duty, rate, levy or other charge whatsoever, whether local or general⁵.

¹ Ie under the New Towns Act 1959 s 2(1) (repealed). Section 2(1) was replaced by the New Towns Act 1965 s 35(1) (repealed).

² New Towns Act 1981 s 35(1).

³ See PARA 1308 ante. The Commission exercises functions in relation to the new town of Cwmbran, in Wales, whose development corporation was dissolved in 1988 (see the Cwmbran Development Corporation (Transfer of Property and Dissolution) Order 1988, SI 1988/265).

⁴ Ie the New Towns Act 1981 s 72(1)(a): see PARA 1407 note 5 post.

⁵ Ibid s 35(2).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1383 Establishment of the Commission

TEXT AND NOTES--Repealed: Housing and Regeneration Act 2008 Sch 5 para 4, Sch 16.

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1384. Functions and powers of the Commission.

The purposes for which the Commission for the New Towns exists are:

- 4939 (1) to take over and, with a view to its eventual disposal¹, to hold, manage and turn to account the property of development corporations² transferred to the Commission under the New Towns Act 1981³ and the property of urban development corporations⁴ transferred to the Commission by order⁵ under the Local Government, Planning and Land Act 1980⁶; and
- 4940 (2) as soon as it considers it expedient to do so, to dispose of property so transferred and any other property held by it⁷,

due regard being had to the specified⁸ considerations⁹.

The Commission has power¹⁰, with a view to the better fulfilment of any of the purposes mentioned in heads (1) and (2) above so far as they relate to property of development corporations, by the improvement of any of its towns, or to the convenience or welfare of persons residing, working or carrying on business there:

- 4941 (a) to acquire, otherwise than by transfer under the relevant statutory provisions¹¹, hold, manage and turn to account land situated in or near the town, or any interest in or rights over such land¹²;
- 4942 (b) to make contributions towards the cost of providing amenities for the town, or of providing for it roads, water supplies, gas or electricity services, or sewerage or sewage disposal services¹³;
- 4943 (c) to promote or assist by any means, and in particular by making advances towards the costs of purchasing land, or of erecting, extending, improving or adapting buildings or works, the setting up or extension of businesses in the town¹⁴.

The Commission has power, with a view to the better fulfilment of any of the purposes mentioned in heads (1) and (2) above so far as they relate to property of urban development corporations:

- 4944 (i) to acquire, hold, manage and turn to account any land or other property, including any interest in or rights over land; and

4945 (ii) to make contributions towards the cost of providing roads, water supplies, gas or electricity services or sewerage or sewage disposal services¹⁵.

1 For the meaning of 'dispose' see PARA 1313 note 4 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 Ie under the New Towns Act 1981: see PARA 1406 post.

4 As to urban development corporations see PARA 1428 et seq post.

5 Ie under the Local Government, Planning and Land Act 1980 s 165B (as added): see PARA 1489 post. See also note 8 infra.

6 New Towns Act 1981 s 36(1)(a) (s 36(1), (2) substituted, and s 36(3), (4) amended by the New Towns and Urban Development Corporations Act 1985 ss 1(2), (3), 14, Sch 3 para 4; the New Towns Act 1981 s 36(1)-(3), (4) amended, and s 36(3A), (4A) added, by the Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85, art 3).

7 New Towns Act 1981 s 36(1)(b) (as substituted: see note 6 supra).

8 Ie the considerations specified in *ibid* s 36(2) (as substituted and amended: see note 6 supra). The considerations so specified, in relation to any new town or urban development area, are (1) the convenience and welfare of person residing, working or carrying on business there; and (2) until disposal, the maintenance and enhancement of the value of the land held and the return obtained from it: s 36(2) (as so substituted and amended). For these purposes, 'urban development area' means land which is or was, or is or was part of, an urban development area (within the meaning of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended) (see PARA 1426 et seq post)); and (a) any reference to property transferred to the Commission by order under s 165B (as added) includes a reference to rights and liabilities so transferred; and (b) in relation to liabilities so transferred, any reference to disposal includes a reference to extinguishment: New Towns Act 1981 s 36(4A) (as added: see note 6 supra).

A transaction between a person and the Commission is not, however, invalidated by reason of any non-compliance by the Commission with the obligation to have regard to the specified considerations; nor is any such transaction invalidated by reason of any non-compliance by the Commission with the requirement of the New Towns Act 1981 s 36(3) (as amended) that the Commission must exercise the powers conferred by s 36(3) (as amended) or s 36(3A) (as added) with the view there mentioned: s 36(4) (as amended: see note 6 supra). For the meaning of 'new town' see PARA 1315 note 9 ante; and for the meaning of 'land' see PARA 1313 note 7 ante.

9 *Ibid* s 36(1) (as substituted: see note 6 supra).

10 Ie subject to the provisions of the New Towns Act 1981 and to any direction given to the Commission by the Secretary of State under s 37 (as amended): see PARA 1385 post.

11 See note 3 supra.

12 New Towns Act 1981 s 36(3)(a) (as amended: see note 6 supra). See also note 4 supra. As to housing see also PARA 1382 ante. Nothing in the New Towns (Transfer of Housing Stock) Regulations 1990, SI 1990/1700 (as amended) prevents the Commission making a disposal in exercise of its powers under the New Towns Act 1981 s 36 (as amended): New Towns (Transfer of Housing Stock) Regulations 1990, SI 1990/1700, reg 2(4) (added by SI 1990/2366).

13 New Towns Act 1981 s 36(3)(b) (as amended: see note 6 supra). As to sewerage functions see also PARA 1381 ante.

14 *Ibid* s 36(3)(c) (as amended: see note 6 supra). Where a building is proposed to be erected on land belonging to, or in the possession of, the Commission or a new town development corporation, the statutory requirement of a deposit or security before building on a private street (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 179) does not apply: Highways Act 1980 s 219(4)(i)(iii). A separate scheme of building regulation control applies to work carried out in relation to a building by certain public bodies: see the Building Act 1984 s 54, Sch 4; the Building (Approved Inspectors etc) Regulations 2000, SI 2000/2532 (as amended); and BUILDING vol 4(2) (2002 Reissue) PARA 370 et seq.

15 New Towns Act 1981 s 36(3A) (as added: see note 6 supra).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1384 [Functions of Welsh Ministers]

TEXT AND NOTES--New Towns Act 1981 s 36 further amended: Housing and Regeneration Act 2008 Sch 5 para 5, Sch 16.

NOTE 6--SI 1998/85 art 3 amended: Housing and Regeneration Act 2008 Sch 16.

NOTE 14--Highways Act 1980 s 219(4)(i)(iii) amended, s 219(4B) added: Housing and Regeneration Act 2008 Sch 8 para 32.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/A. ESTABLISHMENT, FUNCTIONS AND GENERAL POWERS/1385. Restrictions on functions of the Commission.

1385. Restrictions on functions of the Commission.

The Commission for the New Towns does not have power:

- 4946 (1) to borrow money except in accordance with the specified¹ statutory provisions²;
- 4947 (2) to dispose of any property by way of mortgage or charge³.

In discharging its functions, the Commission must comply with such directions as may be given to it by the Secretary of State⁴ but, in giving any such direction, he must have regard to the Commission's obligation to have regard to the specified⁵ considerations⁶. A transaction between a person and the Commission is not, however, invalidated by reason of any failure by the Commission to comply with directions so given by the Secretary of State; and such a person is not to be concerned to see or inquire whether a direction has been so given or complied with⁷.

The Commission may not⁸, except under the general or special authority of the Secretary of State:

- 4948 (a) acquire land⁹ or any interest in or rights in or over land;
- 4949 (b) make contributions towards the cost of providing amenities, supplies or services;
- 4950 (c) make loans or advances or give guarantees;
- 4951 (d) develop¹⁰ land otherwise than in accordance with proposals submitted to, and approved by, the Secretary of State; or
- 4952 (e) dispose of any property by way of gift or for a consideration which is less than the best reasonably obtainable¹¹.

In so far as they are exercisable in Wales, the functions of the Secretary of State under the New Towns Act 1981 relating to the Commission have been transferred, formally, to the National Assembly for Wales¹² but it appears that in practice, although the Commission still exercises a role in relation to the former development corporation of Cwmbran in Wales¹³, it is regarded as coming under the remit of the Secretary of State¹⁴.

1 Ie the New Towns Act 1981 ss 58-60 (as amended): see PARAS 1396-1399 post.

2 Ibid s 37(1).

3 Ibid s 37(4) (s 37(2), (6)(a) amended, and s 37(3), (4) substituted, by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 5).

4 As to the Secretary of State see PARA 19 ante.

5 Ie the considerations specified in the New Towns Act 1981 s 36(2) (as substituted and amended): see PARA 1384 ante.

6 Ibid s 37(2) (as amended: see note 3 supra).

7 New Towns Act 1981 s 37(5). In relation to any transaction or purported disposal made before 13 November 1980, ie the date of the coming into force of the Local Government, Planning and Land Act 1980 Sch 25 Pt I (paras 1-6) (repealed), for the words 'and such a person shall not be concerned to see or inquire whether a direction under that subsection has been given or complied with' there must be substituted 'unless that person had actual notice of that direction': New Towns Act 1981 s 81, Sch 11 para 13(2). See also note 12 infra.

8 Ie by virtue of ibid s 36 (as amended): see PARA 1384 ante.

9 For the meaning of 'land' see PARA 1313 note 7 ante.

10 For the meaning of 'development' see PARA 1320 note 4 ante.

11 New Towns Act 1981 s 37(3) (as substituted: see note 3 supra). See *R v Commission for the New Towns, ex p Tomkins* (1988) 87 LGR 207, CA.

Where, however, the Commission purports to dispose of land by virtue of the New Towns Act 1981 s 36 (as amended), then (1) in favour of any person claiming under the Commission, the disposal so purporting to be made is not invalid by reason that any authority which is required under s 37(3)(e) (as so substituted) (see head (e) in the text) had not been given; and (2) a person dealing with the Commission or a person claiming under the Commission is not to be concerned to see or inquire whether any such authority has been given: s 37(6) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 para 5(c)). Nothing in the New Towns Act 1981 s 37(6) (as so amended) affects a transaction or purported disposal made before 13 November 1980: Sch 11 para 13(1)(c).

12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante.

13 See PARA 1383 note 3 ante.

14 Ie by reason of the fact that the Commission now forms part of English Partnerships. As to English Partnerships see PARA 1308 ante.

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1385 Restrictions on functions of the Commission

TEXT AND NOTES 1-11--Repealed: Housing and Regeneration Act 2008 Sch 5 para 6, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/A. ESTABLISHMENT, FUNCTIONS AND GENERAL POWERS/1386. Local authorities and work for the Commission.

1386. Local authorities and work for the Commission.

The council of a county, county borough¹ or district² in which the whole or any part of the area of a new town³ is situated may, at the request of the Commission for the New Towns and for such consideration and on such other terms as may be agreed between the council and the Commission:

- 4953 (1) do for the Commission any building or other work on land⁴, including land outside the county or district, being work undertaken for the purposes of the Commission's functions⁵ in relation to the new town or any work preliminary to, or connected with, any such work on land; or
- 4954 (2) allow the Commission to have, for the purpose of any such work, the services of officers or servants of the council, or the use of premises or equipment of the council⁶.

1 As to county and county borough councils see PARA 28 ante.

2 As to district councils see PARA 28 ante.

3 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

4 For the meaning of 'land' see PARA 1313 note 7 ante.

5 As to the functions of the Commission see PARA 1383 ante.

6 New Towns Act 1981 s 38(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(5)). The New Towns Act 1981 s 38 (as amended) applies in relation to a joint board discharging functions of any such council as is mentioned in s 38(1) (as so amended) as it applies in relation to the council: s 38(2). As to joint boards see PARA 30 ante.

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1387. Appointment of members and tenure of office.

B. CONSTITUTION AND PROCEEDINGS

1387. Appointment of members and tenure of office.

The members of the Commission for the New Towns, of whom there must not be more than 15, are appointed by the Secretary of State¹ and he must appoint one of them to be chairman and one to be deputy chairman². A member of the Commission and the chairman and deputy chairman hold and must vacate office as such in accordance with the terms of their appointment³; but, if the chairman or deputy chairman of the Commission ceases to be a member of the Commission, he also ceases to be chairman or deputy chairman⁴. A member of the Commission may resign his membership, and the chairman or deputy chairman may resign his office as such, by notice in writing addressed to the Secretary of State⁵. A member of the Commission who ceases to be a member or ceases to be chairman or deputy chairman is, however, eligible for reappointment⁶.

If the Secretary of State is satisfied that a member of the Commission:

- 4955 (1) has become bankrupt or made an arrangement with his creditors; or
- 4956 (2) is incapacitated by physical or mental illness; or
- 4957 (3) has been absent from meetings of the Commission for a period longer than three consecutive months without the permission of the Commission; or
- 4958 (4) is otherwise unable or unfit to discharge the functions of a member, or is unsuitable to continue as a member,

the Secretary of State may remove him from his office as a member of the Commission⁷.

1 New Towns Act 1981 s 35(4)(a), Sch 9 para 1(1). Members of the Commission are disqualified for membership of the House of Commons: see PARLIAMENT vol 78 (2010) PARA 908.

2 As to the Secretary of State see PARA 19 ante. In relation to Wales, these functions are transferred, formally, to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended)); but see PARA 1385 the text and notes 12-14 ante.

3 New Towns Act 1981 Sch 9 para 1(2).

4 Ibid Sch 9 para 1(3).

5 Ibid Sch 9 para 1(4). As to the service of notices see PARA 1313 post.

6 Ibid Sch 9 para 1(6).

7 Ibid Sch 9 para 1(5).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1388. Remuneration etc.

1388. Remuneration etc.

The Secretary of State¹ may pay out of moneys provided by Parliament:

- 4959 (1) to persons holding office as chairman, deputy chairman or members of the Commission for the New Towns such remuneration in respect of that office as he may, with the consent of the Treasury, determine²;
- 4960 (2) in the case of any such person as he may, with the consent of the Treasury, determine, and in respect of that person's office as chairman, deputy chairman or member of the Commission, such pension, allowance or gratuity to or in respect of him on his retirement or death, or such contributions or other payments towards provision for such a pension, allowance or gratuity, as may be so determined³.

Where a member of the Commission is admitted⁴ to participate in the benefits of a superannuation fund maintained by a local authority⁵, head (2) above does not apply to him, and the Secretary of State must make out of moneys provided by Parliament any payments which are required to be made to the superannuation fund in respect of him by the employing authority, and may make from his remuneration any deductions which the employing authority might make in respect of his contributions to that fund⁶.

The Commission may pay to the persons mentioned in head (1) above such reasonable allowances as may be determined with the consent of the Treasury in respect of expenses properly incurred by them in the performance of their duties⁷.

The statutory provisions for making payments to persons called up for service in the armed forces to make up their civil remuneration⁸ apply to employees of the Commission⁹.

¹ As to the Secretary of State see PARA 19 ante. In Wales, these functions are transferred, formally, to the National Assembly for Wales, but the requirement for Treasury consent is retained (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante); but see PARA 1385 the text and notes 12-14 ante.

2 New Towns Act 1981 s 35(4)(a), Sch 9 para 2(1) (Sch 9 para 2 modified by virtue of the Transfer of Functions (Minister for the Civil Service and Treasury) Order 1981, SI 1981/1670, arts 2(2), 3(5)).

3 New Towns Act 1981 Sch 9 para 2(2) (as modified: see note 2 supra). As soon as may be after the making of any such determination, the Secretary of State must lay before each House of Parliament a statement of the amount of the pension, allowance or gratuity, or the contributions or other payments towards pension, allowance or gratuity, as the case may be, payable in pursuance of the determination: Sch 9 para 2(3).

4 In accordance with regulations made under the Superannuation Act 1972 s 7: see SOCIAL SECURITY AND PENSIONS vol 44(2) (Reissue) PARA 875.

5 For the meaning of 'local authority' see PARA 1315 note 4 ante.

6 New Towns Act 1981 Sch 9 para 2(4).

7 Ibid Sch 9 para 2(1) (as modified: see note 2 supra).

8 In the Reserve and Auxiliary Forces (Protection of Civil Interests) Act 1951 Pt V (ss 46-52) (as amended) (provision for the making to service personnel of payments to make up civil remuneration): see ARMED FORCES vol 2(2) (Reissue) PARA 88 et seq. Part V (as amended) has effect as if in Sch 2 Pt I (as amended) the capacities specified in the first column included that of employee of the Commission, and the Commission were specified as respects that capacity in the second column: New Towns Act 1981 s 35(3).

9 Ibid s 35(3).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1389. Committees of the Commission.

1389. Committees of the Commission.

The Commission for the New Towns may make arrangements for any part of its business in any town, or in two or more towns, to be conducted on its behalf, but subject to its general control, by a committee consisting partly of persons who are not members or servants of the Commission¹.

It is the Commission's duty so to make arrangements approved by the Secretary of State² in relation to the management of land³ held by the Commission in any town for the purpose of being let for dwellings⁴.

The Commission's appointments to any committee set up by virtue of these provisions are subject to the Secretary of State's approval⁵; and, before making any appointment to a committee set up⁶ to manage land let for dwellings, the Commission must consult⁷ with the council of any district⁸ comprising a substantial part of the area for which the committee is set up⁹.

The Commission may adopt, in addition to the common seal in general use by the Commission¹⁰, such additional common seals as the Commission thinks fit for use on its behalf by committees set up under these provisions¹¹.

In the case of any such person as the Secretary of State may with the consent of the Treasury determine, the Secretary of State may pay out of money provided by Parliament in respect of that person's service as member of any committee set up¹² to manage land let for dwellings such remuneration and such allowances in respect of expenses properly incurred by that person in that capacity as may be so determined¹³.

1 New Towns Act 1981 s 35(4)(a), Sch 9 para 3(1). As to members of the Commission see PARA 1383 ante.

2 As to the Secretary of State see PARA 19 ante. In Wales, these functions of the Secretary of State are transferred, formally, to the National Assembly for Wales but the requirement of Treasury consent is retained (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante); but see PARA 1385 the text and notes 12-14 ante.

3 For the meaning of 'land' see PARA 1313 note 7 ante.

4 New Towns Act 1981 Sch 9 para 3(2) (amended by the Local Government and Housing Act 1989 s 194(4), Sch 12 Pt II). As to housing see PARA 1382 ante.

5 New Towns Act 1981 Sch 9 para 3(3).

6 *Ibid* Sch 9 para 3(2) (as amended: see note 3 supra).

7 For the meaning of 'consult' para 2 note 1 ante.

8 As to district councils (of which there are none in Wales) see PARA 28 ante.

9 New Towns Act 1981 Sch 9 para 3(4).

10 As to sealing of documents see PARA 1391 post.

11 New Towns Act 1981 Sch 9 para 3(5).

12 See note 5 supra.

13 New Towns Act 1981 Sch 9 para 4. As to remuneration and expenses of members of the Commission see PARA 1388 ante.

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1390. Delegation of powers.

1390. Delegation of powers.

Anything authorised or required to be done by the Commission for the New Towns under the New Towns Act 1981 or any other enactment¹ may be done by any member of the Commission, or of its staff, who has been authorised for the purpose, whether generally or specially, by the Commission, or may be done by any committee or sub-committee of the Commission which has been so authorised².

¹ For the meaning of 'enactment' see PARA 1312 note 3 ante.

² New Towns Act 1981 s 35(4), Sch 9 para 8 (added by the New Towns (Amendment) Act 1994 s 1(c)).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1391. Proceedings of the Commission and its committees.

1391. Proceedings of the Commission and its committees.

Subject to any directions given by the Secretary of State¹, the quorum of the Commission for the New Towns is such as the Commission may determine². The quorum of any committee or sub-committee of the Commission³ and the arrangements relating to its meetings, so far as not provided for by the arrangements made for setting up the committee or sub-committee, are such as the committee may determine⁴. The validity of any proceedings of the Commission or

of such a committee or sub-committee is not affected by any vacancy among its members or by any defect in the appointment of any of its members⁵.

1 As to the Secretary of State see PARA 19 ante. In Wales, these functions of the Secretary of State are transferred, formally, to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended)); but see PARA 1385 the text and notes 12-14 ante.

2 New Towns Act 1981 s 35(4)(a), Sch 9 para 5(1).

3 As to the setting up of committees see PARA 1389 ante.

4 New Towns Act 1981 Sch 9 para 5(2) (s 5(2), (3) amended by the New Towns (Amendment) Act 1994 s 1(a), (b)).

5 New Towns Act 1981 Sch 9 para 5(3) (as amended: see note 4 supra).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/B. CONSTITUTION AND PROCEEDINGS/1392. Execution of instruments etc.

1392. Execution of instruments etc.

The fixing of the seal of the Commission for the New Towns must be authenticated by the signature of the chairman or of some other member or officer of the Commission authorised generally or specially by the Commission to act for the purpose or, in the case of a seal adopted for use by a committee, by the signature of the chairman of the committee or of some other member of the committee authorised generally or specially by the committee to act for that purpose¹; and any document purporting to be a document duly executed under the seal of the Commission must be received in evidence and, unless the contrary is proved, is deemed to be so executed².

Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal³ may be made or executed on behalf of the Commission by any person generally or specially authorised for that purpose by the Commission or a committee set up⁴ under arrangements made by the Commission⁵.

1 New Towns Act 1981 s 35(4), Sch 9 para 6(1) (amended by the Local Government and Housing Act 1989 s 194(1), Sch 11 para 58).

2 New Towns Act 1981 Sch 9 para 6(3). As to the presumption of due execution see CIVIL PROCEDURE vol 11 (2009) PARA 865.

3 As to the execution of deeds see PARA 1329 note 4 ante.

4 le under the New Towns Act 1981 Sch 9 para 3 (as amended): see PARA 1389 ante.

5 Ibid Sch 9 para 6(2).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1386-1392 Local authorities and work for the Commission ... Execution of instruments etc

Repealed: Housing and Regeneration Act 2008 Sch 5 paras 6, 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/C. REPORTS AND INFORMATION/1393. Annual report.

C. REPORTS AND INFORMATION

1393. Annual report.

As soon as possible after the end of each financial year¹, the Commission for the New Towns must make to the Secretary of State² a report dealing generally and in relation to each of its towns with the operations of the Commission during that year, and must include in the report a copy of its audited accounts³ for that year⁴. The Secretary of State must lay a copy of every such report before each House of Parliament⁵.

1 The financial year of the Commission begins on 1 April but, if the Secretary of State, with the approval of the Treasury, so directs in a case where the Commission is to be dissolved, the final financial year of the Commission is such period as is specified in the direction; and references in the New Towns Act 1981 to a financial year in relation to the Commission are to be construed accordingly: ss 67(2), 80(1) (amended by the New Towns and Urban Development Corporations Act 1985 ss 9(b), 14(1), Sch 3 para 13).

2 As to the Secretary of State see PARA 19 ante. In Wales, these functions of the Secretary of State are transferred, formally, to the National Assembly for Wales although the requirement for Treasury consent is retained (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended)); but see PARA 1385 the text and notes 12-14 ante.

3 le including, for each year in respect of which the Comptroller and Auditor General is the auditor, his report on the accounts: New Towns Act 1981 s 70(a) (s 70 amended by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 11(1), (4)). As to audit requirements see PARA 1403 post; and as to financial provisions generally see PARA 1396 et seq post.

4 New Towns Act 1981 s 70(a).

5 Ibid s 70 (as amended: see note 3 supra). In so far as the provisions set out in the text apply in Wales (see note 2 supra), the report must be laid before and published by the Assembly: see the Government of Wales Act 1998 s 45(1), (2).

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/C. REPORTS AND INFORMATION/1394. Information.

1394. Information.

The Commission for the New Towns must¹ provide the Secretary of State² with such information relating to its undertaking as he may from time to time require³; and, for that purpose, the Commission must permit any person authorised by the Secretary of State in that behalf to inspect and copy the accounts, books, documents or papers of the Commission, and must afford such explanation thereof as that person or the Secretary of State may reasonably require⁴.

1 le without prejudice to the requirements imposed by the New Towns Act 1981 s 70 (as amended): see PARA 1393 ante.

2 As to the Secretary of State see PARA 19 ante. In Wales, these functions of the Secretary of State are transferred, formally, to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante); but see PARA 1385 the text and notes 12-14 ante.

3 New Towns Act 1981 s 71(1).

4 Ibid s 71(2). As to financial provisions generally see PARA 1396 et seq post.

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1

(ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1394 Information

TEXT AND NOTES--New Towns Act 1981 s 71 amended: Housing and Regeneration Act 2008 Sch 5 para 24, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(iv) The Commission for the New Towns/D. POWER TO DISSOLVE THE COMMISSION/1395. Power to dissolve the Commission.

D. POWER TO DISSOLVE THE COMMISSION

1395. Power to dissolve the Commission.

If at any time it appears to the Secretary of State¹ that the purposes for which the Commission for the New Towns exists² have been substantially achieved, he may, by order³, on such day as he may appoint⁴:

- 4961 (1) terminate the exercise by the Commission of its functions⁵ except for the purpose of winding up its affairs;
- 4962 (2) vest in himself, any other Minister of the Crown, or any accountable public authority⁶ any property, rights, liabilities or obligations of the Commission;
- 4963 (3) extinguish any liability of the Commission in respect of money lent or advanced at any time by the Secretary of State to any development corporation⁷ or to the Commission⁸; and
- 4964 (4) dissolve the Commission⁹.

Any sums arising out of the vesting of property or out of property vested in a Minister of the Crown by such an order must be paid into the Consolidated Fund; and any sums required to meet any liabilities assumed or incurred by a Minister of the Crown or to defray any expenditure of his in connection with the management of property so vested in him must be paid out of money provided by Parliament¹⁰.

1 As to the Secretary of State see PARA 19 ante. In Wales, these functions of the Secretary of State are transferred, formally, to the National Assembly for Wales (see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante); but see PARA 1385 the text and notes 12-14 ante.

2 Ie under the New Towns Act 1981: see PARA 1383 et seq ante.

3 Any such order may include such incidental, supplemental, consequential or transitional provisions as the Secretary of State thinks fit, including provisions amending, repealing or otherwise modifying any enactment: *ibid* s 35(4)(b), Sch 9 para 7(3) (Sch 9 para 7 added by the New Towns and Urban Development Corporations Act 1985 s 2; the New Towns Act 1981 Sch 9 para 7(3) amended, Sch 9 para 7(2A) added and Sch 9 para 7(7) substituted by the Housing Grants, Construction and Regeneration Act 1996 s 145)). Any such order may (1) establish new bodies corporate to receive any property, rights, liabilities or obligations vested by such an order; (2) amend, repeal or otherwise modify any enactment for the purpose of enabling any body established under any enactment to receive such property, rights, liabilities or obligations: New Towns Act 1981 Sch 9 para 7(2A) (as so added). At the date at which this title states the law no such order had been made.

No order containing provision for the purpose specified in Sch 9 para 7(1)(a) or (c) (as so added) may be made unless a draft of it has been laid before Parliament and approved by resolution of each House: Sch 9 para 7(6) (as so added).

An order under Sch 9 para 7 (as added and amended) must be made by statutory instrument: see s 77(3) (as amended); and PARA 1311 ante. As to the making of orders generally see PARA 1311 ante.

4 Different days may be appointed for different purposes of *ibid* Sch 9 para 7 (as added and amended: see note 3 *supra*): Sch 9 para 7(2) (as so added).

5 As to the functions of the Commission see PARA 1383 *et seq* ante.

6 For these purposes, 'accountable public authority' means a body established under the New Towns Act 1981 Sch 9 para 7 (as added and amended) or any other enactment; and 'enactment' includes any instrument made under any enactment: Sch 9 para 7(7) (as substituted: see note 3 *supra*).

7 For the meaning of 'development corporation' see PARA 1322 ante.

8 No order containing provision for the purpose specified in the New Towns Act 1981 Sch 9 para 7(1)(c) (as added: see note 3 *supra*) may be made without the consent of the Treasury; but, if such provision is made, the assets of the National Loans Fund must be reduced by the aggregate amount by which the liabilities of the Commission are thereby reduced: Sch 9 para 7(5) (as added: see note 3 *supra*). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 *et seq*.

9 *Ibid* Sch 9 para 7(1) (as added: see note 3 *supra*).

10 *Ibid* Sch 9 para 7(4) (as added: see note 3 *supra*). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 *et seq*; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

UPDATE

1383-1395 The Commission for the New Towns

The Commission for the New Towns will cease to exist on such day as the Secretary of State may by order appoint: Housing and Regeneration Act 2008 s 50(1). The day appointed is 1 April 2009: SI 2009/801. The Housing and Regeneration Act 2008 Pt 1 (ss 1-58) (partly in force: SI 2008/2358, SI 2008/3068, SI 2009/803) establishes the Homes and Communities Agency. See further PARA 1308A.

1395 Power to dissolve the Commission

TEXT AND NOTES--New Towns Act 1981 Sch 9 repealed: Housing and Regeneration Act 2008 Sch 5 para 30, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/A. GENERAL FINANCIAL PROVISIONS/1396. Advances to development corporations and the Commission.

(v) Finance, Accounts and Audit

A. GENERAL FINANCIAL PROVISIONS

1396. Advances to development corporations and the Commission.

The Secretary of State¹ may² make to a development corporation³ or to the Commission for the New Towns⁴ advances repayable over such period, carrying interest at such rates and on such other terms as may be approved by the Treasury⁵. Such advances may be made for the purpose of enabling:

- 4965 (1) a development corporation to meet expenditure properly chargeable to capital account, including the provision of working capital, or to make good to revenue account sums applied in meeting liabilities so chargeable⁶;
- 4966 (2) the Commission to meet liabilities properly chargeable to capital account, including the provision of working capital, or to make good to revenue account sums applied in meeting liabilities so chargeable⁷.

The Secretary of State may also advance to the Commission any sums required by it to meet a deficit on revenue account; and any such advance is repayable over such period and carries interest at such rates and must be made on such other terms as may be approved by the Treasury; but the sum of the amounts outstanding at any one time in respect of the principal of the sums advanced under these provisions or the corresponding previous provisions⁸ may not exceed £1 million⁹.

The Treasury may issue to the Secretary of State out of the National Loans Fund such sums as are necessary to enable him to make any such advances¹⁰; and any sums received by the Secretary of State by way of repayment of or interest on such advances must be paid into the National Loans Fund¹¹. The Secretary of State must lay before each House of Parliament a statement of any sums payable to him by way of repayment of or interest on any such advances and not duly received by him¹².

In relation to Wales the National Assembly for Wales may exercise the like powers but there is no requirement for Treasury approval¹³.

1 As to the Secretary of State see PARA 19 ante.

2 Ie subject to the New Towns Act 1981 s 60 (as amended): see PARA 1399 post.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 As to the Commission see PARA 1383 et seq ante.

5 New Towns Act 1981 s 58(1), (5) (s 58(1), (5), (6) amended by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 8). As to the position where the liabilities of a development corporation for the repayment of such advances, or for payment of interest on them, are transferred to the Commission for the New Towns see PARA 1409 note 7 post.

6 New Towns Act 1981 s 58(1) (as amended: see note 5 supra). It is a condition of the making of advances to a development corporation under s 58(1) (as so amended) that the proposals for development submitted to the Secretary of State under s 7 (as amended) (see PARA 1357 ante) are approved by the Secretary of State with the Treasury's concurrence as being likely to secure for the corporation a return which is reasonable, having regard to all the circumstances, when compared with the cost of carrying out those proposals: s 58(3). For the meaning of 'development' see PARA 1320 note 4 ante.

7 Ibid s 58(5) (as amended: see note 5 supra).

8 Ie the sums advanced (1) before 5 September 1965, ie the date of the commencement of the New Towns Act 1965, under the New Towns Act 1959 s 3(2) (repealed); (2) before 30 November 1981, ie the date of the commencement of the New Towns Act 1981, under the New Towns Act 1965 s 42(5) (repealed); and (3) on or after 30 November 1981 under the New Towns Act 1981 s 58 (as amended).

9 Ibid s 58(6) (as amended: see note 5 supra). For these purposes any advance to the Commission made before 5 September 1965 under the New Towns Act 1959 s 3(2) (repealed) or any such advance made before 30 November 1981 under the New Towns Act 1965 s 42(5) (repealed), continues to be regarded as having been made under the New Towns Act 1959 s 3(2) (repealed) or the New Towns Act 1965 s 42(5) (repealed), as the

case may be, and not under the New Towns Act 1981 s 58(6) (as so amended) (which corresponds to those provisions): s 81, Sch 11 para 3.

The Secretary of State had power, with the Treasury's consent, by order to extinguish to a specified extent any liabilities in respect of advances made by him to the corporation under s 58 (as amended) or the corresponding provisions of the New Towns Act 1946 (repealed) or the New Towns Act 1965 (repealed): New Towns Act 1981 s 62A(1), (6) (ss 62A, 62B added by the New Towns and Urban Development Corporations Act 1985 s 8(1)). No such order might be made unless a draft of the order had been laid before, and approved by a resolution of, the House of Commons: New Towns Act 1981 s 62A(5) (as so added). The aggregate amount of liabilities so extinguished by order might not exceed £1,750 million: s 62A(2) (as so added). Where liabilities were so extinguished, the assets of the National Loans Fund were reduced by amounts corresponding to the liabilities so extinguished: s 62A(3) (as so added). Orders under s 62A (as so added) were to be made by statutory instrument: see s 77(3) (as amended); and PARA 1311 ante. In exercise of the power so conferred the Secretary of State made the New Towns (Extinguishment of Liabilities) Order 1986, SI 1986/1382, extinguishing liabilities in respect of advances to the development corporations of Milton Keynes, Peterborough, Telford and Warrington and Runcorn. As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq. No such order might be made after 30 September 1986: New Towns Act 1981 s 62A(4) (as added: see note 1 supra). At the date at which this title states the law, the Law Commission had proposed the repeal of s 62A (as added), together with consequential amendments: see *Statute Law Revision--Town and Country Planning Repeal Proposals* (Law Com, June 2005).

The Secretary of State also had power, with the Treasury's consent, by order to specify any new town development loan as a loan the repayment of which to the Secretary of State, and subsequently into the National Loans Fund, was to be suspended for such period ('the period of suspension') as was specified in the order: New Towns Act 1981 s 62B(1) (as so added). The power to make orders under s 62B(1) (as so added) was exercisable by statutory instrument and a statutory instrument containing such an order was subject to annulment in pursuance of a resolution of either House of Parliament: see s 77(3), (4)(b) (as amended); and PARA 1311 ante. For these purposes, 'new town development loan' means (1) as regards a development corporation, any sum advanced by the Secretary of State to the corporation under s 58(1) (as amended) or the corresponding provisions of the New Towns Act 1946 (ie s 12(1) (repealed)) or the New Towns Act 1965 (ie s 42(1) (repealed)); (2) as regards the Commission, any sum advanced by the Secretary of State to the Commission under the New Towns Act 1981 s 58(5) (as amended) or the corresponding provisions of the New Towns Act 1959 (ie s 3(1) (repealed)) or the New Towns Act 1965 (ie s 42(4) (repealed)) or any new town development loan transferred from a development corporation to the Commission under the New Towns Act 1981 s 41(2)(a), Sch 10 (see PARAS 1407-1409 post): s 62B(8)(a), (9) (as so added). The power extended to new town development loans made to development corporations and to new town development loans made to the Commission for the New Towns (New Towns Act 1981 s 62B(2) (as so added)); but no such order might be made effecting a suspension of an outstanding loan of a development corporation if an order had been made under s 62A (as added) extinguishing a liability of that development corporation (s 62B(4) (as so added)). Where a loan was specified by such an order: (a) the terms of the loan had effect as if any payment by way of repayment of or interest on the loan which would otherwise fall due at any time within the unexpired period for repayment of the loan fell due instead at the corresponding time within the period of the same duration beginning at the end of the period of suspension; (b) no interest accrued in respect of the loan during the period of suspension; and (c) the borrower was to assume during the period of suspension such obligations as the Secretary of State might impose by directions under the order as regarded the achieving of financial objectives, the obtaining of his approval for proposed expenditure and the provision of information about the borrower's present or future financial position: s 62B(3) (as so added). For these purposes, 'the unexpired period for repayment of the loan', in relation to any loan specified by an order under *ibid* s 62B (as so added), means the period beginning with the date specified in the order as the date of the beginning of the period of suspension and ending with the date which would otherwise be the last date on which any payment by way of repayment of or interest on the loan would fall due under the terms of the loan: s 62B(8)(b) (as so added). The aggregate amount of new town development loans so suspended by order might not exceed £950 million or such greater sum, not exceeding £1,300 million, as the Secretary of State might by order specify: s 62B(5) (as so added). No order might be made under s 62B(5) (as so added) unless a draft of it has been laid before, and approved by a resolution of, the House of Commons: s 62B(6) (as so added). The power to make such orders was exercisable by statutory instrument: see s 77(3) (as amended); and PARA 1311 ante. In exercise of the power so conferred the Secretary of State made the New Towns (Suspension of Loan Repayment) Order 1986, SI 1986/1436, providing for the suspension of certain loans to the development corporations of Aycliffe and Peterlee, Cwmbran and Washington and to the former Peterlee development corporation. No such order might be made after 31 March 1996: New Towns Act 1981 s 62B(7) (as added: see note 6 supra). At the date at which this title states the law, the Law Commission had proposed the repeal of s 62B (as added), together with consequential amendments: see *Statute Law Revision--Town and Country Planning Repeal Proposals* (Law Com, June 2005).

10 New Towns Act 1981 s 61(1) (amended by the New Towns and Urban Development Corporations Act 1985 s 14, Sch 3 para 8, Sch 4). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

11 New Towns Act 1981 s 61(2).

12 Ibid s 61(3).

13 As to the transfer of functions under *ibid* ss 58, 61 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see *PARA 20 ante*. As to functions relating to the Commission see, however, *PARA 1385* the text and notes 12-14 *ante*.

UPDATE

1396 Advances to development corporations [...]

TEXT AND NOTES--New Towns Act 1981 ss 58(5), (6), 62B, Sch 11 para 3 repealed, s 61(1), (2) amended: Housing and Regeneration Act 2008 Sch 5 paras 10, 14, 16, 32, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/A. GENERAL FINANCIAL PROVISIONS/1397. Grants to development corporations and the Commission.

1397. Grants to development corporations and the Commission.

The Secretary of State¹ may, out of money provided by Parliament, make grants of such amount as may be approved by the Treasury:

4967 (1) to a development corporation²:

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- 22. (a) for the purpose of enabling the corporation to meet expenditure properly chargeable to capital account and incurred or to be incurred in providing, or in making contributions towards the cost to others of providing, any of the specified facilities³, or to make good to revenue account sums applied in meeting liabilities so chargeable and arising out of the provision of any of those facilities⁴;
- 23. (b) for the purpose of enabling the corporation to meet expenditure properly chargeable to revenue account⁵;

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4968 (2) to the Commission for the New Towns:

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- 24. (a) for the purpose of enabling the Commission to meet expenditure, or liabilities in respect of expenditure, properly chargeable to capital account and incurred or to be incurred in providing, or in making contributions towards the cost to others of providing, any of the specified facilities⁶, or to make good to revenue account sums applied in meeting liabilities so chargeable and arising out of the provision of any of those facilities⁷;
- 25. (b) for the purpose of enabling the Commission to meet any housing expenditure⁸.

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In relation to Wales the National Assembly for Wales may exercise the like powers, except that the payment is not to be made out of money provided by Parliament⁹ and there is no requirement for Treasury approval¹⁰.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For the meaning of 'development corporation' see PARA 1322 ante.
- 3 The facilities specified in the New Towns Act 1981 s 58A(2) (s 58A added by the New Towns and Urban Development Corporations Act 1985 s 6). The facilities so specified are: (1) roads, paths, bridges and car parks; (2) public open spaces, recreation grounds, playgrounds and landscaping; (3) meeting halls and assembly rooms; (4) any other facilities similar to those specified in heads (1)-(3) supra: New Towns Act 1981 s 58A(2) (as so added). For the meaning of 'open space' see PARA 1335 note 4 ante.
- 4 Ibid s 58A(1) (as added: see note 3 supra).
- 5 Ibid s 58A(3) (as added: see note 3 supra).
- 6 See note 3 supra.
- 7 New Towns Act 1981 s 58A(4) (as added: see note 3 supra).
- 8 Ibid s 58A(5) (as added: see note 3 supra). As to housing generally see PARA 1382 ante.
- 9 See the Government of Wales Act 1998 s 89(b).
- 10 As to the transfer of functions under the New Towns Act 1981 s 58A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions relating to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

UPDATE

1397 Grants to development corporations [...]

TEXT AND NOTES 7, 8--New Towns Act 1981 s 58A(4), (5) repealed: Housing and Regeneration Act 2008 Sch 5 para 11, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/A. GENERAL FINANCIAL PROVISIONS/1398. Other borrowing powers of development corporations and the Commission.

1398. Other borrowing powers of development corporations and the Commission.

A development corporation¹ or the Commission for the New Towns may borrow temporarily, by way of overdraft or otherwise, either:

- 4969 (1) in sterling from the Secretary of State²; or
- 4970 (2) with the Secretary of State's consent and the Treasury's approval, or in accordance with any general authority given by the Secretary of State with the Treasury's approval, in any currency from any other person,

such sums as the development corporation or the Commission, as the case may be, may require for meeting its obligations or performing its functions³.

With the like consent and approval, a development corporation or the Commission may borrow, otherwise than by way of temporary loan:

- 4971 (a) in any currency from the European Commission⁴ or from the European Investment Bank⁵; or
 4972 (b) in any currency other than sterling from any person, other than the Secretary of State and the bodies mentioned in head (a) above,

such sums as it may require for enabling it to meet expenditure properly chargeable to capital account, including the provision of working capital, or to make good to revenue account sums applied in meeting liabilities so chargeable⁶.

In relation to Wales the above functions of the Secretary of State are exercisable by the National Assembly for Wales but are subject to Treasury approval⁷.

- 1 For the meaning of 'development corporation' see PARA 1322 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 New Towns Act 1981 s 59(1). As to the overall limit on borrowing see PARA 1399 post.
- 4 As to the European Commission see EUROPEAN COMMUNITIES.
- 5 As to the European Investment Bank see EUROPEAN COMMUNITIES.
- 6 New Towns Act 1981 s 59(2). See also note 3 supra.
- 7 As to the transfer of functions under *ibid* s 59, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

UPDATE

1398 Other borrowing powers of development corporations [...]

TEXT AND NOTES 3, 6--New Towns Act 1981 s 59(1), (2) amended: Housing and Regeneration Act 2008 Sch 5 para 12, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/A. GENERAL FINANCIAL PROVISIONS/1399. Limit on borrowing by development corporations and the Commission.

1399. Limit on borrowing by development corporations and the Commission.

The aggregate of the amounts outstanding in respect of the principal of sums:

- 4973 (1) advanced to development corporations¹ or to the Commission for the New Towns²; or
 4974 (2) borrowed³, whether by development corporations or by the Commission,

may not at any time exceed the limit imposed⁴ by or under the relevant statutory provisions⁵, that is to say £4,600 million⁶ or such greater sum not exceeding £5,250 million as the Secretary of State⁷ may by order specify⁸.

1 le advanced (1) before 30 November 1981 under the New Towns Act 1946 s 12(1) (repealed) in its application to England and Wales or under the New Towns Act 1965 s 42(1) (repealed) and, after that date, under the New Towns Act 1981 s 58(1) (as amended) (see PARA 1396 ante) which corresponds to those provisions; (2) before the commencement of the New Towns (Scotland) Act 1968 under the New Towns Act 1946 s 12(1) (repealed) in its application to Scotland (to which the New Towns (Scotland) Act 1968 s 37(1) corresponds) and, after the commencement of the 1968 Act, under the New Towns (Scotland) Act 1968 s 37(1). For the meaning of 'development corporation' see PARA 1322 ante.

2 le advanced before 30 November 1981 under the New Towns Act 1959 s 3(1) (repealed) or under the New Towns Act 1965 s 42(4) (repealed) and, after that date, under the New Towns Act 1981 s 58(5) (as amended) (see PARA 1396 ante) (which corresponds to those provisions).

3 le before 30 November 1981 under the New Towns Act 1965 s 42A (repealed) and, after that date, under the New Towns Act 1981 s 59 (see PARA 1398 ante) (which corresponds to that provision), or under the New Towns (Scotland) Act 1968 s 37A (as added).

4 le by or under the New Towns Act 1981 s 60(2)-(4) (added by the New Towns and Urban Development Corporations Act 1985 s 7(1), (3)): see the text and notes 5-8 infra.

5 New Towns Act 1981 s 60(1) (amended by the New Towns and Urban Development Corporations Act 1985 s 7(1), (2)). For these purposes: (1) any advance to a development corporation made before 5 September 1965 under the New Towns Act 1946 s 12(1) (repealed) or any such advance made before 30 November 1981 under the New Towns Act 1965 s 42(1) (repealed) continues to be regarded as having been made under the New Towns Act 1946 s 12(1) (repealed) or the New Towns Act 1965 s 42(1) (repealed), as the case may be, and not under the New Towns Act 1981 s 58(1) (as amended) (which corresponds to those provisions); and (2) any advance to the Commission made before 5 September 1965 under the New Towns Act 1959 s 3(1) (repealed) or any such advance made before 30 November 1981 under the New Towns Act 1965 s 42(4) (repealed) continues to be regarded as having been made under the New Towns Act 1959 s 3(1) (repealed) or the New Towns Act 1965 s 42(4) (repealed), as the case may be, and not under the New Towns Act 1981 s 58(5) (as amended) (which corresponds to those provisions): Sch 11 paras 4, 5.

6 le except during the period beginning with 11 May 1965, ie the date of the commencement of the New Towns and Urban Development Corporations Act 1985, and ending with 30 September 1986, for which period the specified limit was £5,250 million: New Towns Act 1981 s 60(2), (4) (as added: see note 4 supra). At the date at which this title states the law, the Law Commission had proposed the repeal of s 60(4) (as added), together with consequential amendments: see *Statute Law Revision--Town and Country Planning Repeal Proposals* (Law Com, June 2005).

7 As to the Secretary of State see PARA 19 ante. As to the transfer of functions under ibid s 60 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions relating to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

8 New Towns Act 1981 s 60(2) (as added: see note 4 supra). No order may be made under s 60(2) (as so added) unless a draft of the order has been laid before, and approved by resolution of, the House of Commons: s 60(3) (as added: see note 4 supra). As to the making of orders generally see PARA 1311 ante.

UPDATE

1399 Limit on borrowing by development corporations [...]

TEXT AND NOTES 5, 6--New Towns Act 1981 s 60(1) amended, s 60(4), Sch 11 para 5 repealed: Housing and Regeneration Act 2008 Sch 5 paras 13, 32, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/A. GENERAL FINANCIAL PROVISIONS/1400. Treasury or Assembly guarantees.

1400. Treasury or Assembly guarantees.

The Treasury may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with, any sums which a development corporation¹ or the Commission for the New Towns borrows² from a person other than the Secretary of State³. Immediately after a guarantee is so given, the Treasury must lay a statement of the guarantee before each House of Parliament⁴.

Where any sum is issued for fulfilling a guarantee so given, the Treasury must, as soon as possible after the end of each financial year⁵ beginning with that in which the sum is issued, and ending with that in which all liability in respect of the principal of the sum, and in respect of interest on it, is finally discharged, lay before each House of Parliament a statement relating to that sum⁶. Any sums required by the Treasury for fulfilling such a guarantee must be charged on and issued out of the Consolidated Fund⁷.

If any sums are issued in fulfilment of a guarantee so given in respect of money borrowed by a development corporation or by the Commission, the development corporation or the Commission, as the case may be, must make to the Treasury, at such times and in such manner as the Treasury may from time to time direct:

- 4975 (1) payments, of such amounts as the Treasury may so direct, in or towards repayment of the sums so issued; and
- 4976 (2) payments of interest on what is outstanding for the time being in respect of amounts so issued at such rate as the Treasury may so direct⁸.

In relation to Wales these Treasury functions are transferred to the National Assembly for Wales⁹ and there is no requirement for the required sums to be charged on and issued out of the Consolidated Fund¹⁰.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 I.e. under the New Towns Act 1981. As to powers to borrow see PARA 1396 et seq ante.

3 Ibid s 62(1) (amended by the Miscellaneous Financial Provisions Act 1983 s 4(5)). As to the Secretary of State see PARA 19 ante.

4 New Towns Act 1981 s 62(2).

5 For the meaning of 'financial year' see PARA 1330 note 1 ante (development corporations), PARA 1393 note 1 ante (Commission for the New Towns).

6 New Towns Act 1981 s 62(3).

7 Ibid s 62(4). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

8 Ibid s 62(5). Any sums so received by the Treasury must be paid into the Consolidated Fund: s 62(6).

9 As to the transfer of functions under ibid s 62 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

10 See the Government of Wales Act 1998 s 89(a).

UPDATE

1400 Treasury or Assembly guarantees

TEXT AND NOTES 3, 8--New Towns Act 1981 s 62(1) further amended, s 62(5) amended: Housing and Regeneration Act 2008 Sch 5 para 15.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/B. PAYMENTS TO THE SECRETARY OF STATE OR THE ASSEMBLY/1401. Payments to the Secretary of State or to the Assembly and disposal of surplus funds.

B. PAYMENTS TO THE SECRETARY OF STATE OR THE ASSEMBLY

1401. Payments to the Secretary of State or to the Assembly and disposal of surplus funds.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may direct a development corporation³ or the Commission for the New Towns to pay to him or to the Assembly, on the date specified in the direction, such sum as is so specified⁴. Before giving such a direction, the Secretary of State or the Assembly must consult⁵ the corporation or the Commission, as the case may be⁶. Any sum so received must⁷ be paid into the Consolidated Fund⁸; and the debt carries interest⁹ from the date specified in the direction until payment¹⁰.

Where, in order to comply with such a direction, the development corporation considers it desirable to dispose¹¹ of any land¹², it may do so¹³.

Where it appears to the Secretary of State, after consultation with the Treasury, and to him or to the Assembly after consultation with the Commission or any development corporation, as the case may be, that the Commission or that development corporation has a surplus, whether on capital or on revenue account, after making allowance by way of transfer to reserve or otherwise for its future requirements¹⁴, the Commission or that corporation, as the case may be, must, if the Secretary of State or the Assembly after such consultation so directs, pay to him or to the Assembly such sum not exceeding the amount of that surplus as may be specified in the direction; and any sum so received must be paid¹⁵ into the Consolidated Fund¹⁶.

The whole or part of any payment so made¹⁷ to the Secretary of State or to the Assembly is treated, if the Secretary of State or the Assembly (with the Treasury's approval in either case) so determines, as made by way of repayment of such part of the principal of advances¹⁸ and as made in respect of the repayments due at such times, as may be so determined¹⁹. Any sum so treated as a repayment of a loan must be paid by the Secretary of State or by the Assembly into the National Loans Fund²⁰.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 ss 63-66 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

3 For the meaning of 'development corporation' see PARA 1322 ante.

4 New Towns Act 1981 s 63(1).

5 For the meaning of 'consult' para 2 note 1 ante.

6 New Towns Act 1981 s 63(2).

7 le subject to *ibid* s 66(2): see the text and note 20 *infra*.

8 *Ibid* s 63(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 *et seq*; PARLIAMENT vol 78 (2010) PARAS 1028-1031. As to payments by the Assembly into the Consolidated Fund see, however, the Government of Wales Act 1998 s 84; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

9 le at the rate for the time being in force under the Land Compensation Act 1961 s 32: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 641.

10 New Towns Act 1981 s 63(3) (amended by the New Towns and Urban Development Corporations Act 1985 s 14, Sch 3 para 9, Sch 4).

11 For the meaning of 'dispose' see PARA 1313 note 4 *ante*.

12 For the meaning of 'land' see PARA 1313 note 7 *ante*.

13 New Towns Act 1981 s 64(1) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 paras 9, 10(a), Sch 4). The power of disposal by virtue of the New Towns Act 1981 s 64 (as amended) may be exercised notwithstanding s 17(1) (conditions of disposal: see PARA 1365 *ante*) and any implied restriction in Pt I (ss 1-33) (as amended) (see PARA 1315 *et seq ante*) on the circumstances in which property of a development corporation may be disposed of, but otherwise must be exercised in accordance with Pt I (ss 1-33) (as amended) except that, before giving directions under s 5(2) (as amended) (see PARA 1325 *ante*), the Secretary of State or the Assembly must consult the corporation unless satisfied that, on account of urgency, such consultation is impracticable: s 64(2) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 paras 9, 10(b)).

14 le including, in the Commission's case, any contributions required under the New Towns Act 1981 s 36(3) (b) (as amended): see PARA 1384 *ante*.

15 See note 7 *supra*.

16 New Towns Act 1981 s 65(1), (2).

17 le under *ibid* s 63 (as amended) or s 65.

18 le under *ibid* s 58(1) (as amended) in the case of a development corporation, or under s 58(5), (6) (as amended) in the case of the Commission: see PARA 1396 *ante*.

19 *Ibid* s 66(1) (amended by the New Towns and Urban Development Corporation Act 1985 Sch 3 para 9, Sch 4).

20 New Towns Act 1981 s 66(2).

UPDATE

1401 Payments to the Secretary of State or to the Assembly and disposal of surplus funds

TEXT AND NOTES 4, 6, 16, 19--New Towns Act 1981 ss 63(1), (2), 65(1), (2) amended, s 66(1) further amended: Housing and Regeneration Act 2008 Sch 5 paras 17-19, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/C. ACCOUNTS AND AUDIT/1402. Accounts of the Commission and development corporations.

C. ACCOUNTS AND AUDIT

1402. Accounts of the Commission and development corporations.

The Commission for the New Towns and every development corporation¹ must keep proper accounts and other records in relation to those accounts and must prepare in respect of each financial year² annual accounts in such form³ as the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ may, in either case with the Treasury's approval, direct⁶. Directions so given may make different provisions as regards the Commission and as regards a development corporation⁷. The Secretary of State or the Assembly may⁸, in either case with the Treasury's approval, give directions to the Commission or a development corporation as to:

- 4977 (1) the kind or number of accounts which it is to keep;
- 4978 (2) the amounts which are or are not to be credited or debited to any account;
- 4979 (3) the manner of rectifying any account;
- 4980 (4) provision for working balances,

and any such direction may be a general direction or a direction for a particular case⁹.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 For the meaning of 'financial year' see PARA 1330 note 1 ante (development corporations), PARA 1393 note 1 ante (Commission for the New Towns).

3 I.e. being, in the Commission's case, in a form which will show the Commission's financial position generally and also, if directed, its financial position in relation to such towns, such combinations of towns or such other parts of its undertakings as are specified in the direction: New Towns Act 1981 s 67(1)(b) (substituted by the New Towns and Urban Development Corporations Act 1985 s 9(a)).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the New Towns Act 1981 s 67 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As functions relating to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

6 New Towns Act 1981 s 67(1)(a), (b) (as amended: see note 3 supra). The Commission must send a copy of its accounts prepared under s 67(1) (as so amended) in respect of each financial year ending on or after 31 March 2005 to the Comptroller and Auditor General as soon as reasonably practicable after the end of the financial year to which the accounts relate: s 67(1A) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 11(1), (2)).

7 New Towns Act 1981 s 67(1) (as amended: see note 3 supra).

8 I.e. without prejudice to the generality of the New Towns Act 1981 s 67(1) (as amended: see note 3 supra).

9 Ibid s 67(3). As to audit see PARA 1403 post; and as to annual reports see PARA 1330 ante (development corporations), PARA 1393 ante (Commission for the New Towns).

UPDATE

1402 Accounts of [...] development corporations

TEXT AND NOTES--New Towns Act 1981 s 67 further amended: Housing and Regeneration Act 2008 Sch 5 para 20, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/C. ACCOUNTS AND AUDIT/1403. Audit.

1403. Audit.

The accounts of the Commission for the New Towns and of every development corporation¹ must be audited by an auditor to be appointed annually by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³ in relation to the Commission or corporation⁴. A person may not be so appointed auditor unless he is eligible⁵ for appointment as a company auditor⁶. The Comptroller and Auditor General must, however, examine, certify and report on the accounts of the Commission in respect of financial years ending on or after 31 March 2005⁷.

As soon as the annual accounts of the Commission or a development corporation for any financial year⁸ have been audited, the Commission or corporation, as the case may be, must send to the Secretary of State or to the Assembly a copy of the accounts prepared by the Commission or corporation for that year in accordance with these provisions, together with a copy of any report made by the auditor on those accounts⁹.

1 For the meaning of 'development corporation' see PARA 1322 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the New Towns Act 1981 s 68 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions relating to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

4 New Towns Act 1981 s 68(1).

5 le under the Companies Act 1989 s 25: see COMPANIES vol 15 (2009) PARA 969.

6 New Towns Act 1981 s 68(2) (substituted by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 41).

7 New Towns Act 1981 s 68(2A) (added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2003, SI 2003/1326, art 11(1), (3(a)). For the meaning of 'financial year' in relation to the Commission see PARA 1393 note 1 ante.

8 For the meaning of 'financial year' in relation to development corporations see PARA 1330 note 1 ante.

9 New Towns Act 1981 s 68(3). As to annual accounts see PARA 1402 ante; and as to reports and information see PARAS 1330-1331 ante (development corporations), PARAS 1393-1394 ante (Commission for the New Towns).

UPDATE

1403 Audit

TEXT AND NOTES--New Towns Act 1981 s 68 further amended: Housing and Regeneration Act 2008 Sch 5 para 21, Sch 16.

TEXT AND NOTES 5, 6--Now eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264)': 1981 Act s 68(2) (amended by SI 2008/948).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(v) Finance, Accounts and Audit/C. ACCOUNTS AND AUDIT/1404. Secretary of State's and Assembly's accounts.

1404. Secretary of State's and Assembly's accounts.

The Secretary of State¹ must prepare in respect of each financial year², in such form and manner and at such times as the Treasury may direct:

- 4981 (1) an account of the sums issued to him and advanced to the Commission for the New Towns³, of sums received by him from the Commission and paid into the National Loans Fund⁴ in respect of the principal and interest on sums so advanced, and of sums received by him from the Commission⁵; and
- 4982 (2) an account of the sums issued to him and advanced to a development corporation⁶ and of sums received by him from that development corporation and paid into the National Loans Fund in respect of the principal of and interest on sums so advanced,

and such directions may make different provisions as regards the Commission and as regards a development corporation⁷.

On or before 30 November in each year, the Secretary of State must transmit to the Comptroller and Auditor General the accounts so prepared⁸ by the Secretary of State in respect of the last foregoing financial year; and the Comptroller and Auditor General must examine and certify every account so prepared by the Secretary of State and lay before each House of Parliament copies of each such account together with his report on it⁹.

In relation to Wales, the functions of the Secretary of State under the above provisions are transferred to the National Assembly for Wales¹⁰ and are likewise subject to Treasury direction¹¹. The Assembly must transmit to the Auditor General for Wales the accounts so prepared by the Assembly in respect of each financial year beginning in and after 1999; and the Auditor General for Wales must examine and certify every account so prepared and lay before the Assembly copies of each such account together with his report on it¹².

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'financial year' see PARA 1330 note 1 ante (development corporations), PARA 1393 note 1 ante (Commission for the New Towns).

3 I.e. under the New Towns Act 1981: see PARA 1396 et seq ante.

4 As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

5 I.e. under ibid s 65: see PARA 1401 ante.

6 See note 3 supra. For the meaning of 'development corporation' see PARA 1322 ante.

7 New Towns Act 1981 s 69(1).

8 I.e. the account prepared by the Secretary of State under ibid s 69(1)(a) (see head (1) in the text) and the account prepared by him under s 69(1)(b) (see head (2) in the text).

9 Ibid s 69(2).

10 As to the Assembly see PARA 20 ante.

11 As to the transfer of functions of the Secretary of State under the New Towns Act 1981 s 69, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and PARA 20 ante. As to functions relating to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

12 National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.

UPDATE

1404 Secretary of State's and Assembly's accounts

TEXT AND NOTES 7-9--New Towns Act 1981 s 69(1), (2) amended: Housing and Regeneration Act 2008 Sch 5 para 22, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(vi) Position after Development of New Towns/A. TRANSFER OF UNDERTAKINGS/1405. Power of development corporation to transfer undertakings.

(vi) Position after Development of New Towns

A. TRANSFER OF UNDERTAKINGS

1405. Power of development corporation to transfer undertakings.

Without prejudice to the powers¹ of development corporations² to dispose of any of their property, including any trade or business carried on by them, a development corporation may, by an agreement made with any local authority³ or any statutory undertakers⁴ and approved by the Secretary of State⁵ with the concurrence of the Treasury, or, in relation to Wales, by the National Assembly for Wales⁶, transfer:

- 4983 (1) to that local authority any part of the undertaking of the corporation; or
- 4984 (2) to those statutory undertakers any part of that undertaking which consists of a statutory undertaking,

upon such terms as may be prescribed by the agreement⁷.

Before, however, approving such an agreement:

- 4985 (a) the Secretary of State or the Assembly must consult⁸ with the council of every county⁹ and of every county borough in Wales¹⁰ or district in England¹¹ in which the whole or any part of the area of the new town¹² is situated, except, in the case of an agreement made with such a council, the council with which it is made¹³;
- 4986 (b) for the transfer of a statutory undertaking, the Secretary of State or the Assembly must publish in the London Gazette, and in one or more newspapers circulating in the area in which the new town is situated, a notice stating that the agreement has been submitted for approval, and describing the general effect of the agreement¹⁴.

If, within 28 days from the publication of the notice in the London Gazette in accordance with head (b) above, any objection to the agreement is made by any statutory undertakers who are

carrying on, or are authorised to carry on, a statutory undertaking of a character similar to the statutory undertaking proposed to be transferred by the agreement, and who do so within the area in which the new town is situated or any adjacent area, the statutory requirement of consent¹⁵ applies in England in relation to the agreement as if for the reference to the Secretary of State there were substituted a reference to the Secretary of State and the appropriate minister¹⁶.

If the Secretary of State or the Assembly is satisfied that it is expedient, having regard to any agreement so made or proposed to be so made, that the liability of the development corporation in respect of advances made to it¹⁷ should be reduced, he may (with the Treasury's consent) or the Assembly may by order¹⁸ reduce that liability to such extent as may be specified in the order¹⁹.

The payment of any sums payable by a local authority for the purposes of such an agreement is a purpose for which that authority may borrow money²⁰.

1 Ie under the New Towns Act 1981: see PARAS 1323, 1365 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 For the meaning of 'local authority' see PARA 1315 note 4 ante.

4 The New Towns Act 1981 s 39 (as amended) has effect as if references to statutory undertakers included references to the operator of an electronic communications code network and as if for this purpose references (1) to a statutory undertaking were references to the provision of such a network; and (2) to the appropriate minister were references to the Secretary of State for Trade and Industry: s 39(7) (added by the Telecommunications Act 1984 s 109(1), Sch 4 para 79(7); amended by the Communications Act 2003 s 406(1), Sch 17 para 57(1)(e), (2)). References to statutory undertakers in the New Towns Act 1981 s 39 (as amended) do not, however, include references to any water or sewerage undertaker; and references to a statutory undertaking do not include references to the statutory undertaking of such an undertaker: Water Act 1989 s 190(1), Sch 25 para 1(5). For the meaning of 'statutory undertakers' generally see PARA 1344 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the New Towns Act 1981 s 39 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 New Towns Act 1981 s 39(1).

8 For the meaning of 'consult' para 2 note 1 ante.

9 As to county councils see PARA 28 ante.

10 See the New Towns Act 1981 s 39(2A) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(6)).

11 As to district councils (of which there are none in Wales) see PARA 28 ante.

12 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

13 New Towns Act 1981 s 39(2).

14 Ibid s 39(3).

15 Ie ibid s 39(1): see the text and notes 1-7 supra.

16 Ibid s 39(4). See also note 4 supra. For the meaning of 'the appropriate minister' generally see PARA 1314 ante.

17 Ie under ibid ss 41-80 (as amended): see PARA 1406 et seq post.

18 No order may be so made unless a draft of the order has been laid before, and approved by resolution of, the House of Commons: ibid s 39(5A) (added by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 6). Any such order must be made by statutory instrument: New Towns Act 1981 s 77(3). As

to the making of orders generally see PARA 1311 ante. As to parliamentary procedure in relation to orders made by the Assembly see PARA 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS; PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

19 Ibid s 39(5) (amended by the New Towns and Urban Development Corporations Act 1985 Sch 3 para 6).

20 New Towns Act 1981 s 39(6).

UPDATE

1405 Power of development corporation to transfer undertakings

TEXT AND NOTES--New Towns Act 1981 s 39 further amended: Housing and Regeneration Act 2008 Sch 5 para 7.

NOTE 18--New Towns Act 1981 s 77(3) amended: Housing and Regeneration Act 2008 Sch 5 para 27, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(vi) Position after Development of New Towns/B. TRANSFER OF PROPERTY AND DISSOLUTION OF DEVELOPMENT CORPORATIONS/1406. Transfer of property to Commission; dissolution of development corporation.

B. TRANSFER OF PROPERTY AND DISSOLUTION OF DEVELOPMENT CORPORATIONS

1406. Transfer of property to Commission; dissolution of development corporation.

Where the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied, after consultation³ with the council of every county⁴ and of every county borough in Wales⁵ or district in England⁶ in which the whole or any part of the area of a new town⁷ is situated, that the purposes for which the development corporation⁸ is established have been substantially achieved, he or the Assembly must by order⁹ direct that:

4987 (1) on such a date as may be specified in the order, the property of the corporation, other than excepted property¹⁰, shall vest in the Commission for the New Towns¹¹ and the corporation shall cease to act except for the purpose of taking such steps, if any, as may be authorised or required by the order to dispose¹² of any property so excepted, to prepare its final accounts and report¹³, or otherwise to wind up its affairs;

4988 (2) on that date, or such later date as may be fixed by or under the order, the corporation shall be dissolved¹⁴.

Where a development corporation discharges functions¹⁵ in relation to more than one new town, the Secretary of State or the Assembly may make an order under these provisions in relation to that corporation and to any of those towns without the other or others as if the corporation were not concerned with the other or others, but without providing for the dissolution of the corporation¹⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the New Towns Act 1981 s 41 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

3 For the meaning of 'consult' para 2 note 1 ante.

4 As to county councils see PARA 28 ante.

5 See the New Towns Act 1981 s 41(1A) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 63(7)).

6 As to district councils (of which there are none in Wales) see PARA 28 ante.

7 For the meaning of 'area of a new town' see PARA 1315 note 9 ante.

8 For the meaning of 'development corporation' see PARA 1322 ante.

9 Any such order must be made by statutory instrument: New Towns Act 1981 s 77(3). As to the making of orders generally see PARA 1311 ante.

10 As to excepted property see PARA 1408 post.

11 As to the Commission for the New Towns see PARA 1383 et seq ante.

12 For the meaning of 'dispose' see PARA 1313 note 4 ante.

13 As to accounts see PARA 1402 ante.

14 New Towns Act 1981 s 41(1). See eg the Telford Development Corporation (Transfer of Property and Dissolution) Order 1991, SI 1991/1980; the Milton Keynes Development Corporation (Transfer of Property and Dissolution) Order 1992, SI 1992/525. As to local inquiries for the purpose of the exercise of the functions of the Secretary of State or the Assembly under these provisions see PARA 1312 ante.

With respect to the transfer to the Commission by such an order of the property of a development corporation and with respect to matters arising out of the transfer or out of the dissolution of the corporation, the New Towns Act 1981 s 41(1), Sch 10 (as amended) (see PARAS 1407-1409 post) has effect; and the Secretary of State or the Assembly may by order under s 41 (as amended) make such further incidental or supplementary provisions as appear to him or to it to be necessary or expedient in relation to any such matter: s 41(2) (as so modified).

15 Ie by virtue of an order under *ibid* s 6: see PARA 1332 ante.

16 *Ibid* s 41(4). In the case of any such order, Sch 10 (as amended) applies subject to such modifications as may be provided by the order for the purpose in particular of determining what part of the corporation's property, rights, liabilities and obligations is to be transferred to the Commission: s 41(5).

UPDATE

1406 Transfer of property [...]; dissolution of development corporation

TEXT AND NOTES--New Towns Act 1981 s 41 further amended, s 41A added: Housing and Regeneration Act 2008 Sch 5 paras 8, 9, Sch 16.

NOTE 9--New Towns Act 1981 s 77(3) amended: Housing and Regeneration Act 2008 Sch 5 para 27, Sch 16.

Position after Development of New Towns/B. TRANSFER OF PROPERTY AND DISSOLUTION OF DEVELOPMENT CORPORATIONS/1407. Effect of order vesting property in the Commission.

1407. Effect of order vesting property in the Commission.

Where an order¹ provides that on a specified date the property of a development corporation², so far as not excepted³ by the order, shall vest in the Commission for the New Towns⁴, then on that date ('the transfer date') there are transferred to the Commission, by virtue of the order and without further assurance, all property, rights, liabilities and obligations which immediately before the transfer date were property, rights, liabilities or obligations of the corporation⁵.

Every agreement to which the development corporation was a party immediately before the transfer date, whether in writing or not, and whether or not of such a nature that rights, liabilities and obligations thereunder could be assigned by the corporation, has effect, unless its terms or subject matter make it impossible that it should have effect as modified in the following manner, from the transfer date as if:

- 4989 (1) the Commission had been a party to the agreement;
- 4990 (2) for any reference, however worded and whether express or implied, to the corporation there were substituted, as respects anything falling to be done on or after the transfer date, a reference to the Commission;
- 4991 (3) for any reference, however worded and whether express or implied, to any member or officer of the corporation there were substituted, as respects anything falling to be done on or after the transfer date, a reference to such person as the Commission may appoint or, in default of appointment, to the member or officer of the Commission who corresponds as nearly as may be to the member or officer in question of the corporation⁶;

and other documents, not being enactments⁷, which refer, whether specifically or generally, to the corporation are to be construed in accordance with heads (1) to (3) above so far as applicable⁸.

Where by the operation of any of the above provisions any right, liability or obligation vests in the Commission, the Commission and all other persons have⁹, as from the transfer date, the same rights, powers and remedies, and in particular the same rights as to the taking or resisting of legal proceedings or the making or resisting of applications to any authority for asserting, perfecting or enforcing that right, liability or obligation as they would have had if it had at all times been a right, liability or obligation of the Commission¹⁰; and any legal proceedings or application to any authority pending on the transfer date by or against the development corporation, and not relating to property, rights, liabilities or obligations excepted by the order from the transfer to the Commission, may be continued on and after that date by or against the Commission¹¹.

On the transfer date the New Towns Act 1981 and any other enactment relating to areas designated¹² as the site of a new town cease to apply to the town as an area so designated, except for the purposes of any functions remaining to the development corporation by virtue of the statutory provisions¹³ relating to excepted property¹⁴. The statutory provisions relating to the acquisition of land for highways¹⁵ continue, however, to have effect¹⁶ in relation to the town for such period, if any, as may be specified in the order¹⁷ relating to the town; and that order may provide that any other enactment applying in relation to the town immediately before the transfer date shall continue to apply, subject or not to any modifications specified in the order¹⁸.

Any permission for development¹⁹ in the new town granted by an order made, or having effect as made, under the Town and Country Planning Act 1990²⁰ and in force on the transfer date continues in force²¹ as if references in the order to the development corporation included the

Commission²²; and, where the development corporation was making contributions²³ to expenditure of a local authority²⁴ or statutory undertakers²⁵, or had obtained the Secretary of State's²⁶ consent or, in relation to Wales, the consent of the National Assembly for Wales²⁷, to making such contributions, the Commission has power to make or continue to make those contributions, whether or not the development corporation had undertaken any obligation to do so²⁸.

1 Ie under the New Towns Act 1981: see PARA 1406 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 As to excepted property see PARA 1408 post.

4 As to the Commission for the New Towns see PARA 1383 et seq ante.

5 New Towns Act 1981 s 41(2), (5), Sch 10 para 1(1). Any property vested in any person by virtue of an order under s 41 (as amended) transferring that property from a development corporation or from the Commission is not treated as so vested by way of sale for the purposes of the Finance Act 1895 s 12 (as amended) (stamp duty on certain statutory transfers by way of sale) (New Towns Act 1981 s 72(1)(a)); however, the Finance Act 1895 s 12 (as amended) now applies only in relation to stock and marketable securities and not to transfers of land. With regard to stamp duty land tax, however, a land transaction entered into on, in consequence of, or in connection with a reorganisation effected by or under a statutory provision is exempt from charge if both the purchaser and vendor are public bodies (see the Finance Act 2003 s 66) and it is apprehended that the transfers mentioned in the New Towns Act 1981 s 72(1)(a) fall within that exemption.

6 Ibid Sch 10 para 1(2).

7 For these purposes, 'enactment' means any Act of Parliament and any order, rules, regulations or similar instrument having effect by virtue of an Act of Parliament, and includes enactments passed or made on or after 30 October 1981, ie the date of the passing of the New Towns Act 1981, except in so far as any such enactment provides to the contrary: Sch 10 para 6. For the meaning of 'enactment' generally see PARA 1312 note 3 ante.

8 Ibid Sch 10 para 1(3).

9 Ie without prejudice to the generality of ibid Sch 10 para 1(1)-(3): see the text and notes 1-8 supra.

10 Ibid Sch 10 para 1(4).

11 Ibid Sch 10 para 1(5).

12 Ie under ibid s 1 (as amended): see PARA 1315 ante.

13 Ie by virtue of ibid Sch 10 para 2: see PARA 1408 post.

14 Ibid Sch 10 para 3(1). Nothing in Sch 10 para 1 (see the text and notes 1-11 supra) is to be construed as conferring on the Commission any rights, liabilities or obligations of a development corporation under any enactment: Sch 10 para 3(1). Schedule 10 para 3(1) does not affect the operation of Sch 10 para 1 or of any other enactment in relation to things done by or to a development corporation before the transfer date or in relation to matters arising out of things so done; but no order may be made under any enactment on or after the transfer date by virtue of this provision: Sch 10 para 3(2).

Where an enactment ceases to apply in relation to the town by virtue of Sch 10 (as amended), the Interpretation Act 1978 s 16(1) (which relates to the effect of repeals) has effect as it has effect on the repeal of one Act by another: New Towns Act 1981 Sch 10 para 3(5).

15 Ie ibid s 11 (as amended) (see PARA 1334 ante) and, so far as they have effect for the purposes of s 11 (as amended), the other provisions of the New Towns Act 1981.

16 Ie notwithstanding anything in ibid Sch 10 para 3(1): see the text and notes 12-14 supra.

17 Ie under ibid s 41 (as amended): see PARA 1406 ante.

18 Ibid Sch 10 para 3(4).

19 For the meaning of 'development' see PARA 1320 note 4 ante.

20 le under the Town and Country Planning Act 1990 s 59: see PARA 252 ante. As to permitted development see PARAS 1360-1363 ante.

21 le without prejudice to the New Towns Act 1981 Sch 10 para 3(2): see note 14 supra.

22 Ibid Sch 10 para 3(3)(a) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 51(4)).

23 le under the New Towns Act 1981 s 4(4)(a): see PARA 1323 ante.

24 For the meaning of 'local authority' see PARA 1315 note 4 ante.

25 For the meaning of 'statutory undertakers' see PARA 1344 ante.

26 As to the Secretary of State see PARA 19 ante.

27 As to the transfer of functions under the New Towns Act 1981 Sch 10 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

28 New Towns Act 1981 Sch 10 para 3(3)(c).

UPDATE

1407 Effect of order vesting property in the Commission

TEXT AND NOTES--New Towns Act 1981 s 41, Sch 10 further amended: Housing and Regeneration Act 2008 Sch 5 paras 8, 31, Sch 16.

NOTE 5--New Towns Act 1981 s 72(1)(a) amended: Housing and Regeneration Act 2008 Sch 5 para 25, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(vi) Position after Development of New Towns/B. TRANSFER OF PROPERTY AND DISSOLUTION OF DEVELOPMENT CORPORATIONS/1408. Excepted property.

1408. Excepted property.

Any order¹ providing that on a specified date the property of a development corporation² shall vest in the Commission for the New Towns³ may, if the Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ sees fit, except from the transfer to the Commission:

- 4992 (1) any books, papers or documents of the corporation;
- 4993 (2) any property, including in particular any trade or business, which the corporation has agreed to transfer to some person other than the Commission⁶, together with the corporation's rights, liabilities and obligations under that agreement, and any other rights, liabilities or obligations which it is necessary for the corporation to retain in order to give effect to that agreement;
- 4994 (3) such other property as the Secretary of State or the Assembly thinks expedient for the purpose of enabling the corporation to discharge any functions remaining to it,

and may provide for the disposal⁷ of any property so excepted and of any property received by the corporation after the transfer date⁸ under any such agreement or otherwise⁹.

Any expenses of the corporation on or after the transfer date, so far as not defrayed out of any such property¹⁰, must be defrayed by the Commission¹¹.

1 le any such order as is mentioned in the New Towns Act 1981 s 41(2), (4), Sch 10 para 1: see PARA 1407 ante.

2 For the meaning of 'development corporation' see PARA 1322 ante.

3 As to the Commission for the New Towns see PARA 1383 et seq ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the New Towns Act 1981 Sch 10 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.

6 As to the corporation's powers to transfer its undertaking to other persons see PARA 1406 ante.

7 For the meaning of 'dispose' see PARA 1313 note 4 ante.

8 For the meaning of 'the transfer date' see PARA 1407 ante.

9 New Towns Act 1981 s 41(2), (5), Sch 10 para 2(1). As to local inquiries for the purpose of the exercise of the functions of the Secretary of State or the Assembly under these provisions see PARA 1312 ante.

10 le any such property as is mentioned in the New Towns Act 1981 Sch 10 para 2(1): see the text and notes 1-9 supra.

11 Ibid Sch 10 para 2(2).

UPDATE

1408 Excepted property

TEXT AND NOTES--New Towns Act 1981 s 41, Sch 10 further amended: Housing and Regeneration Act 2008 Sch 5 paras 8, 31, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(2) NEW TOWNS/(vi) Position after Development of New Towns/B. TRANSFER OF PROPERTY AND DISSOLUTION OF DEVELOPMENT CORPORATIONS/1409. Financial provisions.

1409. Financial provisions.

In respect of expenditure of a development corporation¹ on matters other than the provision of housing accommodation², the Secretary of State³ with the Treasury's approval, or, in relation to Wales, the National Assembly for Wales⁴, may make to the Commission for the New Towns⁵ payments not exceeding those which, in his or the Assembly's opinion, he or it would have made⁶ to the corporation⁷.

The Secretary of State's or the Assembly's power to make advances to the Commission⁸ extends to the making of advances for the purpose of enabling the Commission to meet

liabilities transferred to the Commission from a development corporation, being liabilities properly chargeable to capital account by the corporation, or to make good to revenue account sums applied by a development corporation in meeting liabilities so chargeable⁹.

- 1 For the meaning of 'development corporation' see PARA 1322 ante.
- 2 As to housing generally, and the transfer of housing stock, see PARA 1382 ante.
- 3 As to the Secretary of State see PARA 19 ante.
- 4 As to the transfer of functions under the New Towns Act 1981 Sch 10 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. As to functions in relation to the Commission see, however, PARA 1385 the text and notes 12-14 ante.
- 5 As to the Commission for the New Towns see PARA 1383 et seq ante.
- 6 le under the New Towns Act 1981 s 58A(3) (as added): see PARA 1397 ante.
- 7 Ibid s 41(2), (4), Sch 10 para 4(1) (amended by the New Towns and Urban Development Corporations Act 1985 s 14(1), Sch 3 para 16). There must be paid out of moneys provided by Parliament any expenses of the Secretary of State under the New Towns Act 1981 Sch 10 para 4(1) (as so amended): Sch 10 para 4(2). This requirement does not apply to expenses of the Assembly: see the Government of Wales Act 1994 s 89(b).
- 8 le under the New Towns Act 1981 s 58(5) (as amended): see PARA 1396 ante.
- 9 Ibid Sch 10 para 5(1). Where the liabilities of a development corporation for the repayment of advances under s 58(1) (as amended) (see PARA 1396 ante), or for the payment of interest on such advances, are transferred to the Commission: (1) s 61(2), (3) (see PARA 1396 ante), s 66(1) (as amended) in its application to the Commission (see PARA 1401 ante), and s 69(1)(a) (see PARA 1404 ante) apply to those advances as if those advances had been made to the Commission under s 58(5) (as amended) (see PARA 1396 ante); and (2) s 69(1) (b) (see PARA 1404 ante) ceases to apply in relation to them: Sch 10 para 5(2).

UPDATE

1409 Financial provisions

TEXT AND NOTES--New Towns Act 1981 s 41, Sch 10 further amended: Housing and Regeneration Act 2008 Sch 5 paras 8, 31, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(i) Designated Districts/1410. Designation of districts by the Secretary of State or the Assembly.

(3) INNER URBAN AREAS

(i) Designated Districts

1410. Designation of districts by the Secretary of State or the Assembly.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that:

- 4995 (1) special social need exists in any inner urban area in Great Britain³; and

4996 (2) the conditions which give rise to the existence of that need could be alleviated by the exercise of his or the Assembly's statutory powers⁴,

he may by order specify any district⁵, or the Assembly may by order specify any Welsh county or county borough, which includes the whole or any part of that area as a designated district for the purposes of the Inner Urban Areas Act 1978⁶.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Inner Urban Areas Act 1978 s 1 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'Great Britain' see PARA 60 note 5 ante. The Inner Urban Areas Act 1978 does not extend to Northern Ireland: s 18(2).

4 The powers conferred by the Inner Urban Areas Act 1978: see PARA 1411 et seq post.

5 For these purposes, 'district' includes a London borough, and any reference to the council of a district is to be construed accordingly: ibid s 17(1). For the meaning of 'London borough' see PARA 28 note 7 ante.

6 Ibid s 1(1) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 55(1)(a)). Any order under the Inner Urban Areas Act 1978 must be made by statutory instrument and may be varied or revoked by a subsequent order so made: s 15(1). A statutory instrument containing an order under s 1(1) (as amended) is, if made by the Secretary of State, subject to annulment in pursuance of a resolution of either House of Parliament: s 15(2). As to parliamentary procedure in relation to orders made by the Assembly see PARA 20 ante.

In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly (see note 2 supra), the Secretary of State made the following orders:

- 82 (1) the Inner Urban Areas (Designated Districts) (England and Wales) Order 1978, SI 1978/1314, specifying the districts of Barnsley, Birmingham, Blackburn, Blaenau Gwent, Bolton, Bradford, Brent, Cardiff, Doncaster, Ealing, Gateshead, Greenwich, Hackney, Hammersmith, Haringey, Hartlepool, Islington, Kingston upon Hull, Lambeth, Leeds, Leicester, Lewisham, Liverpool, Manchester, Middlesbrough, Newcastle upon Tyne, Newham, Newport, North Tyneside, Nottingham, Oldham, Rhondda, Rochdale, Rotherham, Saint Helens, Salford, Sandwell, Sefton, Sheffield, South Tyneside, Southwark, Sunderland, Swansea, Tower Hamlets, Wandsworth, Wigan and Wirral;
- 83 (2) the Inner Urban Areas (Designated Districts) (England and Wales) (No 2) Order 1978, SI 1978/1486, specifying the district of Wolverhampton;
- 84 (3) the Inner Urban Areas (Designated Districts) Order 1983, SI 1983/289, specifying the districts of Burnley, Coventry, Knowsley, Langbaugh and Walsall;
- 85 (4) the Inner Urban Areas (Designated Districts) (Wales) Order 1983, SI 1983/1851, specifying the districts of Afan, Cynon Valley and Merthyr Tydfil;
- 86 (5) the Inner Urban Areas (Designated Districts) (Wales) Order 1987, SI 1987/115, designating the districts of Ogwr and Rhymney Valley.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(i) Designated Districts/1411. Loans for acquisition of, or works on, land.

1411. Loans for acquisition of, or works on, land.

Where a designated district authority¹ is satisfied that:

- 4997 (1) the acquisition by any person of land² situated within the designated district or, except where the land is in Wales, within the same county as the designated district; or
- 4998 (2) the carrying out by any person of any works on land so situated,

would benefit the designated district, the authority may make a loan to that person for the purpose of enabling him to acquire that land or, as the case may be, carry out those works³. The council of a designated district may not, however, make a loan as respects land situated in the same county as that district without first consulting⁴ the council of the district in which the land is situated⁵.

Such a loan, together with interest thereon⁶, must be secured by a mortgage of the land⁷; and a mortgage securing such a loan:

- 4999 (a) must be taken at the time when the loan is made or, in the case of a loan made for the purpose of enabling a person to carry out works on land belonging to the authority in pursuance of an agreement whereby the land will be sold or leased to him if the works are carried out to the authority's satisfaction, at the time when the land is sold or leased to him in pursuance of that agreement⁸;

- 5000 (b) must include provision:

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- 26. (i) for repayment being made, subject to heads (iii) and (iv) below, within such period not exceeding 30 years as may be specified in the mortgage;
- 27. (ii) for repayment being made, subject to heads (iii) and (iv) below, either by instalments of principal or by an annuity of principal and interest combined;
- 28. (iii) that, in the event of any of the conditions subject to which the loan is made not being complied with, the balance for the time being unpaid shall become repayable on demand by the authority;
- 29. (iv) that that balance, or such part thereof as may be provided for in the mortgage, may⁹ be repaid on any conditions as may be specified in the mortgage after one month's written notice of intention to repay has been given to the authority;
- 30. (v) where repayment is to be made by an annuity of principal and interest combined, for determining the amount by which the annuity or the life of the annuity is to be reduced when a part of the loan is paid off otherwise than by way of an instalment of the annuity¹⁰.

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The amount of the principal of such a loan may not exceed:

- 5001 (A) in the case of a loan made for the purpose of enabling a person to acquire land, 90% of the value of the security;
- 5002 (B) in the case of a loan made for the purpose of enabling a person to carry out works, 90% of the value which it is estimated the security will bear when the works have been carried out¹¹.

1 For these purposes, unless the context otherwise requires, 'designated district authority', in relation to a designated district, means the council of that district or the council of the county which includes that district but, in relation to a designated district which is a Welsh county or county borough, means the council of that county or county borough: Inner Urban Areas Act 1978 ss 1(2), 17(1) (amended by the Local Government

(Wales) Act 1994 s 66(6), Sch 16 para 55(1); the Local Government etc (Scotland) Act 1994 s 180, Sch 13 para 114(1), (2), Sch 14). 'County' includes Greater London: Inner Urban Areas Act 1978 s 17(1). 'Designated district' means any district or Welsh county or county borough specified as such a district by an order made under s 1(1) (as amended) (see PARA 1410 ante): s 17(1) (definition amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 55(5)). For the meaning of 'district' see PARA 1410 note 5 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

There must be paid out of money provided by Parliament any increase attributable, in England, to the Inner Urban Areas Act 1978 in the sums so payable under any other Act: s 16. For these purposes, except so far as the context otherwise requires, any reference to an enactment is to be construed as a reference to that enactment as amended by or under any other enactment: s 17(2). Section 16 does not apply in Wales: see the Government of Wales Act 1998 s 89(b).

As to the exercise of certain powers of designated district authorities by urban development corporations see PARA 1435 post.

2 For these purposes, unless the context otherwise requires, 'land' includes land covered with water, any interest in land and any easement, servitude or right in, to or over land: Inner Urban Areas Act 1978 s 17(1).

3 Ibid s 2(1) (amended by the Local Government (Wales) Act 1994 Sch 16 para 55(2); and by the Local Government etc (Scotland) Act 1994 Sch 13 para 114(1), (3), Sch 14). As to the exercise of such power by an urban development corporation see PARA 1435 post.

4 For the meaning of 'consult' see PARA 2 note 1 ante.

5 Inner Urban Areas Act 1978 s 2(1) (as amended: see note 3 supra).

6 A loan under ibid s 2 (as amended) carries interest either (1) at a rate not less than 0.25% greater than the rate which, on the date of acceptance of the offer to make the loan, is the rate for the time being determined by the Treasury in accordance with the National Loans Act 1968 s 5 (as substituted and amended) (see CONSTITUTIONAL LAW AND HUMAN RIGHTS) in respect of local loans made on the security of local rates on that date and for the same period as the loan; or (2) at such other rate as the Secretary of State or, in relation to Wales, the National Assembly for Wales may fix in the case of the loan: Inner Urban Areas Act 1978 s 2(4). Where, however, on the date of acceptance of an offer to make a loan under the Inner Urban Areas Act 1978 s 2 (as amended), there are two or more rates of interest for the time being determined by the Treasury as mentioned in s 2(4), the reference in s 2(4) to the rate so determined is to be read as a reference to such one of those rates as may be specified in a direction given by the Treasury for these purposes; and the Treasury must cause any such direction to be published in the London Gazette as soon as may be after giving it: s 2(5). As to the transfer of functions under s 2 (as amended), other than the Treasury function under s 2(5), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

For these purposes, 'local loans' and 'made on the security of local rates' have the same meanings as in the National Loans Act 1968 s 6(2): Inner Urban Areas Act 1978 s 2(4). As to local loans see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 736; and as to the Secretary of State see PARA 19 ante.

Any direction given under the Inner Urban Areas Act 1978 may be varied or revoked by a subsequent direction so given: s 15(3).

7 Ibid s 2(2).

8 Ibid s 2(6).

9 Ie in any event other than that specified in ibid s 2(7)(c): see head (b)(iii) in the text.

10 Ibid s 2(7).

11 Ibid s 2(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(i) Designated Districts/1412. Loans and grants for establishing common ownership enterprises and co-operative enterprises.

1412. Loans and grants for establishing common ownership enterprises and co-operative enterprises.

Where a designated district authority¹ is satisfied that the establishment by any persons of a body which is intended to meet the specified statutory requirements with regard to common ownership enterprises² or co-operative enterprises³ would benefit the designated district⁴, the authority may make a loan or grant or both to those persons for the purpose of enabling them to establish that body⁵.

In so making a loan or grant, a designated district authority may⁶ impose such conditions as the authority thinks fit and may in particular impose a condition requiring the repayment of all or any part of the loan or grant if any other condition is not complied with, or in such other circumstances as the authority may specify⁷.

1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.

2 I.e. the Industrial Common Ownership Act 1976 s 2(1)(a)-(c).

3 I.e. *ibid* s 2(2)(a), (b).

4 For the meaning of 'designated district' see PARA 1411 note 1 ante.

5 Inner Urban Areas Act 1978 s 3(1). As to the exercise of this power by an urban development corporation see PARA 1435 post.

6 I.e. subject to *ibid* s 3(2). The Secretary of State or, in relation to Wales, the National Assembly for Wales may, either generally or with respect to particular cases, give directions as to the making of loans and grants under s 3 and in particular as to the imposition of conditions: s 3(2). As to the variation and revocation of directions see PARA 1411 note 6 ante. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under s 3, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Inner Urban Areas Act 1978 s 3(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(ii) Improvement Areas/1413. Procedure for declaring area to be improvement area.

(ii) Improvement Areas

1413. Procedure for declaring area to be improvement area.

Where a designated district authority¹ is satisfied that conditions in an area within the designated district² which:

- 5003 (1) is predominantly an industrial area, a commercial area or an industrial and commercial area; or
- 5004 (2) if developed in accordance with the development plan³, would be predominantly such an area,

could be improved by the exercise of the statutory powers in relation to the improvement of amenities and buildings⁴, the authority may, after consulting⁵, in England, either the district or county council as appropriate⁶, pass a resolution declaring the area to be an improvement

area⁷. Such a resolution must specify the date on which it is to take effect, and that date must not be earlier than the end of the period of three months beginning with the passing of the resolution⁸.

As soon as practicable after passing the resolution the authority must:

- 5005 (a) publish a notice⁹ of the effect of the resolution identifying the area and naming a place or places where a copy of the resolution and a map on which the area is defined may be inspected at all reasonable times; and
- 5006 (b) send to the Secretary of State¹⁰ or, in relation to Wales, to the National Assembly for Wales¹¹ a copy of the resolution and a copy of the map¹².

If, however, the area declared to be an improvement area by such a resolution is wholly or partly included in an area of land¹³ designated as an urban development area¹⁴, the Secretary of State or the Assembly may, if it appears appropriate to him or to it:

- 5007 (i) at any time before the resolution takes effect, send to the authority a notification¹⁵ that the land included in the urban development area is not to be or to be included in the improvement area by virtue of the resolution; and
- 5008 (ii) at any time after the resolution takes effect, send to the authority a notification¹⁶ that the land included in the urban development area is no longer to be or to be included in the improvement area by virtue of it¹⁷.

As soon as practicable after receiving the notification the authority must publish a notice of the effect of the notification naming a place or places where a copy of the notification and, in the case of a notification affecting a part only of the area, a map on which that part of the area is defined may be inspected at all reasonable times¹⁸.

1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.

2 For the meaning of 'designated district' see PARA 1411 note 1 ante.

3 For the meaning of 'development plan' see PARA 91 ante.

4 Ie the powers conferred by the Inner Urban Areas Act 1978 s 5 (see PARA 1414 post) or s 6 (as amended) (see PARA 1415 post).

5 For the meaning of 'consult' see PARA 2 note 1 ante.

6 Ie the other designated district authority: see PARA 1411 ante. This requirement does not apply in Wales: see the Inner Urban Areas Act 1978 s 4(1), Schedule para 1(1A) (added by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 55(6)).

7 Inner Urban Areas Act 1978 Schedule para 1(1). For these purposes, 'improvement area', in relation to a designated district authority, means an area declared to be such an area by that authority: see ss 4(2), 17(1). As to the exercise of this power by an urban development corporation see PARA 1435 post.

8 Ibid Schedule para 1(2).

9 For these purposes, any reference to publication of a notice is a reference to publication in two or more newspapers circulating in the locality, of which at least one must, if practicable, be a local newspaper: *ibid* Schedule para 4.

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of functions under the Inner Urban Areas Act 1978 s 4, Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Inner Urban Areas Act 1978 Schedule para 1(3).

13 For the meaning of 'land' see PARA 1411 note 2 ante.

14 le under the Local Government, Planning and Land Act 1980 s 134 (as amended): see PARA 1426 post.

15 Such a notification takes effect on the date on which it is received by the authority: Inner Urban Areas Act 1978 Schedule para 2(2).

16 Such a notification must specify the date on which it is to take effect; and that date must not be earlier than the end of the period of six months beginning with the sending of the notification: *ibid* Schedule para 2(3). Such a notification does not, however, affect the continued operation of s 5 or s 6 (as amended) in relation to any loan or grant the offer of which is accepted before the notification takes effect: Schedule para 5.

17 *Ibid* Schedule para 2(1) (substituted by the Local Government, Planning and Land Act 1980 s 191(2)).

18 Inner Urban Areas Act 1978 Schedule para 2(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(ii) Improvement Areas/1414. Loans and grants for improving amenities.

1414. Loans and grants for improving amenities.

Where a designated district authority¹ is satisfied that the carrying out by any person of any of the following works, namely:

- 5009 (1) the construction of fencing or walls;
- 5010 (2) landscaping and the planting of trees, shrubs and plants;
- 5011 (3) the clearing or levelling of land²;
- 5012 (4) the cleansing of watercourses, whether natural or artificial, or the reclamation of land covered with water;
- 5013 (5) the cleaning, painting, repair or demolition of structures or buildings; and
- 5014 (6) the construction of parking spaces, access roads, turning heads or loading bays,

on land situated within an improvement area³ would benefit that area, the authority may make a loan or grant or both to that person for the purpose of enabling him to carry out those works⁴.

1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.

2 For the meaning of 'land' see PARA 1411 note 2 ante.

3 For the meaning of 'improvement area' see PARA 1413 note 7 ante.

4 Inner Urban Areas Act 1978 s 5(1), (2). As to the exercise of this power by an urban development corporation see PARA 1435 post. Section 3(2), (3) (see PARA 1412 ante) applies in relation to the making of loans or grants under s 5 as it applies in relation to the making of loans or grants under s 3: s 5(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(ii) Improvement Areas/1415. Grants for converting or improving buildings.

1415. Grants for converting or improving buildings.

Where a designated district authority¹ is satisfied that the carrying out by any person of any works consisting of:

- 5015 (1) the conversion, extension, improvement or modification of industrial or commercial buildings²; and
- 5016 (2) the conversion of other buildings into industrial or commercial buildings,

on land³ situated within an improvement area⁴ would benefit that area, the authority may make a grant to that person for the purpose of enabling him to carry out those works⁵; but the amount of such a grant may not exceed 50% of the cost of carrying out the works⁶.

1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.

2 For these purposes, 'industrial or commercial building' means a building in use or intended for use for industrial or commercial purposes: Inner Urban Areas Act 1978 s 6(5).

3 For the meaning of 'land' see PARA 1411 note 2 ante.

4 For the meaning of 'improvement area' see PARA 1413 note 7 ante.

5 Inner Urban Areas Act 1978 s 6(1), (2). As to the exercise of this power by an urban development corporation see PARA 1435 post. Section 3(2), (3) (see PARA 1412 ante) applies in relation to the making of grants under s 6 (as amended) as it applies in relation to the making of grants under s 3: s 6(4).

6 Ibid s 6(3) (substituted by the Local Government, Planning and Land Act 1980 s 191(1)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(ii) Improvement Areas/1416. Termination of all or part of an improvement area.

1416. Termination of all or part of an improvement area.

At any time after a resolution declaring an area to be an improvement area¹ takes effect, the designated district authority² may pass a further resolution declaring that all or any part of the improvement area³ is no longer to be such an area⁴. Such a resolution takes effect on the date on which it is passed⁵ but does not affect the continued operation of the statutory provisions with regard to the improvement of amenities and buildings⁶ in relation to any loan or grant the offer of which is accepted before the resolution takes effect⁷.

As soon as practicable after passing the resolution the authority must:

- 5017 (1) publish a notice⁸ of the effect of the resolution naming a place or places where a copy of the resolution and, in the case of a resolution affecting part only of the area, a map on which that part of the area is defined may be inspected at all reasonable times; and
- 5018 (2) send to the Secretary of State⁹ or, in relation to Wales, to the National Assembly for Wales¹⁰ a copy of the resolution and a copy of any map¹¹.

1 ie a resolution under the Inner Urban Areas Act 1978 s 4(1), Schedule para 1(1): see PARA 1413 ante.

- 2 For the meaning of 'designated district authority' see para 1411 note 1 ante.
- 3 For the meaning of 'improvement area' see PARA 1413 note 7 ante.
- 4 Inner Urban Areas Act 1978 s 4(1), Schedule para 3(1).
- 5 Ibid Schedule para 3(2).
- 6 Ie ibid s 5 (see PARA 1414 ante) or s 6 (as amended) (see PARA 1415 ante).
- 7 Ibid Schedule para 5.
- 8 For the meaning of references to the publication of notices see PARA 1413 note 9 ante.
- 9 As to the Secretary of State see PARA 19 ante.
- 10 As to the transfer of functions under the Inner Urban Areas Act 1978 Schedule (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 11 Inner Urban Areas Act 1978 Schedule para 3(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(iii) Arrangements for Determining Action/1417. Power to enter into arrangements.

(iii) Arrangements for Determining Action

1417. Power to enter into arrangements.

If the Secretary of State¹ is or ministers² are satisfied that special social need exists in any inner urban area in England³ and that the conditions which give rise to the existence of that need are such that a concerted effort should be made to alleviate them, he or they may, as respects any district⁴ which includes the whole or any part of that area, enter into arrangements with:

- 5019 (1) as respects any such district, the council of that district or the council of the county⁵ which includes that district or both; and
- 5020 (2) such other person or persons, if any, as may appear to him or them appropriate,

being arrangements for determining, by consultation⁶ between the parties, the action⁷ to be taken, whether in the district or not, for the purpose of alleviating those conditions⁸.

Similarly, if the National Assembly for Wales⁹ is satisfied that such need exists in any inner urban area in Wales and that the conditions which give rise to the existence of that need are such that a concerted effort should be made to alleviate them, the Assembly may, as respects any Welsh county or county borough which includes the whole or any part of that area, enter into such arrangements with, as respects any such Welsh county or county borough, the council of that county or county borough and such other person or persons, if any, as may appear to the Assembly appropriate¹⁰.

Where each of two or more districts, Welsh counties or county boroughs includes the whole or any part of any inner urban area as respects which the Secretary of State or the Assembly is, or ministers are, so satisfied, such arrangements may take the form of a single set of arrangements covering both or all of those districts, Welsh counties or county boroughs¹¹.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 For these purposes, 'ministers' means the Secretary of State and any other Minister or Ministers of the Crown: Inner Urban Areas Act 1978 s 7(3).
- 3 The statutory wording is 'Great Britain' but in Wales these functions are exercisable by the National Assembly for Wales: see the text and notes 9-10 infra. For the meaning of 'Great Britain' see PARA 60 note 5 ante. The Inner Urban Areas Act 1978 does not extend to Northern Ireland (see s 18(2)); and Scotland is outside the scope of this work.
- 4 For the meaning of 'district' see PARA 1410 note 5 ante.
- 5 For the meaning of 'county' see PARA 1411 note 1 ante.
- 6 For the meaning of 'consult' see PARA 2 note 1 ante.
- 7 For these purposes, 'action' includes the exercise of functions under the Inner Urban Areas Act 1978 or any other Act, whenever passed, including in particular functions, whether of ministers or councils, relating to planning or the compulsory acquisition of land: s 7(3).
- 8 Ibid s 7(1) (amended for these purposes by the Local Government etc (Scotland) Act 1994 s 180, Sch 13 para 114(1), (4), Sch 14; the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 55(3)). Such arrangements may also be entered into with an urban development corporation: see PARA 1435 post.
- 9 As to the transfer of functions under the Inner Urban Areas Act 1978 s 7 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 10 Inner Urban Areas Act 1978 s 7(1) (amended for these purposes by the Local Government (Wales) Act 1994 Sch 16 para 55(3)).
- 11 Inner Urban Areas Act 1978 s 7(2), (2A) (s 7(2A) added by the Local Government (Wales) Act 1994 Sch 16 para 55(4)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(iv) Special Areas/1418. Orders specifying special areas.

(iv) Special Areas

1418. Orders specifying special areas.

Where any arrangements¹ have been entered into as respects a designated district², the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may⁵ by order specify the whole or any part of that district⁶ as an area as respects which the special statutory powers⁷ are exercisable by the designated district authority⁸ or, as the case may be, either or both of the designated district authorities with which he or the Assembly has entered into those arrangements⁹. An area so specified in relation to a designated district authority is referred to, in relation to that authority, as a 'special area'¹⁰.

The Secretary of State or the Assembly may not, however, so make an order enabling a designated district authority to exercise the special statutory powers¹¹ as respects a special area except with the consent of that authority¹².

- 1 ie under the Inner Urban Areas Act 1978 s 7(1) (as amended): see PARA 1417 ante.
- 2 For the meaning of 'designated district' see PARA 1411 note 1 ante.

- 3 As to the Secretary of State see PARA 19 ante.
- 4 As to the transfer of functions under the Inner Urban Areas Act 1978 s 8, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 5 Ie subject to the Inner Urban Areas Act 1978 s 8(3): see the text and notes 11-12 infra.
- 6 For the meaning of 'district' see PARA 1410 note 5 ante.
- 7 Ie the powers conferred by the Inner Urban Areas Act 1978 ss 9-11: see PARAS 1419-1421 post.
- 8 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.
- 9 Inner Urban Areas Act 1978 s 8(1). As to the application of s 8 to an urban development corporation see PARA 1435 post; and as to the making of orders generally see PARA 1410 note 5 ante.
- 10 Ibid ss 8(2), 17(1).
- 11 See note 7 supra.
- 12 Inner Urban Areas Act 1978 s 8(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(iv) Special Areas/1419. Loans for site preparation.

1419. Loans for site preparation.

Where a designated district authority¹ is satisfied that the carrying out by any person of any of the following works, namely:

- 5021 (1) the demolition of structures or buildings;
- 5022 (2) the removal of foundations;
- 5023 (3) the clearance of land²;
- 5024 (4) the levelling of land;
- 5025 (5) the construction of access roads; and
- 5026 (6) the provision of sewers or drains,

on land situated within a special area³ would benefit that area, the authority may make a loan to that person for the purpose of enabling him to carry out those works⁴.

Where a designated district authority is satisfied that the carrying out by any statutory undertakers⁵ or other authority of any works for the provision of electricity, gas, water or sewerage services for land situated within a special area would benefit that area, the authority may make a loan to any person for the purpose of enabling him to make any payments required as a condition of the carrying out of those works⁶.

In so making a loan, an authority may agree, if it thinks fit, that no interest shall be payable in respect of, and no repayments of principal shall be required within, such period beginning with the making of the loan and not exceeding two years as the authority may determine⁷.

The Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ may give directions, either generally or with respect to particular cases, as to the making of such loans and, in particular, as to the imposition of conditions¹⁰.

- 1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.
- 2 For the meaning of 'land' see PARA 1411 note 2 ante.
- 3 For the meaning of 'special area' see PARA 1418 ante.
- 4 Inner Urban Areas Act 1978 s 9(1), (2). Subject to s 9(5), (6) (see the text and notes 7-10 infra), s 2(2)-(7) (see PARA 1411 ante) applies in relation to loans made under s 9 as it applies in relation to loans made under s 2 (as amended) for the purpose of enabling a person to carry out works: s 9(4). As to the exercise of this power by an urban development corporation see PARA 1435 post.
- 5 The following are deemed to be statutory undertakers for this purpose: (1) a gas transporter (see the Gas Act 1995 s 16(1), Sch 4 para 2(1)(xxvi); the Utilities Act 2000 s 76(7)); (2) a water undertaker and a sewerage undertaker (see the Water Act 1989 s 190(1), Sch 25 para 1(7)); (3) an electricity supplier (see the Electricity Act 1989 s 112(1), Sch 16 para 1(1)(xxxii); the Utilities Act 2000 s 31(3)). As to water and sewerage undertakers see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 999 et seq; WATER AND WATERWAYS vol 100 (2009) PARAS 108, 134 et seq; and as to gas transporters and electricity suppliers see FUEL AND ENERGY vol 19(2) (2007 Reissue) PARAS 835 et seq, 1033 et seq.
- 6 Inner Urban Areas Act 1978 s 9(3). See also note 4 supra.
- 7 Ibid s 9(5).
- 8 As to the Secretary of State see PARA 19 ante.
- 9 As to the transfer of functions under the Inner Urban Areas Act 1978 s 9, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 10 Inner Urban Areas Act 1978 s 9(6). As to the variation and revocation of directions see PARA 1411 note 6 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(iv) Special Areas/1420. Grants towards rent.

1420. Grants towards rent.

Where a designated district authority¹ is satisfied that the taking by any person of a lease of a building which is intended for use for industrial or commercial purposes, and is situated within a special area², would benefit that area, the authority may, in respect of such period and by such instalments as it may determine, make a grant to that person towards the rent payable under that lease³.

- 1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.
- 2 For the meaning of 'special area' see PARA 1418 ante.
- 3 Inner Urban Areas Act 1978 s 10(1). As to the exercise of this power by an urban development corporation see PARA 1435 post. Section 3(2), (3) (see PARA 1412 ante) applies in relation to the making of grants under s 10 as it applies in relation to the making of grants under s 3: s 10(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE)

PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(3) INNER URBAN AREAS/(iv) Special Areas/1421. Grants towards loan interest.

1421. Grants towards loan interest.

Where:

5027 (1) a designated district authority¹ is satisfied that the acquisition by a small firm² of land³ situated within a special area⁴, or the carrying out by such a firm of any works on land so situated, would benefit the special area; and

5028 (2) a loan is made to the firm, whether by the authority or by any other person, for the purpose of enabling it to acquire that land or, as the case may be, carry out those works,

the authority may, in respect of such period and by such instalments as it may determine, make a grant to the firm towards the interest payable in respect of that loan⁵.

1 For the meaning of 'designated district authority' see PARA 1411 note 1 ante.

2 For these purposes, 'small firm' means an industrial or commercial undertaking which has no more than 50 employees: Inner Urban Areas Act 1978 s 11(3).

3 For the meaning of 'land' see PARA 1411 note 2 ante.

4 For the meaning of 'special area' see PARA 1418 ante.

5 Inner Urban Areas Act 1978 s 11(1). As to the exercise of this power by an urban development corporation see PARA 1435 post. Section 3(2), (3) (see PARA 1412 ante) applies in relation to the making of grants under s 11 as it applies in relation to the making of grants under s 3: s 11(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(i) Legislation and Administration; in general/1422. Introduction.

(4) URBAN DEVELOPMENT AREAS

(i) Legislation and Administration; in general

1422. Introduction.

Part XVI of the Local Government, Planning and Land Act 1980¹ provides for the designation of urban development areas² and the establishment of urban development corporations for those areas³ with the general object of urban regeneration⁴. A number of areas in England have been designated and development corporations established under that legislation; the majority of those development corporations have now been dissolved⁵ and their property transferred to the Commission for the New Towns⁶, whose functions with regard to urban development areas have already been discussed⁷. Extant development corporations in England include the Thurrock Development Corporation, established in 2003⁸, and the London Thames Gateway Development Corporation, established in 2004⁹.

In Wales, the Cardiff Bay Development Corporation¹⁰ was formally wound up by the National Assembly for Wales at the end of March 2000 and its assets, functions and associated liabilities

were transferred on 1 April 2000 to four successor organisations: Cardiff County Council, the Welsh Development Agency, the Countryside Council for Wales and the Vale of Glamorgan County Borough Council¹¹.

1 See the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1423 et seq post.

2 See ibid s 134 (as amended); and PARAS 1426-1427 post.

3 See ibid s 135 (as amended); and PARA 1428 post.

4 See ibid s 136; and PARA 1429 post.

5 See eg the Urban Development Corporations in England (Dissolution) Order 1998, SI 1998/953; and PARA 1490 post.

6 See eg the Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85; and PARA 1489 post.

7 See the New Towns Act 1981 s 36 (as amended); and PARA 1384 ante.

8 See the Thurrock Development Corporation (Area and Constitution) Order 2003, SI 2003/2896.

9 See the London Thames Gateway Development Corporation (Area and Constitution) Order 2004, SI 2004/1642.

10 As to the establishment of the Cardiff Bay Development Corporation (which was the sole urban development corporation established in Wales under the Local Government, Planning and Land Act 1980 Pt XVI (as amended)) see the Cardiff Bay Development Corporation (Area and Constitution) Order 1987, SI 1987/646.

11 See the Cardiff Bay Development Corporation (Transfer of Property, Rights and Liabilities) Order 2000, SI 2000/996; the Cardiff Bay Development Corporation (Transfer of Property, Rights and Liabilities) (National Assembly for Wales) Order 2000, SI 2000/997; the Cardiff Bay Development Corporation (Area and Constitution) Order 2000, SI 2000/998; and the Cardiff Bay Development Corporation (Dissolution) Order 2000, SI 2000/1023.

UPDATE

1422 Introduction

TEXT AND NOTE 11--The Welsh Development Agency has been abolished and its functions, property, rights and liabilities have been transferred to the National Assembly for Wales: see the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(i) Legislation and Administration; in general/1423. Service of notices.

1423. Service of notices.

The following provisions have effect in relation to any notice required or authorised¹ to be served on any person by an urban development corporation².

Any such notice may:

- 5029 (1) be served on the person in question either by delivering it to him, or by leaving it at his proper address³, or by sending it by post to him at that address⁴;
 5030 (2) in the case of a body corporate, be given to or served on the secretary or clerk of that body⁵;
 5031 (3) in the case of a partnership, be given to or served on a partner or a person having the control or management of the partnership business⁶.

If the name or address of any owner, lessee or occupier of land⁷ to or on whom any such notice is to be served cannot after reasonable inquiry be ascertained, the document may be served either by leaving it in the hands of a person who is or appears to be resident or employed on the land or by leaving it conspicuously affixed to some building or object on the land⁸.

Where the fee simple of any ecclesiastical property⁹ is in abeyance, it is treated for the purposes of a compulsory acquisition¹⁰ of the property as being vested in the Church Commissioners, and any notice to treat must be served, or is deemed to have been served, accordingly¹¹. Where any notice, other than a notice to treat, is required¹² to be served on an owner of land, and the land is ecclesiastical property, a like notice must be served on the Church Commissioners¹³.

1 le under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq post.

2 Ibid s 168(1).

3 For these purposes, and for the purposes of the Interpretation Act 1978 s 7 (service of documents by post: see STATUTES vol 44(1) (Reissue) PARA 1388) in its application for these purposes, the proper address of any person to or on whom a notice is to be given or served is his last known address, except that (1) in the case of a body corporate or its secretary or clerk, it is the address of the registered or principal office of that body; (2) in the case of a partnership or a person having the control or management of the partnership business, it is that of the principal office of the partnership; and, for these purposes, the principal office of a company registered outside the United Kingdom or of a partnership carrying on business outside the United Kingdom is its principal office within the United Kingdom: Local Government, Planning and Land Act 1980 s 168(4).

If the person to be given or served with any notice mentioned in s 168(1) (see the text and notes 1-2 supra) has specified an address within the United Kingdom other than his proper address within the meaning of s 168(4) as the one at which he or someone on his behalf will accept documents of the same description as that notice, that address is also treated for these purposes and for the purposes of the Interpretation Act 1978 s 7 as his proper address: Local Government, Planning and Land Act 1980 s 168(5). For the meaning of 'United Kingdom' see PARA 60 note 5 ante.

4 Ibid s 168(2).

5 Ibid s 168(3)(a).

6 Ibid s 168(3)(b).

7 'Land' includes buildings and other structures, land covered with water and any estate, interest, easement, servitude or right in or over land: Interpretation Act 1978 s 5, Sch 1.

8 Local Government, Planning and Land Act 1980 s 168(6).

9 For these purposes, 'ecclesiastical property' means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction: ibid s 171.

10 See note 1 supra.

11 Local Government, Planning and Land Act 1980 s 169(1).

12 See note 1 supra.

13 Local Government, Planning and Land Act 1980 s 169(2). Section 169 does not extend to Scotland: s 169(3).

UPDATE**1423 Service of notices**

NOTE 9--Definition of 'ecclesiastical property' in 1980 Act s 171 amended: Church of England (Miscellaneous Provisions) Measure 2006 Sch 5 para 21(2).

TEXT AND NOTES 11-13--1980 Act s 169 amended: 2006 Measure Sch 5 para 21(1).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(i) Legislation and Administration; in general/1424. Meaning of 'the appropriate minister'.

1424. Meaning of 'the appropriate minister'.

For the purposes of the statutory provisions relating to urban development areas¹, the expression 'the appropriate minister', and any reference to the Secretary of State² and the appropriate minister:

- 5032 (1) in relation to any statutory undertakers³ who are also statutory undertakers for the purposes of any provision of Part XI of the Town and Country Planning Act 1990⁴, have the same meanings as in Part XI of that Act⁵; and
- 5033 (2) in relation to any other statutory undertakers, have the meanings given by an order made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales⁶ under this provision⁷.

If, in relation to anything required or authorised to be done under the statutory provisions relating to urban development areas⁸, any question arises as to which minister is the appropriate minister in relation to any statutory undertakers, that question must be determined by the Treasury⁹.

1 Ie the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq post.

2 As to the Secretary of State see PARA 19 ante.

3 For the meaning of 'statutory undertakers' see PARA 1425 post.

4 Ie the Town and Country Planning Act 1990 Pt XVI (ss 262-283) (as amended): see PARA 1009 et seq ante.

5 See PARA 1012 ante.

6 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 170 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Local Government, Planning and Land Act 1980 s 170(3) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(7)). An order so made must be made by statutory instrument subject, if made by the Secretary of State, to annulment in pursuance of a resolution of either House of Parliament: Local Government, Planning and Land Act 1980 s 170(5). In exercise of the power so conferred, and prior to the transfer of functions in Wales to the Assembly (see note 6 supra), the Secretary of State made the Urban

Development Corporations (Appropriate Ministers) Order 1988, SI 1988/900 (amended by SI 1994/2567), which came into force on 9 June 1988: Urban Development Corporations (Appropriate Ministers) Order 1988, SI 1988/900, art 1. For these purposes, 'the appropriate minister' means, in relation to British Shipbuilders and the British Steel Corporation or any wholly-owned subsidiary of either of them, the Secretary of State for Trade and Industry: see art 2 (as so amended).

8 See note 1 *supra*.

9 Local Government, Planning and Land Act 1980 s 170(4). In relation to Wales, this Treasury function is not transferred to the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(i) Legislation and Administration; in general/1425. Meaning of 'statutory undertakers'.

1425. Meaning of 'statutory undertakers'.

For the purposes of the statutory provisions relating to urban development areas¹, unless the context otherwise requires, 'statutory undertakers' means:

- 5034 (1) persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of hydraulic power;
- 5035 (2) the Civil Aviation Authority², a universal service provider³ in connection with the provision of a universal postal service⁴ and any other authority, body or undertakers which by virtue of any enactment are to be treated as statutory undertakers for any of the purposes of the Town and Country Planning Act 1990⁵;
- 5036 (3) any other authority, body or undertakers specified in an order made by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷ under this provision; and
- 5037 (4) any wholly-owned subsidiary⁸ of any person, authority, body or undertakers mentioned in heads (1) and (2) above or specified in an order made under head (3) above,

and 'statutory undertaking' is to be construed accordingly⁹. The following are also deemed to be statutory undertakers, and their undertakings statutory undertakings, for those purposes:

- 5038 (a) the Environment Agency¹⁰, every water undertaker and every sewerage undertaker¹¹;
- 5039 (b) a gas transporter¹²;
- 5040 (c) an electricity supplier¹³.

For the purposes of the statutory provision enabling an order to be made for the vesting of statutory undertakers' land in an urban development corporation¹⁴, 'statutory undertakers' also includes British Shipbuilders¹⁵ and any wholly-owned subsidiary¹⁶ of British Shipbuilders¹⁷.

1 I.e. the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 *et seq post*.

2 As to the Civil Aviation Authority see AIR LAW vol 2 (2008) PARA 50 *et seq*.

3 For these purposes, 'universal service provider' has the same meaning as in the Postal Services Act 2000: Local Government, Planning and Land Act 1980 s 170(2B) (s 170(1) amended, and s 170(2A), (2B) added, by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1 para 48(1), (4), (5)).

4 For these purposes, references to the provision of a universal postal service are to be construed in accordance with the Postal Services Act 2000: Local Government, Planning and Land Act 1980 s 170(2B) (as added: see note 3 supra). The undertaking of a universal service provider so far as relating to the provision of a universal postal service is to be taken to be his statutory undertaking for the purposes of Pt XVI (ss 134-172) (as amended); and references therein to his undertaking are to be construed accordingly: s 170(2A) (as so added). As to the provision of a universal postal service see POST OFFICE vol 36(2) (Reissue) PARA 24.

5 As to statutory undertakers for the purposes of the Town and Country Planning Act 1990 Pt XVI (ss 134-172) (as amended) see PARA 1012 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 170 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Ie within the meaning assigned by the Companies Act 1985 s 736 (as substituted): see COMPANIES vol 14 (2009) PARA 25.

9 Local Government, Planning and Land Act 1980 s 170(1) (as amended (see note 3 supra); also amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; the Airports Act 1986 s 83(5), Sch 6 Pt I; the Gas Act 1986 s 67(4), Sch 9 Pt I; the Companies Act 1989 s 144(4), Sch 18 para 24; the Electricity Act 1989 s 112(4), Sch 18; the Water Act 1989 s 190, Sch 25 para 61; the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(7); the Coal Industry Act 1994 s 67, Sch 9 para 25(1), Sch 11 Pt II).

10 As to the Environment Agency see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 45 (2010) PARA 68 et seq.

11 Water Act 1989 s 190(1), Sch 25 para 1(1), (2)(xxiv) (amended by the Environment Act 1995 (Consequential Amendments) Regulations 1996, SI 1996/593, reg 3, Sch 2 para 4; and by the Government of Wales Act 1998 s 135(2)).

12 Gas Act 1995 s 16(1), Sch 4 para 2(1)(xxxiv); Utilities Act 2000 s 76(7).

13 Electricity Act 1989 s 112(1), Sch 16 para 1(1)(xxxiv); Utilities Act 2000 s 31(3).

14 Ie the Local Government, Planning and Land Act 1980 s 141 (as amended): see PARA 1454 post.

15 As to British Shipbuilders see TRADE AND INDUSTRY vol 97 (2010) PARA 844 et seq.

16 See note 8 supra.

17 Local Government, Planning and Land Act 1980 s 170(2) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; the British Steel Act 1988 s 16(3), Sch 2 Pt I; the Companies Act 1989 s 144(4), Sch 18 para 24; the British Technology Group Act 1991 s 17(2), Sch 2 Pt I).

UPDATE

1425 Meaning of 'statutory undertakers'

NOTE 3--Local Government, Planning and Land Act 1980 s 170(1) amended: SI 2009/1941.

NOTE 17--Local Government, Planning and Land Act 1980 s 170(2) amended: SI 2009/1941.

PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (ii) Designation of Areas/1426. Designation of urban development areas.

(ii) Designation of Areas

1426. Designation of urban development areas.

If the Secretary of State¹, or, in relation to Wales, the National Assembly for Wales², is of opinion that it is expedient in the national interest to do so, he or the Assembly may by order made by statutory instrument designate any area of land³ as an urban development area⁴; and separate parcels of land may be designated as one urban development area⁵.

No such order has effect, however, until approved by a resolution of each House of Parliament⁶.

The action to be taken by the Secretary of State or the Assembly when an area declared to be an improvement area⁷ is wholly or partly included in an area of land so designated as an urban development area has already been discussed⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 134 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'land' see PARA 1423 note 7 ante.

4 Local Government, Planning and Land Act 1980 s 134(1) (amended by the Housing and Planning Act 1986 s 49(2), Sch 12 Pt III). For these purposes, except in so far as the context otherwise requires, 'urban development area' means so much of an area designated by such an order as is not excluded from it by an order under the Local Government, Planning and Land Act 1980 s 134(3A) (as added) (see PARA 1427 post): s 171 (definition substituted by the Leasehold Reform, Housing and Urban Development Act 1993 s 179(5)).

5 Local Government, Planning and Land Act 1980 s 134(3). As to the exercise of this power see eg the Thurrock Development Corporation (Area and Constitution) Order 2003, SI 2003/2896; the London Thames Gateway Development Corporation (Area and Constitution) Order 2004, SI 2004/1642.

6 Local Government, Planning and Land Act 1980 s 134(4) (amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 179(2)). The Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172 (as amended): see PARA 1427 et seq post) does not extend to Northern Ireland: s 172.

7 For the meaning of 'improvement area' see PARA 1413 note 7 ante.

8 See the Inner Urban Areas Act 1978 s 4(1), Schedule para 2 (as amended); and PARA 1413 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (ii) Designation of Areas/1427. Alteration of boundaries of urban development area.

1427. Alteration of boundaries of urban development area.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may by order³ alter the boundaries of any urban development area⁴ so as to exclude any area of land⁵. Before making such an order, the Secretary of State or the Assembly must consult⁶ any local authority⁷ the whole or any part of whose area is included in the area of land to be excluded by the order⁸.

- 1 As to the Secretary of State see PARA 19 ante.
- 2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 134 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 3 The power to make an order under the Local Government, Planning and Land Act 1980 s 134(3A) (as added) (see the text and notes 1-2 supra, 4-5 infra) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament and includes power to make such incidental, consequential, transitional or supplementary provision as the Secretary of State or the Assembly thinks fit: s 134(5) (s 134(3A), (3B), (5) added by the Leasehold Reform, Housing and Urban Development Act 1993 s 179(1)-(3)).
- 4 For the meaning of 'urban development area' see PARA 1426 note 4 ante.
- 5 Local Government, Planning and Land Act 1980 s 134(3A) (as added: see note 3 supra). As to the exercise of this power see eg the London Docklands Development Corporation (Planning Functions) Order 1997, SI 1997/2946. For the meaning of 'land' see PARA 1423 note 7 ante.
- 6 For the meaning of 'consult' see PARA 2 note 1 ante.
- 7 There is no statutory definition of 'local authority' for these purposes; as to local authorities see generally para 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.
- 8 Local Government, Planning and Land Act 1980 s 134(3B) (as added: see note 3 supra).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1428. Establishment of urban development corporations.

(iii) Urban Development Corporations

A. ESTABLISHMENT AND GENERAL POWERS

1428. Establishment of urban development corporations.

For the purposes of regenerating an urban development area¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ must by order made by statutory instrument establish a corporation (an 'urban development corporation') for the area⁴; and such an order may be made at the same time as an order designating an area⁵ as an urban development area⁶.

No such order has effect, however, until approved by a resolution of each House of Parliament⁷.

- 1 For the meaning of 'urban development area' see PARA 1426 note 4 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 135 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 4 Local Government, Planning and Land Act 1980 s 135(1).

5 le under the Local Government, Planning and Land Act 1980 s 134(1) (as amended): see PARA 1426 ante.

6 Ibid s 135(2) (amended by the Leasehold Reform, Housing and Urban Development Act 1993 s 179(4)). As to the exercise of this power see eg the Thurrock Development Corporation (Area and Constitution) Order 2003, SI 2003/2896; the London Thames Gateway Development Corporation (Area and Constitution) Order 2004, SI 2004/1642.

7 Local Government, Planning and Land Act 1980 s 135(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1429. Object and general powers of urban development corporations.

1429. Object and general powers of urban development corporations.

The object of an urban development corporation¹ is to secure the regeneration of its area²; and the object is to be achieved in particular by the following means, or by such of them as seem to the corporation to be appropriate in the case of its area, namely by bringing land³ and buildings into effective use, encouraging the development of existing and new industry and commerce, creating an attractive environment and ensuring that housing and social facilities are available to encourage people to live and work in the area⁴.

For the purpose of achieving the object an urban development corporation may⁵:

- 5041 (1) acquire, hold, manage, reclaim and dispose of land and other property;
- 5042 (2) carry out building and other operations;
- 5043 (3) seek to ensure the provision of water, electricity, gas, sewerage and other services;
- 5044 (4) carry on any business or undertaking for the purposes of the object; and
- 5045 (5) generally do anything necessary or expedient for the purposes of the object or for purposes incidental to those purposes⁶.

Without prejudice to the generality of the powers conferred⁷ on urban development corporations, such a corporation may, for the purpose of achieving the object and with the consent of the Secretary of State⁸:

- 5046 (a) contribute such sums as he may, with the Treasury's concurrence, determine towards expenditure incurred or to be incurred by any local authority or statutory undertakers⁹ in the performance of any statutory functions of the authority or undertakers, including expenditure so incurred in the acquisition of land;
- 5047 (b) contribute such sums as the Secretary of State may with the like concurrence determine by way of assistance towards the provision of amenities¹⁰;

and, in relation to Wales, the National Assembly for Wales¹¹ exercises the like functions of giving consent in Wales which are not subject to Treasury concurrence¹².

A transaction between a person and an urban development corporation is not invalidated by reason of any failure of the corporation to observe the object of securing the regeneration of its area¹³ or the requirement¹⁴ that the corporation shall exercise the statutory powers¹⁵ for the purpose of achieving that object¹⁶.

- 1 For these purposes, except in so far as the context otherwise requires, 'urban development corporation' means a corporation established under the Local Government, Planning and Land Act 1980 s 135 (as amended) (see PARA 1428 ante): s 171.
- 2 Ibid s 136(1).
- 3 For the meaning of 'land' see PARA 1423 note 7 ante.
- 4 Local Government, Planning and Land Act 1980 s 136(2).
- 5 Ie subject to ibid s 137 (see PARA 1431 post) and s 138 (see PARA 1432 post).
- 6 Ibid s 136(3). No provision of ibid Pt XVI (ss 134-172) (as amended) (see PARAS 1426-1428 ante, PARA 1431 et seq post) by virtue of which any power is exercisable by an urban development corporation is to be construed as limiting the effect of s 136(3): s 136(4). To avoid doubt it is declared that s 136(3) relates only to the capacity of an urban development corporation as a statutory corporation; and nothing in s 136 authorises such a corporation to disregard any enactment or rule of law: s 136(6). As to the construction of the phrase 'necessary and expedient' see eg *Bell Houses Ltd v City Wall Properties Ltd* [1966] 2 QB 656, [1966] 2 All ER 674, CA. The powers of acquisition and disposal under the Local Government, Planning and Land Act 1980 s 136 are not sufficiently wide to embrace an agreement purportedly made under s 165 (as amended) (see PARA 1488 post): *National Assembly for Wales v Cardiff City and County Council* [2005] EWHC 974 (QB), [2005] All ER (D) 134 (Jun).
- 7 Ie by the Local Government, Planning and Land Act 1980.
- 8 As to the Secretary of State see PARA 19 ante.
- 9 For the meaning of 'statutory undertakers' see PARA 1425 ante.
- 10 Local Government, Planning and Land Act 1980 s 136(5).
- 11 As to the transfer of functions under ibid s 136, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 12 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1.
- 13 Ie the object in the Local Government, Planning and Land Act 1980 s 136(1): see the text and notes 1-2 supra.
- 14 Ie the requirement in ibid s 136(3): see the text and notes 3-6 supra.
- 15 Ie the powers conferred by ibid s 136(3).
- 16 Ibid s 136(7).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1430. Appointment as agent of Urban Regeneration Agency in England.

1430. Appointment as agent of Urban Regeneration Agency in England.

The Urban Regeneration Agency¹ may, with the consent of the Secretary of State², appoint an urban development corporation³, on such terms as may be agreed, to act as its agent in connection with such of its functions, other than its power to give financial assistance, as may be specified in the appointment; and where such an appointment is made, the urban development corporation must act as such an agent in accordance with the terms of its appointment⁴. For the purpose of assisting the Agency to carry out any of its functions, an

urban development corporation, on being so requested by the Agency, may arrange for any of its property or staff to be made available to the Agency for such period and on such other terms as it thinks fit⁵.

1 As to the Urban Regeneration Agency see PARA 1306 ante.

2 As to the Secretary of State see PARA 19 ante.

3 For these purposes, 'urban development corporation' means a corporation established by an order under the Local Government, Planning and Land Act 1980 s 135 (as amended) (see PARA 1428 ante): Leasehold Reform, Housing and Urban Development Act 1993 s 177(3).

4 Ibid s 177(1).

5 Ibid s 177(2).

UPDATE

1430 Appointment as agent of Urban Regeneration Agency in England

TEXT AND NOTES--Leasehold Reform, Housing and Urban Development Act 1993 s 177 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1431. Exclusion of functions.

1431. Exclusion of functions.

An order establishing an urban development corporation¹ may:

5048 (1) provide that any functions which may be exercisable² by such a corporation and which are specified in the order are not to be exercised by the corporation established by the order, either as regards the whole of its area or as regards a portion of that area; and the relevant statutory provisions³ apply to the corporation accordingly⁴;

5049 (2) amend any provision of a previous order⁵ which was included in that order by virtue of head (1) above⁶.

1 Ie an order under the Local Government, Planning and Land Act 1980 s 135 (as amended): see PARA 1428 ante. For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Ie by virtue of ibid Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante; the text and notes 3-6 infra; and PARA 1432 et seq post.

3 Ie ibid Pt XVI (ss 134-172) (as amended).

4 Ibid s 137(1).

5 Ie under ibid s 135 (as amended): see PARA 1428 ante.

6 Ibid s 137(2). Nothing in s 137(2) prejudices the operation of the Interpretation Act 1978 s 14 (power to amend orders etc): Local Government, Planning and Land Act 1980 s 137(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1432. Restrictions on powers.

1432. Restrictions on powers.

Without prejudice to any statutory provision¹ requiring the consent of the Secretary of State² or, in relation to Wales, of the National Assembly for Wales³ to be obtained for anything to be done by an urban development corporation⁴, he or the Assembly may give directions to such a corporation for restricting the exercise by it of any of its statutory powers⁵ or for requiring it to exercise those powers in any manner specified in the directions⁶; but, before giving such a direction, the Secretary of State or the Assembly must consult⁷ the corporation, unless satisfied that because of urgency consultation is impracticable⁸.

A transaction between a person and an urban development corporation acting in purported exercise of its statutory powers⁹ is not, however, void by reason only that it was carried out in contravention of a direction so given; and such a person is not to be concerned to see or inquire whether such a direction has been given or complied with¹⁰.

1 Ie any provision of the Local Government, Planning and Land Act 1980.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 138, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

5 Ie under the Local Government, Planning and Land Act 1980.

6 Ibid s 138(1).

7 For the meaning of 'consult' para 2 note 1 ante.

8 Local Government, Planning and Land Act 1980 s 138(2).

9 See note 5 supra.

10 Local Government, Planning and Land Act 1980 s 138(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1433. Consultation with local authorities.

1433. Consultation with local authorities.

An urban development corporation¹ must prepare a code of practice as to consultation² with the relevant local authorities³ about the exercise of its powers⁴. Preparation of the code must be

completed not later than the expiration of the period of 12 months from the date of the establishment of the corporation⁵.

A corporation may from time to time revise the whole or any part of its code⁶; and it must prepare and revise its code in consultation with the relevant local authorities⁷.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For the meaning of 'consult' see PARA 2 note 1 ante.

3 For these purposes, 'the relevant local authorities' means local authorities the whole or any part of whose area is included in the urban development area: Local Government, Planning and Land Act 1980 s 140(2). For the meaning of 'urban development area' see PARA 1426 note 4 ante. There is no statutory definition of 'local authority' for these purposes; as to local authorities see PARA 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

4 Ibid s 140(1).

5 Ibid s 140(3).

6 Ibid s 140(4).

7 Ibid s 140(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/A. ESTABLISHMENT AND GENERAL POWERS/1434. Allocation or transfer of corporation's functions.

1434. Allocation or transfer of corporation's functions.

If it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales² that there are exceptional circumstances which render it expedient:

5050 (1) in the case of an urban development area³, that the functions⁴ of an urban development corporation⁵ should be performed by the urban development corporation established for the purposes of any other area instead of by a separate corporation, established for the purpose, he or the Assembly may, instead of establishing such a separate corporation, by order⁶ direct that those functions shall be performed by the urban development corporation established for the other area⁷;

5051 (2) that the functions of an urban development corporation established for one area should be transferred to the urban development corporation established for the purposes of another area, or to a new urban development corporation to be established for the first-mentioned area, he or the Assembly may by order⁸ provide for the dissolution of the first-mentioned corporation and for the transfer of its functions, property, rights and liabilities to the urban development corporation established for the purposes of the other area or, as the case may be, to a new corporation established for the purposes of the first-mentioned area by the order⁹.

Before making such an order providing for the transfer of functions from or to a development corporation or for the exercise of any functions by such a corporation, the Secretary of State or the Assembly must consult¹⁰ that corporation¹¹.

An order so made providing for the exercise of functions in relation to an area by the urban development corporation established for the purposes of another area, or for the transfer of such functions to such a corporation, may¹² modify the name and constitution of that corporation in such manner as appears to the Secretary of State or to the Assembly to be expedient; and that corporation is treated¹³ as having been established for the purposes of each of those areas¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 139, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

4 Ie under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1435 et seq post.

5 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

6 An order under the Local Government, Planning and Land Act 1980 s 139 (see the text and notes 7-14 infra): (1) must make, with regard to a corporation on which functions are conferred by the order, the same provision as that which may be made with regard to a corporation under s 137 (see PARA 1431 ante) (s 139(5)); and (2) must be made by statutory instrument (s 139(6)). No such order has effect until approved by a resolution of each House of Parliament: s 139(7).

7 Ibid s 139(1).

8 See note 6 supra.

9 Local Government, Planning and Land Act 1980 s 139(2).

10 For the meaning of 'consult' para 2 note 1 ante.

11 Local Government, Planning and Land Act 1980 s 139(4).

12 Ie without prejudice to the Interpretation Act 1978 s 14 (implied power to amend).

13 Ie for the purposes of the Local Government, Planning and Land Act 1980.

14 Ibid s 139(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/B. POWERS IN INNER URBAN AREAS/1435. Inner urban areas.

B. POWERS IN INNER URBAN AREAS

1435. Inner urban areas.

An urban development corporation¹ has, as regards relevant land², the same power as the designated district authority³ has, as regards the designated district, under specified provisions⁴ of the Inner Urban Areas Act 1978⁵.

Where the Secretary of State⁶ or ministers wish or, in relation to Wales, the National Assembly for Wales⁷ wishes to enter into arrangements to determine action in case of special social need⁸ as respects any district or Welsh county or county borough and any area of land is situated

both in an urban development area and in that district or, as the case may be, in that Welsh county or county borough, such arrangements may be entered into with:

- 5052 (1) the urban development corporation; or
- 5053 (2) the specified⁹ council or councils; or
- 5054 (3) both the urban development corporation and the specified council or councils¹⁰;

but such arrangements which are entered into by virtue of head (3) above may not be entered into jointly with the urban development corporation and the specified council or councils¹¹.

Where such arrangements are so entered into, they may also be entered into with such other person or persons, if any, as may appear appropriate to the Secretary of State or the ministers, or to the Assembly¹².

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For these purposes, 'relevant land' means an area of land which is at the same time situated in both an urban development area and a designated district: Local Government, Planning and Land Act 1980 s 162(2). 'Designated district' has the same meaning as in the Inner Urban Areas Act 1978 (see PARA 1411 note 1 ante): Local Government, Planning and Land Act 1980 s 162(1). For the meaning of 'urban development area' see PARA 1426 note 4 ante.

3 For these purposes, 'designated district authority' has the same meaning as in the Inner Urban Areas Act 1978 (see PARA 1411 note 1 ante): Local Government, Planning and Land Act 1980 s 162(1).

4 I.e. the provisions mentioned in *ibid* s 162(4). The provisions so specified are: (1) the Inner Urban Areas Act 1978 s 2(1) (as amended) (loans for acquiring land etc: see PARA 1411 ante); (2) s 3(1) (loans and grants for co-operative enterprises etc: see PARA 1412 ante); (3) ss 4-6 (as amended) (loans and grants in improvement areas: see PARAS 1413-1415 ante); and (4) ss 8-11 (loans and grants in special areas: see PARAS 1418-1421 ante): Local Government, Planning and Land Act 1980 s 162(4).

5 *Ibid* s 162(1), (3). The statutory provisions which are or contain the provisions mentioned in s 162(4) (see note 4 *supra*) apply accordingly with the necessary modifications: s 162(3).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 162 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 I.e. under the Inner Urban Areas Act 1978 s 7(1) (as amended): see PARA 1417 ante.

9 I.e. the councils mentioned in *ibid* s 7(1)(a) (as amended) or s 7(1)(aa) (as added): see PARA 1417 ante.

10 Local Government, Planning and Land Act 1980 s 162(5), (6) (amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 59(2)).

11 Local Government, Planning and Land Act 1980 s 162(7).

12 *Ibid* s 162(8).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1436. Incorporation and status.

C. CONSTITUTION AND PROCEEDINGS

1436. Incorporation and status.

An urban development corporation¹ is a body corporate by such name as may be prescribed by the order establishing it²; and it must consist of a chairman, a deputy chairman and such number of other members, not less than five but not exceeding eleven, as the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may by order⁵ prescribe⁶.

An urban development corporation is not to be regarded as the servant or agent of the Crown or as enjoying any status, immunity or privilege of the Crown; and the corporation's property is not to be regarded as the property of, or property held on behalf of, the Crown⁷.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Local Government, Planning and Land Act 1980 s 135(4). As to the establishment of urban development corporations see PARA 1428 ante.

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 135, Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 See under the Local Government, Planning and Land Act 1980 s 135 (as amended): see PARA 1428 ante.

6 Ibid s 135(5), Sch 26 para 1; and see eg the London Thames Gateway Development Corporation (Area and Constitution) Order 2004, SI 2004/1642, art 3(2) (urban development corporation established by that order to have eleven members in addition to the chairman and deputy chairman). As to the appointment of members see PARA 1437 post.

7 Local Government, Planning and Land Act 1980 s 135(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1437. Appointment of members; tenure of office.

1437. Appointment of members; tenure of office.

The members of an urban development corporation¹ ('a corporation') are appointed by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³; and he or the Assembly must appoint two of the members to be respectively chairman and deputy chairman of the corporation⁴. In appointing members of the corporation the Secretary of State or the Assembly must have regard to the desirability of securing the services of people having special knowledge of the locality in which the urban development area⁵ is or will be situated⁶; and, in relation to the possible appointment of such people, he or the Assembly must consult⁷ such local authorities⁸ as appear to him or to the Assembly to be concerned with the regeneration of the urban development area⁹.

A member of the corporation and the chairman and deputy chairman of the corporation hold and must vacate office as such in accordance with the terms of the instrument by which they are respectively appointed¹⁰. If the chairman or deputy chairman ceases to be a member of the corporation, he also ceases to be chairman or deputy chairman, as the case may be¹¹.

Any member of the corporation may, by notice in writing addressed to the Secretary of State or to the Assembly, resign his membership; and the chairman or deputy chairman may by the like notice resign his office as such¹². A member of the corporation who ceases to be a member or ceases to be chairman or deputy chairman is eligible for reappointment¹³.

If the Secretary of State or the Assembly is satisfied that a member of the corporation, including the chairman or deputy chairman:

- 5055 (1) has become bankrupt or made an arrangement with his creditors; or
- 5056 (2) is incapacitated by physical or mental illness; or
- 5057 (3) has been absent from meetings of the corporation for a period longer than three consecutive months without the permission of the corporation; or
- 5058 (4) is otherwise unable or unfit to discharge the functions of a member, or is unsuitable to continue as a member,

the Secretary of State or the Assembly may remove him from his office¹⁴.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Local Government, Planning and Land Act 1980 s 135(5), Sch 26 para 2(1). As to the transfer of functions under Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Any member of an urban development corporation who is in receipt of remuneration is disqualified for membership of the House of Commons: see PARLIAMENT vol 78 (2010) PARA 908. As to remuneration of members see PARA 1438 post.

4 Local Government, Planning and Land Act 1980 Sch 26 para 2(4).

5 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

6 Local Government, Planning and Land Act 1980 Sch 26 para 2(2).

7 For the meaning of 'consult' para 2 note 1 ante.

8 There is no statutory definition of 'local authority' for these purposes; as to local authorities see generally para 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

9 Local Government, Planning and Land Act 1980 Sch 26 para 2(3).

10 Ibid Sch 26 para 3.

11 Ibid Sch 26 para 4.

12 Ibid Sch 26 para 5.

13 Ibid Sch 26 para 7.

14 Ibid Sch 26 para 6.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1438. Remuneration etc.

1438. Remuneration etc.

The urban development corporation¹ may:

- 5059 (1) pay to each member such remuneration and allowances;
- 5060 (2) pay or make provision for paying, to or in respect of any member, such sums by way of pensions, allowances and gratuities,

as the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may determine⁴.

Where a person ceases to be a member otherwise than on the expiry of his term of office and it appears to the Secretary of State or to the Assembly that there are special circumstances which make it right for him to receive compensation, the corporation may make to him payment of such amount as the Secretary of State or the Assembly may determine⁵.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 s 135(5), Sch 26 paras 8, 9 (amended by the Housing Act 1996 ss 222, 227, Sch 18 Pt IV para 22(1), Sch 19 Pt XIII).

5 Local Government, Planning and Land Act 1980 Sch 26 para 10.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1439. Staff.

1439. Staff.

An urban development corporation¹ may, with the approval of the Secretary of State² or, in relation to Wales, of the National Assembly for Wales³, appoint such officers and servants as the corporation may determine⁴. Employees⁵ of a corporation are appointed at such remuneration and on such other terms and conditions as the corporation may determine⁶.

A corporation may pay such pensions, allowances or gratuities⁷ as it may determine to or in respect of any of its employees, make such payments as it may determine towards the provision of pensions, allowances or gratuities to or in respect of any of its employees or provide and maintain such schemes as it may determine, whether contributory or not, for the payment of pensions, allowances or gratuities to or in respect of any of its employees⁸.

If an employee of a corporation becomes a member and was by reference to his employment by the corporation a participant in a pension scheme maintained by the corporation for the benefit of any of its employees, the corporation may determine that his service as a member shall be treated⁹ for the purposes of the scheme as service as an employee of the corporation¹⁰.

A determination of the corporation for the above purposes is ineffective unless made with the approval of the Secretary of State or of the Assembly¹¹.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 s 135(5), Sch 26 para 11(1).

5 For these purposes, references to employees of a corporation are to persons appointed in pursuance of ibid Sch 26 para 11 (as amended): Sch 26 para 11(2).

6 Ibid Sch 26 para 12(1).

7 For these purposes, the reference to pensions, allowances or gratuities to or in respect of any of a corporation's employees includes a reference to pensions, allowances or gratuities by way of compensation to or in respect of any of the corporation's employees who suffer loss of office or employment or loss or diminution of emoluments: ibid Sch 26 para 12(3).

8 Ibid Sch 26 para 12(2).

9 Ie whether or not any benefits are to be payable to or in respect of him by virtue of ibid Sch 26 para 9 (as amended): see PARA 1438 ante.

10 Ibid Sch 26 para 12(4).

11 Ibid Sch 26 para 12(5) (amended by the Housing Act 1996 ss 222, 227, Sch 18 para 22(1), Sch 19 Pt XIII).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1440. Meetings and proceedings.

1440. Meetings and proceedings.

The quorum of an urban development corporation¹ and the arrangements relating to its meetings are such as the corporation may determine, subject to any directions given by the Secretary of State² or, in relation to Wales, by the National Assembly for Wales³.

The validity of any proceeding of a corporation is not affected by any vacancy among its members or by any defect in the appointment of any of its members⁴.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 Local Government, Planning and Land Act 1980 s 135(5), Sch 26 para 13. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 Sch 26 para 14. As to the appointment and tenure of office of members see PARA 1437 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/C. CONSTITUTION AND PROCEEDINGS/1441. Execution of instruments etc.

1441. Execution of instruments etc.

The fixing of the seal of an urban development corporation¹ must be authenticated by the signature of the chairman or of some other member authorised either generally or specially by the corporation to act for that purpose²; and any document purporting to be a document duly executed under the seal of the corporation must be received in evidence and is deemed to be so executed unless the contrary is proved³.

Any contract or instrument which, if made or executed by a person not being a body corporate, would not be required to be under seal⁴ may be made or executed on behalf of the corporation by any person generally or specially authorised by it to act for that purpose⁵.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Local Government, Planning and Land Act 1980 s 135(5), Sch 26 para 15.

3 Ibid Sch 26 para 17. As to the presumption of due execution see CIVIL PROCEDURE vol 11 (2009) PARA 865.

4 As to the execution of deeds see PARA 1329 note 4 ante.

5 Local Government, Planning and Land Act 1980 Sch 26 para 16.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/D. REPORTS AND INFORMATION/1442. Annual report.

D. REPORTS AND INFORMATION

1442. Annual report.

As soon as possible after the end of each financial year¹, an urban development corporation must make to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ a report dealing generally with the corporation's operations during the year, and must include in the report a copy of its audited statement of accounts⁴ for that year⁵. Such a report must⁶ deal with the operation during the year of the corporation's arrangements for consultation⁷ about the exercise of its powers with local authorities⁸ the whole or any part of whose area is included in the urban development area⁹.

The Secretary of State must lay a copy of the report before each House of Parliament¹⁰ and in relation to Wales such a copy must be laid before and published by the Assembly¹¹.

- 1 The financial year of an urban development corporation begins with 1 April and references to a financial year in relation to a corporation are to be construed accordingly; Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 1(1), (2). For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.
- 2 As to the Secretary of State see PARA 19 ante.
- 3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.
- 4 As to the statement of accounts see PARA 1452 post; and as to audit see PARA 1453 post.
- 5 Local Government, Planning and Land Act 1980 Sch 31 para 13(1).
- 6 Ie without prejudice to the generality of *ibid* Sch 31 para 13(1): see the text and notes 1-5 *supra*.
- 7 For the meaning of 'consult' para 2 note 1 ante.
- 8 There is no statutory definition of 'local authority' for these purposes; as to local authorities see PARA 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.
- 9 Local Government, Planning and Land Act 1980 Sch 31 para 13(2). As to consultation with local authorities see PARA 1433 ante; and for the meaning of 'urban development area' see PARA 1426 note 4 ante.
- 10 *Ibid* Sch 31 para 13(3)(a) (substituted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005, SI 2005/913, art 2(2), (6)). In the case of a corporation whose accounts and statement of accounts have been audited under the Local Government, Planning and Land Act 1980 Sch 31 para 10A(3) (as added) (see PARA 1453 post), he must also lay before each House of Parliament a copy of the report sent to him under Sch 31 para 12(a) (as substituted) (see PARA 1452 post): Sch 31 para 13(b) (as so substituted).
- 11 See the Government of Wales Act 1998 s 45; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/D. REPORTS AND INFORMATION/1443. Information.

1443. Information.

An urban development corporation¹ must provide² the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ with such information relating to its undertaking as he or the Assembly may require; and for that purpose it must permit any person authorised by the Secretary of State or by the Assembly to inspect and make copies of the accounts, books, documents or papers of the corporation and must afford such explanation of them as that person or the Secretary of State or the Assembly may reasonably require⁵.

- 1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.
- 2 Ie without prejudice to the Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 13: see PARA 1442 ante.
- 3 As to the Secretary of State see PARA 19 ante.
- 4 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Local Government, Planning and Land Act 1980 Sch 31 para 14.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1444. Financial duties.

E. FINANCE, ACCOUNTS AND AUDIT

1444. Financial duties.

After consultation¹ with an urban development corporation in England², the Secretary of State³ may, with the Treasury's approval, determine the financial duties of the corporation; and different determinations may be made in relation to different corporations or for different functions and activities of the same corporation⁴. In relation to Wales the National Assembly for Wales has the like powers but there is no requirement for Treasury approval⁵.

The Secretary of State or the Assembly must give the corporation notice of every determination; and a determination may relate to a period beginning before the date on which it is made, contain incidental or supplementary provisions and be varied by a subsequent determination⁶.

1 For the meaning of 'consult' para 2 note 1 ante.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 As to the Secretary of State see PARA 19 ante.

4 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 2(1).

5 See note 4 supra. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Local Government, Planning and Land Act 1980 Sch 31 para 2(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1445. Government grants; Secretary of State's or Assembly's expenses.

1445. Government grants; Secretary of State's or Assembly's expenses.

The Secretary of State¹ may, out of money provided by Parliament and with the Treasury's consent, pay to an urban development corporation in England² in respect of the exercise of its functions, and in respect of its administrative expenses, such sums as he may with the

Treasury's approval determine³. The payment may be made on such terms as the Secretary of State, with the Treasury's approval, provides⁴.

The expenses of the Secretary of State in respect of the administration of the statutory provisions relating to urban development areas⁵ must be paid out of money provided by Parliament⁶.

In relation to Wales, the National Assembly for Wales has the like power, subject to Treasury consent, to make payments to an urban development corporation⁷; but there is no requirement for the payments to be made out of money provided by Parliament⁸.

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 3(1).

4 Ibid Sch 31 para 3(2).

5 ie ibid Pt VI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1446 et seq post.

6 Ibid s 164(2).

7 See the text and notes 1-4 supra. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 See the Government of Wales Act 1998 s 89(b); and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1446. Borrowing.

1446. Borrowing.

An urban development corporation¹ may borrow temporarily, by way of overdraft or otherwise, such sums as it may require for meeting its obligations and discharging its functions:

5061 (1) in sterling from the Secretary of State² or, in relation to Wales, from the National Assembly for Wales³; or

5062 (2) with the consent of the Secretary of State or of the Assembly, or in accordance with any general authority given by him or by it, either in sterling or in a currency other than sterling from a person other than the Secretary of State or the Assembly⁴.

A corporation may borrow otherwise than by way of temporary loan such sums as the corporation may require:

5063 (a) in sterling from the Secretary of State or from the Assembly; or

5064 (b) with the consent of the Secretary of State or of the Assembly, in a currency other than sterling from a person other than the Secretary of State or the Assembly⁵.

The Secretary of State or the Assembly may lend to a corporation any sums it has power so to borrow from him or from it⁶; and loans so made must be repaid to the Secretary of State or to the Assembly at such times and by such methods, and interest on the loans must be paid to him or to it at such times and at such rates, as he or it may determine⁷.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For these purposes, references to the Secretary of State are references to him acting with the Treasury's approval: Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 4(7). As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 Sch 31 para 4(1). The Treasury approval referred to in note 2 supra is also required by the Assembly: see note 3 supra.

5 Ibid Sch 31 para 4(2).

6 Ibid Sch 31 para 4(3). The Treasury may issue to the Secretary of State or to the Assembly out of the National Loans Fund any sums necessary to enable him or it so to make loans: Sch 31 para 4(4). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

7 Ibid Sch 31 para 4(5). All sums so received by the Secretary of State must be paid into the National Loans Fund: Sch 31 para 4(6). As to the limits on borrowing see PARA 1450 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1447. Guarantees.

1447. Guarantees.

In relation to England, the Treasury may guarantee, in such manner and on such conditions as it thinks fit, the repayment of the principal of, the payment of interest on and the discharge of any other financial obligation in connection with any sums which an urban development corporation¹ borrows from a person or body other than the Secretary of State². Immediately after a guarantee is so given, the Treasury must lay a statement of the guarantee before each House of Parliament; and, where any sum is issued³ for fulfilling a guarantee so given, the Treasury must lay before each House of Parliament a statement relating to that sum, as soon as possible after the end of each financial year⁴, beginning with that in which the sum is issued and ending with that in which all liability in respect of the principal of the sum and in respect of interest on it is finally discharged⁵.

If any sums are issued in fulfilment of a guarantee so given, the corporation must make to the Treasury, at such times and in such manner as the Treasury may from time to time direct, payments of such amounts as the Treasury so directs in or towards repayment of the sums so issued and payments of interest, at such rates as the Treasury so directs, on what is outstanding for the time being in respect of sums so issued⁶.

In relation to Wales, these functions of the Treasury have been transferred to the National Assembly for Wales⁷ and the statement relating to the sum issued for fulfilling a guarantee so given must be published by the Assembly⁸.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 5(1) (amended by the Miscellaneous Financial Provisions Act 1983 s 4, Sch 2).

3 Any sums so required by the Treasury for fulfilling such a guarantee must be charged on and issued out of the Consolidated Fund: Local Government, Planning and Land Act 1980 Sch 31 para 5(3). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031.

4 For the meaning of 'financial year' see PARA 1442 note 1 ante.

5 Local Government, Planning and Land Act 1980 Sch 31 para 5(2).

6 Ibid Sch 31 para 5(4). Any sums so received by the Treasury must be paid into the Consolidated Fund: Sch 31 para 5(5). As to the limits on guarantees see PARA 1450 post.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 See the Government of Wales Act 1998 s 45; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

UPDATE

1447 Guarantees

NOTE 3--Now, any sums so required by the Welsh Ministers for fulfilling such a guarantee must be charged on and issued out of the Welsh Consolidated Fund: see the 1980 Act Sch 31 para 5(3) (as substituted by the Government of Wales Act 2006 Sch 10 para 12).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1448. Assumed debt.

1448. Assumed debt.

On any acquisition by an urban development corporation¹ of property held:

5065 (1) by or on behalf of the Crown; or

5066 (2) by a company all of whose shares are held by or on behalf of the Crown or by a wholly-owned subsidiary of such a company,

the corporation assumes a debt to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ of such amount as may be notified to the corporation in writing by him or by the Assembly, with the Treasury's approval in either case⁴. The amount to be so notified is the aggregate of the consideration given when the property was first brought into

public ownership and the costs and expenses of and incidental to its being brought into public ownership⁵.

The rate of interest payable on the debt so assumed by a corporation, and the date from which interest is to begin to accrue, the arrangements for paying off the principal, and the other terms of the debt are such as the Secretary of State or the Assembly, with the Treasury's approval, may from time to time determine⁶.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 6(1), (2).

5 Ibid Sch 31 para 6(3). If, however, it appears to the Secretary of State or to the Assembly that there has been such a change in circumstances since the property was first brought into public ownership that its true value would not be reflected by reference to the consideration so mentioned, the Secretary of State or the Assembly, with the Treasury's approval, must determine the amount to be notified: Sch 31 para 6(4).

6 Ibid Sch 31 para 6(5). Different rates and dates may be so determined with respect to different portions of the debt: Sch 31 para 6(6). Any sums so received by the Secretary of State or the Assembly must be paid into the National Loans Fund: Sch 31 para 6(7). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1449. Surplus funds.

1449. Surplus funds.

Where it appears to the Secretary of State¹ or, in relation to Wales, to the National Assembly for Wales², in either case after consultation³ with the Treasury and an urban development corporation⁴, that the corporation has a surplus, whether on capital or on revenue account after making allowance by way of transfer to reserve or otherwise for its future requirements, the corporation must, if the Secretary of State or the Assembly with the approval of the Treasury and after consultation with the corporation so directs, pay to the Secretary of State or to the Assembly such sum not exceeding the amount of the surplus as may be specified in the direction⁵. The whole or part of any payment so made to the Secretary of State or to the Assembly by a corporation must, if the Secretary of State or the Assembly with the approval of the Treasury so determines, be treated as made by way of repayment of such part of the principal of loans⁶ and as made in respect of the repayments due at such times as may be so determined⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'consult' para 2 note 1 ante.

4 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

5 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 7(1). Any sum so received by the Secretary of State or by the Assembly must, subject to Sch 31 para 7(4) (see note 7 infra), be paid into the Consolidated Fund: Sch 31 para 7(2). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031. As to payments into the Consolidated Fund by the Assembly, however, see the Government of Wales Act 1998 s 84; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

6 Ie under the Local Government, Planning and Land Act 1980 Sch 31 para 4(3): see PARA 1446 ante.

7 Ibid Sch 31 para 7(3). Any sum so treated as a repayment of a loan must be paid by the Secretary of State or by the Assembly into the National Loans Fund: Sch 31 para 7(4). As to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1450. Financial limits.

1450. Financial limits.

The aggregate amount of the sums:

5067 (1) borrowed by all urban development corporations¹ minus repayments made in respect of those sums; and

5068 (2) issued by the Treasury in fulfilment of guarantees² of debts of all corporations,

may not exceed £30 million or such greater sum, not exceeding £100 million, as the Secretary of State³ may specify by order⁴ made by statutory instrument⁵. This function of the Secretary of State has not been transferred, so far as exercisable in Wales, to the National Assembly for Wales⁶ but is to be exercised in relation to Wales only with the agreement of the Assembly⁷.

1 Ie under the Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 4: see PARA 1446 ante. For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Ie under ibid Sch 31 para 5 (as amended): see PARA 1447 ante.

3 As to the Secretary of State see PARA 19 ante.

4 No such order has effect until approved by a resolution of the House of Commons: Local Government, Planning and Land Act 1980 Sch 31 para 8(3) (Sch 31 para 8 substituted by the Urban Development Corporations (Financial Limits) Act 1987 s 1(1)).

5 Local Government, Planning and Land Act 1980 Sch 31 paras 1(1), 8(1), (2) (as substituted: see note 4 supra). At the date at which this title states the law, no such order had been made.

6 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 See ibid art 5, Sch 2.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1451. Grants and loans; accounts.

1451. Grants and loans; accounts.

The Secretary of State¹ must prepare in respect of each financial year² an account of the sums:

- 5069 (1) paid to urban development corporations in England³;
- 5070 (2) issued to him⁴ and received by him⁵ and of the disposal by him of those sums; and
- 5071 (3) paid⁶ into the Consolidated Fund or the National Loans Fund⁷.

The form of the account and the manner of preparing it are such as the Treasury may direct⁸.

The Secretary of State must send the account to the Comptroller and Auditor General before the end of the month of November next following the end of the year⁹; and the Comptroller and Auditor General must examine, certify and report on the account and lay copies of it and of his report before each House of Parliament¹⁰.

The National Assembly for Wales must similarly prepare such an account in respect of the sums paid by it to urban development corporations in Wales, issued to and received by it under the relevant statutory provisions¹¹ and paid into the Consolidated Fund or the National Loans Fund, and must so send the account to the Auditor General for Wales; and the Auditor General for Wales must examine, certify and report on the account and lay copies of it and of his report before the Assembly¹².

1 As to the Secretary of State see PARA 19 ante.

2 For the meaning of 'financial year' see PARA 1442 note 1 ante.

3 Ie under the Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 3: see PARA 1445 ante. For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 Ie under ibid Sch 31 para 4(4): see PARA 1446 ante.

5 Ie under ibid Sch 31 para 4(5): see PARA 1446 ante.

6 Ie under ibid Sch 31 para 7: see PARA 1449 ante.

7 Ibid Sch 31 para 9(1). As to the Consolidated Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 711 et seq; PARLIAMENT vol 78 (2010) PARAS 1028-1031; and as to the National Loans Fund see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARA 727 et seq.

8 Ibid Sch 31 para 9(4).

9 Ibid Sch 31 para 9(2).

10 Ibid Sch 31 para 9(3).

11 See notes 4-6 supra.

12 See the provisions cited in notes 7-10 supra. As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly

see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1452. Urban development corporation's accounts.

1452. Urban development corporation's accounts.

An urban development corporation¹ must keep proper accounts and other records in relation to them². The accounts and records must show, in respect of the financial year³ to which they relate, a true and fair view of the corporation's activities⁴.

A corporation must prepare in respect of each financial year a statement of accounts complying with any requirement which the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁶ has, with the Treasury's consent in either case, notified in writing to the corporation relating to:

- 5072 (1) the information to be contained in the statement;
- 5073 (2) the manner in which the information is to be presented; and
- 5074 (3) the methods and principles according to which the statement is to be prepared⁷.

As soon as the accounts and statement of accounts of the corporation for any financial year have been audited⁸, the corporation must send to the Secretary of State or to the Assembly a copy of the statement, together with:

- 5075 (a) if the accounts and statement have been audited under the provisions applying to certain specified corporations in England⁹, a copy of the Comptroller and Auditor General's report on the accounts and statement¹⁰;
- 5076 (b) in other cases¹¹, a copy of any report made by the auditor on the accounts or on the statement¹².

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 10(1).

3 For the meaning of 'financial year' see PARA 1442 note 1 ante.

4 Local Government, Planning and Land Act 1980 Sch 31 para 10(2).

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Local Government, Planning and Land Act 1980 Sch 31 para 10(3). Subject to any requirement so notified to the corporation, in so preparing any statement of accounts, the corporation must follow, with respect to each of the matters specified in the Local Government, Planning and Land Act 1980 Sch 31 para 10(3)(a)-(c) (see heads (1)-(3) in the text), such course as may for the time being be approved by the Secretary of State or by the Assembly with the Treasury's consent: Sch 31 para 10(4).

- 8 le under ibid Sch 31 para 10A(3) (as added) or under Sch 31 para 11(1) (as amended): see PARA 1453 post.
- 9 le if they have been audited under ibid Sch 31 para 10A(3) (as added): see PARA 1453 post.
- 10 The Secretary of State must lay the report before each House of Parliament: see PARA 1442 note 10 ante.
- 11 le if they have been audited under the Local Government, Planning and Land Act 1980 Sch 31 para 11(1) (as amended): see PARA 1453 post.
- 12 Ibid Sch 31 para 12 (substituted by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005, SI 2005/913, art 2(2), (5)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(iii) Urban Development Corporations/E. FINANCE, ACCOUNTS AND AUDIT/1453. Audit.

1453. Audit.

Certain specified urban development corporations¹ must send a copy of their accounts and statement of accounts² for each financial year³ ending on or after 31 March 2005 to the Comptroller and Auditor General as soon as reasonably practicable after the end of that year⁴. The Comptroller and Auditor General must examine, certify and report on the accounts and statement so received⁵.

The accounts and statement of accounts of other urban development corporations must be audited by an auditor to be appointed annually by the Secretary of State⁶ or, in the case of a corporation in Wales, by the National Assembly for Wales⁷ in relation to the corporation⁸. A person:

- 5077 (1) may not be so appointed unless he is eligible⁹ for appointment as a company auditor¹⁰;
- 5078 (2) is not qualified for such appointment if the person is:
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31. (a) a member, officer or servant of the corporation; or
32. (b) a partner of, or employed by, a member, officer or servant of the corporation; or
33. (c) a body corporate of which a member, officer or servant of the corporation is a director or officer¹¹.
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1 le the following corporations: (1) Thurrock Development Corporation; (2) London Thames Gateway Development Corporation; (3) West Northamptonshire Development Corporation: see the Local Government, Planning and Land Act 1980 Sch 31 para 10A(1), (2) (Sch 31 para 10A added by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005, SI 2005/913, art 2(2), (3)). For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 See PARA 1452 ante.

3 For the meaning of 'financial year' see PARA 1442 note 1 ante.

4 Local Government, Planning and Land Act 1980 Sch 31 para 10A(1) (as added: see note 1 supra). As to the Comptroller and Auditor General see CONSTITUTIONAL LAW AND HUMAN RIGHTS vol 8(2) (Reissue) PARAS 724-726.

5 Ibid Sch 31 para 10A(3) (as added: see note 1 supra).

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 31 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Local Government, Planning and Land Act 1980 s 164(1), Sch 31 para 11(1) (amended by the Government Resources and Accounts Act 2000 (Audit of Public Bodies) Order 2005, SI 2005/913, art 2(2), (4)). As to transmission of the auditor's report to the Secretary of State or to the Assembly see PARA 1452 ante.

9 le under the Companies Act 1989 s 25: see COMPANIES vol 15 (2009) PARA 969.

10 Local Government, Planning and Land Act 1980 Sch 31 para 11(2) (Sch 31 para 11(2) substituted, and Sch 31 para 11(3) amended, by the Companies Act 1989 (Eligibility for Appointment as Company Auditor) (Consequential Amendments) Regulations 1991, SI 1991/1997, reg 2, Schedule para 37).

11 Local Government, Planning and Land Act 1980 Sch 31 para 11(3) (as amended: see note 7 supra).

UPDATE

1453 Audit

TEXT AND NOTES 9, 10--Now eligible for appointment as a statutory auditor under the Companies Act 2006 Pt 42 (ss 1209-1264): 1980 Act Sch 31 para 11(2) (amended by SI 2008/948).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/A. VESTING OF LAND/1454. Vesting of land by order.

(iv) Vesting and Acquisition of Land

A. VESTING OF LAND

1454. Vesting of land by order.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may³ by order made by statutory instrument provide that land⁴ specified in the order which is vested in a local authority⁵, statutory undertakers⁶ or other public body or in a subsidiary⁷ of a public body shall vest in an urban development corporation⁸ established or to be established by an order⁹ for an area in which the land is situated¹⁰. Such an order may not, however, specify land vested in statutory undertakers which is used for the purpose of carrying on their undertakings or which is held for that purpose¹¹; and no such order may be made in relation to a universal service provider within the meaning of the Postal Services Act 2000¹².

No such order has effect until approved by a resolution of each House of Parliament¹³.

Compensation¹⁴ must be assessed by reference to values current on the date the order so made comes into force¹⁵.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 141 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le subject to the Local Government, Planning and Land Act 1980 s 141(2): see the text and note 11 infra.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 There is no statutory definition of 'local authority' for these purposes; as to local authorities see generally para 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

6 For these purposes, 'statutory undertakers' also includes British Shipbuilders and any wholly-owned subsidiary thereof, as defined by the Companies Act 1985 s 736 (as substituted) (see COMPANIES vol 14 (2009) PARA 25); see the Local Government, Planning and Land Act 1980 s 170(2) (as amended); and PARA 1425 ante. For the meaning of 'statutory undertakers' generally see PARA 1425 ante. See also, however, the text and note 12 infra.

7 For these purposes, 'subsidiary', in relation to a public body, means a wholly-owned subsidiary of that body; and 'wholly-owned subsidiary' has the meaning assigned to it by the Companies Act 1985 s 736 (as substituted): Local Government, Planning and Land Act 1980 s 141(7) (amended by the Companies Consolidation (Consequential Provisions) Act 1985 s 30, Sch 2; the Companies Act 1989 s 144(4), Sch 18 para 24).

8 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

9 le under the Local Government, Planning and Land Act 1980 s 135 (as amended): see PARA 1428 ante.

10 Ibid s 141(1). In the case of land in England in vested in statutory undertakers, in England the Secretary of State and the appropriate minister must make any such order: Local Government, Planning and Land Act 1980 s 141(3). For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1424 ante. For similar powers in relation to the vesting of land in England in the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 161 (as amended; now repealed).

An order under the Local Government, Planning and Land Act 1980 s 141 (as amended) has the same effect as a declaration under the Compulsory Purchase (Vesting Declarations) Act 1981 (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 686 et seq) except that, in relation to such orders, the enactments mentioned in the Local Government, Planning and Land Act 1980 s 141(4), Sch 27 (as amended) have effect subject to the modifications therein specified: s 141(4) (amended by the Compulsory Purchase (Vesting Declarations) Act 1981 s 16(1), Sch 3 para 4).

The Land Compensation Act 1961 has effect in relation to orders made under the Local Government, Planning and Land Act 1980 s 141 (as amended) subject to the following modifications:

87 (1) references to the date of service of a notice to treat are to be treated as references to the date on which an order under s 141 (as amended) comes into force (Sch 27 paras 9, 10);

88 (2) the Land Compensation Act 1961 s 17(2) (as amended) is to be treated as if for the words 'the authority proposing to acquire it has served a notice to treat in respect thereof, or an agreement has been made for the sale thereof to that authority' there were substituted the words 'an order under section 141 of the Local Government, Planning and Land Act 1980 vesting the land in which the interest subsists in an urban development corporation has come into force, or an agreement has been made for the sale of the interest to such a corporation' (Sch 27 para 11);

89 (3) in the Land Compensation Act 1961 s 22 (as amended), s 22(2) is to be treated as if at the end of s 22(2)(c) there were added the words 'or (d) where an order has been made under section 141 of the Local Government, Planning and Land Act 1980 vesting the land in which the interest subsists in an urban development corporation'; and the Land Compensation Act 1961 s 22(3) (repealed) is to be treated as if in s 22(3)(a) the words 'or (d)' were inserted after the words 'paragraph (b)' (Local Government, Planning and Land Act 1980 Sch 27 para 12);

90 (4) any reference to a notice to treat in the Land Compensation Act 1961 s 39(2) is to be treated as a reference to an order under the Local Government, Planning and Land Act 1980 s 141 (as amended) (Sch 27 para 13).

11 Ibid s 141(2).

12 Ibid s 141(6A) (added by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1, PARA 48(1), (3)). As to the provision of a universal postal service see POST OFFICE vol 36(2) (Reissue) PARA 24.

13 Local Government, Planning and Land Act 1980 s 141(6).

14 Ie under the Land Compensation Act 1961 as applied by the Local Government, Planning and Land Act 1980 s 141(4), Sch 27 (as amended) (see note 9 supra). No compensation is payable, however, under the Land Compensation Act 1961 Pt IV (ss 23-29) (as revived and amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 781, 784 et seq) by virtue of an order under the Local Government, Planning and Land Act 1980 s 141 (as amended): s 141(5A) (added by the Planning and Compensation Act 1991 s 70, Sch 15 para 25).

15 Local Government, Planning and Land Act 1980 s 141(5).

UPDATE

1454 Vesting of land by order

NOTE 7--Definition of 'wholly-owned subsidiary' amended: SI 2009/1941.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/B. POWERS OF ACQUISITION/1455. Acquisition of land by urban development corporation; in general.

B. POWERS OF ACQUISITION

1455. Acquisition of land by urban development corporation; in general.

An urban development corporation¹ may acquire by agreement or, on being authorised to do so by the Secretary of State², or, in relation to Wales, by the National Assembly for Wales³, compulsorily:

- 5079 (1) land⁴ in the urban development area⁵;
- 5080 (2) land adjacent to the area which the corporation requires for purposes connected with the discharge of the corporation's functions in the area;
- 5081 (3) land, whether or not in or adjacent to the area, which the corporation requires for the provision of services in connection with the discharge of the corporation's functions in the area⁶.

An urban development corporation which may be authorised by the Secretary of State or the Assembly, by means of a compulsory purchase order⁷, to purchase any land compulsorily for any purpose may be authorised by him or by the Assembly, by means of such an order, to purchase compulsorily for that purpose such new rights⁸ over the land as are specified in the order⁹.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 142 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales

(Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

6 Local Government, Planning and Land Act 1980 s 142(1). The Acquisition of Land Act 1981 applies to the compulsory acquisition of land in pursuance of the Local Government, Planning and Land Act 1980 s 142(1): s 142(2A) (added by the Acquisition of Land Act 1981 s 34, Sch 4 para 30(1), (5); amended by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 10(1), (2), Sch 9; for transitional provisions see Sch 7 para 10(6)). The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended), so far as applicable and other than s 31 (as amended), apply in relation to the acquisition of land by agreement under the Local Government, Planning and Land Act 1980 s 142 (as amended); and in the Compulsory Purchase Act 1965 Pt I (as amended) as so applied 'land' has the meaning given by the Interpretation Act 1978 (see PARA 1423 note 7 ante): Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 4(1).

For similar powers in England conferred on the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 162 (now repealed).

7 For these purposes, 'compulsory purchase order' has the same meaning as in the Acquisition of Land Act 1981, and s 28, Sch 3 (as amended) (see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 557 et seq) applies to the compulsory purchase of a right by virtue of the Local Government, Planning and Land Act 1980 s 142(4): s 142(5) (amended by the Acquisition of Land Act 1981 Sch 4 para 30(1), (6)).

8 For these purposes, 'new rights' means rights which are not in existence when the order specifying them is made: Local Government, Planning and Land Act 1980 s 142(4).

9 Ibid s 142(4). The Compulsory Purchase Act 1965 has effect with modifications necessary to make it apply to the compulsory purchase of rights by virtue of the Local Government, Planning and Land Act 1980 s 142(4) as the 1965 Act applies to the compulsory purchase of land so that, in appropriate contexts, references in that Act to land are read as referring, or as including references, to the rights or to land over which the rights are to be exercisable, according to the requirements of the particular context; and, without prejudice to the generality of the above, in relation to the purchase of rights in pursuance of the Local Government, Planning and Land Act 1980 s 142(4), the Compulsory Purchase Act 1965 Pt I (as amended) has effect with the modifications specified in the Local Government, Planning and Land Act 1980 s 144(5), Sch 28 para 23; and the enactments relating to compensation for the compulsory purchase of land apply with the necessary modifications as they apply to such compensation: Sch 28 para 21(1), (2) (amended by the Acquisition of Land Act 1981 s 34, Sch 6 Pt I). See further PARA 1459 post.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/B. POWERS OF ACQUISITION/1456. Acquisition of land by local highway authority.

1456. Acquisition of land by local highway authority.

Where the appropriate minister¹ or, in relation to Wales, the National Assembly for Wales² is satisfied that the construction or improvement of a road is needed:

- 5082 (1) outside an urban development area³ for the purpose of securing the development of land⁴ in that area in accordance with proposals approved⁵ by the Secretary of State⁶ or by the Assembly; or
- 5083 (2) for the purpose of providing proper means of access to such an area,

then, in that case, a local highway authority⁷ may, on being authorised to do so by the appropriate minister or by the Assembly, acquire compulsorily any land as to which he or the Assembly is satisfied that its acquisition by the authority is requisite for the construction or

improvement of the road, or for carrying out the improvement, or controlling the development, of frontages to the road or of land abutting on or adjacent to the road⁸.

1 For these purposes, 'the appropriate minister' means, in England, the Secretary of State for Transport: Local Government, Planning and Land Act 1980 s 143(5); Transfer of Functions (Transport) Order 1981, SI 1981/238; Secretary of State for the Environment, Transport and the Regions Order 1997, SI 1997/2971; Transfer of Functions (Transport, Local Government and the Regions) Order 2002, SI 2002/2626.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 143 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 Ie under the Local Government, Planning and Land Act 1980 s 148 (as amended): see PARA 1462 post.

6 As to the Secretary of State see PARA 19 ante.

7 For these purposes, 'local highway authority' means a highway authority other than the appropriate minister or the Assembly: Local Government, Planning and Land Act 1980 s 143(5).

8 Ibid s 143(1), (2). The Acquisition of Land Act 1981 applies to the compulsory acquisition of land under the Local Government, Planning and Land Act 1980 s 143 (as amended): s 143(3A) (added by the Acquisition of Land Act 1981 s 34, Sch 4 para 30(1), (7); amended by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 10(1), (3), Sch 9; for transitional provisions see Sch 7 para 10(6)). See further COMPULSORY ACQUISITION OF LAND.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/B. POWERS OF ACQUISITION/1457. Special powers in relation to common land etc.

1457. Special powers in relation to common land etc.

Where an urban development corporation¹ exercises its powers of acquisition² in relation to land³ which forms part of a common⁴ or open space⁵ or fuel or field garden allotment⁶, the corporation may acquire by agreement or, on being authorised to do so by the Secretary of State⁷ or, in relation to Wales, by the National Assembly for Wales⁸, compulsorily, land for giving in exchange for the land acquired⁹.

Where a local highway authority¹⁰ has been authorised¹¹ to acquire compulsorily any such land, the authority may be authorised¹² to acquire compulsorily land for giving in exchange for the land acquired¹³.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Ie under the Local Government, Planning and Land Act 1980 s 142(1): see PARA 1455 ante.

3 For the meaning of 'land' see PARA 1423 note 7 ante.

4 There is no statutory definition of 'common' for these purposes; but cf the Acquisition of Land Act 1981 s 19(4); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 531. As to the application of the Acquisition of Land Act 1981 to acquisitions of land by a development corporation see note 9 infra.

5 There is no statutory definition of 'open space' for these purposes; but cf *ibid* s 19(4); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 531. See also note 4 *supra*.

6 There is no statutory definition of 'fuel or field garden allotment' for these purposes; but cf *ibid* s 19(4); and COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 531. See also note 4 *supra*.

7 As to the Secretary of State see PARA 19 *ante*.

8 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 142 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.

9 Local Government, Planning and Land Act 1980 s 142(2). The Acquisition of Land Act 1981 applies to the compulsory acquisition of land in pursuance of the Local Government, Planning and Land Act 1980 s 142(2): s 142(2A) (added by the Acquisition of Land Act 1981 s 34, Sch 4 para 30(1), (5); amended by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 10(1), (2), Sch 9; for transitional provisions see Sch 7 para 10(6)). The provisions of the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended), so far as applicable and other than s 31 (as amended), apply in relation to the acquisition of land by agreement under the Local Government, Planning and Land Act 1980 s 142 (as amended); and in the Compulsory Purchase Act 1965 Pt I (as amended) as so applied 'land' has the meaning given by the Interpretation Act 1978 (see PARA 1423 note 7 *ante*): Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 4(1). See further COMPULSORY ACQUISITION OF LAND.

10 For the meaning of 'local highway authority' see PARA 1456 note 7 *ante*.

11 *Ie* under the Local Government, Planning and Land Act 1980 s 143(2): see PARA 1456 *ante*.

12 See note 11 *supra*.

13 *Ibid* s 143(3). The Acquisition of Land Act 1981 applies to the compulsory acquisition of land under the Local Government, Planning and Land Act 1980 s 143 (as amended): s 143(3A) (added by the Acquisition of Land Act 1981 Sch 4 para 30(1), (7); amended by the Planning and Compulsory Purchase Act 2004 ss 118(2), 120, Sch 7 para 10(1), (3), Sch 9; for transitional provisions see Sch 7 para 10(6)). See further COMPULSORY ACQUISITION OF LAND.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/B. POWERS OF ACQUISITION/1458. Power to survey land; rights of entry.

1458. Power to survey land; rights of entry.

A person authorised in writing by the urban development corporation¹, and an officer of the Valuation Office², may at any reasonable time:

5084 (1) survey any land³ or estimate its value, in connection with a proposal by an urban development corporation to acquire the land compulsorily;

5085 (2) for the purpose of surveying⁴ or estimating the value of any land in pursuance of head (1) above, enter on the land and other land⁵.

The power to survey land so conferred includes power for a person authorised in writing by the urban development corporation to search and bore on and in the land for the purpose of ascertaining the nature of the subsoil or whether minerals are present in the subsoil; and the power to enter on land so conferred includes power for such a person to place and leave, on or in the land, apparatus for use in connection with the survey in question and to remove the apparatus⁶.

A person so authorised by an urban development corporation to enter on land in pursuance of heads (1) and (2) above:

- 5086 (a) must, if so required before or after entering on the land, produce evidence of his authority to enter;
- 5087 (b) may take with him on to the land such other persons and such equipment as are necessary for the survey in question;
- 5088 (c) may not, if the land is occupied, demand admission to the land as of right unless notice of the intended entry has been served by the corporation on the occupier not less than 28 days before the demand;
- 5089 (d) must, if the land is unoccupied when he enters or the occupier is then temporarily absent, leave the land as effectually secured against trespassers as he found it;
- 5090 (e) may not place or leave apparatus on or in the land or remove apparatus from the land unless the specified conditions relating to notice⁷ and to ministerial authorisation⁸ are fulfilled;
- 5091 (f) may not search or bore on or in the land which is the subject of the survey in question if the land is held by a local authority or statutory undertakers unless the specified conditions relating to notice⁹ and to ministerial authorisation¹⁰ are fulfilled¹¹.

If, in connection with a proposal of an urban development corporation to acquire land compulsorily, a person interested in any land suffers damage in consequence of the exercise of a power conferred by head (1), head (2) or head (b) above or a failure to perform the duty imposed by head (d) above in respect of the land, he is entitled to recover compensation for the damage from the corporation¹².

If a person:

- 5092 (i) wilfully obstructs another person in the exercise of a power conferred on the other person by head (1), head (2) or head (b) above; or
- 5093 (ii) while another person is on any land in pursuance of head (b) above, wilfully obstructs him in doing things connected with the survey in question; or
- 5094 (iii) removes or otherwise interferes with apparatus left on or in land in pursuance of these provisions,

he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale¹³.

If a person who has entered on any land in pursuance of these provisions discloses to another person information obtained by him there about a manufacturing process or trade secret, then, unless the disclosure is made in the course of performing his duty in connection with the purposes for which he was authorised to enter on the land, he is guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years or a fine, or to both, or on summary conviction to a fine not exceeding the statutory maximum¹⁴.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For these purposes, 'the Valuation Office' means the Valuation Office of the Inland Revenue Department: Local Government, Planning and Land Act 1980 s 167(14).

3 For the meaning of 'land' see PARA 1423 note 7 ante.

4 For these purposes, references to surveying include references to surveying from the air: Local Government, Planning and Land Act 1980 s 167(12).

5 Ibid s 167(1), (2). For similar powers in England conferred on a person authorised by the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 163 (now repealed).

6 Local Government, Planning and Land Act 1980 s 167(3). In exercising the powers of s 167 (as amended) to survey land held by a local authority or statutory undertakers, a person to whom s 167(1) applies must comply with all reasonable conditions imposed by the authority or undertakers with regard to the entry on, surveying of, searching or boring on or in the land, or placing or leaving on, or removal of apparatus from, the land: s 167(6). For the meaning of 'statutory undertakers' see PARA 1425 ante. There is no statutory definition of 'local authority' for these purposes; as to local authorities see generally para 28 ante; and LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq.

Where it is proposed to search or bore in pursuance of s 167 (as amended) in a street within the meaning of the New Roads and Street Works Act 1991 Pt III (ss 48-106) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 9), then: (1) s 55 (as amended) (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works; (2) s 69 (as amended) (requirements to be complied with where works likely to affect another person's apparatus in the street); and (3) s 82 (liability for damage or loss caused), have effect in relation to the searching and boring as if they were street works within the meaning of Pt III (as amended): Local Government, Planning and Land Act 1980 s 167(7) (substituted by the New Roads and Street Works Act 1991 s 168(1), Sch 8 para 109).

7 Ie unless notice of his intention to do so has been served by the corporation on an owner of the land, and if the land is occupied on the occupier, not less than 28 days before he does so: Local Government, Planning and Land Act 1980 s 167(4)(e)(i).

8 Ie unless he has a written ministerial authorisation to do so, if the land is held by a local authority or statutory undertakers who within that 28-day period serve on the corporation a notice stating that they object to the placing or leaving or removal of the apparatus on the ground that to do so would be seriously detrimental to the performance of any of their functions or, as the case may be, the carrying on of their undertaking: ibid s 167(4)(e)(ii). For these purposes, 'ministerial authorisation' means: (1) in relation to land held by a local authority, the authorisation of the Secretary of State or, in relation to Wales, of the National Assembly for Wales; and (2) in relation to land held by statutory undertakers, the authorisation of the Secretary of State and the appropriate minister or, in relation to Wales, of the Assembly: Local Government, Planning and Land Act 1980 s 167(5). As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 167 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. For the meaning of 'the appropriate minister' see PARA 1424 ante.

9 Ie unless notice of his intention to do so has been served by the corporation on the authority or undertakers not less than 28 days before he does so: Local Government, Planning and Land Act 1980 s 167(4)(f)(i).

10 Ie unless he has a written ministerial authorisation to do so, if within that 28-day period the authority or undertakers serve on the corporation a notice stating that they object to the searching or boring on the ground that to do so would be seriously detrimental to the performance of any of their functions or, as the case may be, the carrying on of their undertaking: ibid s 167(4)(f)(ii). See also note 8 supra.

11 Ibid s 167(4).

12 Ibid s 167(8). Any dispute as to a person's entitlement to compensation in pursuance of s 167(8) or as to the amount of the compensation must be determined by the Lands Tribunal; and the Land Compensation Act 1961 s 2(2)-(5) (as amended) and s 4 (conduct of certain proceedings before the tribunal and costs: see COMPULSORY ACQUISITION OF LAND) apply with the necessary modifications in relation to the determination by the tribunal of such a dispute: Local Government, Planning and Land Act 1980 s 167(9).

13 Ibid s 167(10) (amended by the Criminal Justice Act 1982 s 46). For the meaning of 'the standard scale' see PARA 53 note 10 ante.

14 Local Government, Planning and Land Act 1980 s 167(11). For the meaning of 'the statutory maximum' see PARA 53 note 11 ante.

UPDATE

1458 Power to survey land; rights of entry

NOTE 12--Reference to the Lands Tribunal is now to the Upper Tribunal; reference to the Land Compensation Act 1961 s 2(2)-(5) omitted: Local Government, Planning and Land Act 1980 s 167(9) (amended by SI 2009/1307).

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C. COMPENSATION AND BLIGHT

1459. Application of statutory provisions relating to compulsory purchase of rights.

The Compulsory Purchase Act 1965 has effect with modifications necessary to make it apply to the compulsory purchase of rights by an urban development corporation¹ as that Act applies to the compulsory purchase of land² so that, in appropriate contexts, references in that Act to land are read as referring, or as including references, to the rights or to land over which the rights are to be exercisable, according to the requirements of the particular context³.

In assessing the compensation to be paid by the acquiring authority⁴ under the 1965 Act regard must be had not only to the extent, if any, to which the value of the land over which the right is purchased is depreciated by the purchase but also to the damage, if any, to be sustained by the owner of the land by reason of injurious affection of other land of the owner by the exercise of the right⁵.

Where in consequence of the service on a person⁶ of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house ('the relevant land'):

- 5095 (1) a question of disputed compensation in respect of the purchase of the right would otherwise fall to be determined by the Lands Tribunal ('the Tribunal'); and
 5096 (2) before the Tribunal has determined that question the person satisfies the Tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and:

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34. (a) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 35. (b) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

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the compulsory purchase order to which the notice to treat relates must, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person's interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the Tribunal directs⁷. Any question as to the extent of the land in which a compulsory purchase order is so deemed to authorise the purchase of an interest must be determined by the Tribunal⁸. Where, in consequence of a determination of the Tribunal that it is satisfied as mentioned in heads (1) and (2) above, a compulsory purchase order is so deemed to authorise the purchase of an interest in land, the

acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this provision prejudices any other power of the authority to withdraw the notice⁹.

1 le by virtue of the Local Government, Planning and Land Act 1980 s 142(4): see PARA 1455 ante. For the meaning of 'urban development corporation' see PARA 1426 note 4 ante.

2 For the meaning of 'land' see PARA 1423 note 7 ante.

3 Local Government, Planning and Land Act 1980 s 144(5), Sch 28 para 21(1) (Sch 28 para 21(1), (2) (amended by the Acquisition of Land Act 1981 s 34, Sch 6 Pt I). Without prejudice to the generality of the provisions set out in the text, in relation to the purchase of rights in pursuance of the Local Government, Planning and Land Act 1980 s 142(4), the Compulsory Purchase Act 1965 Pt I (ss 1-32) (as amended) has effect with the modifications specified in the Local Government, Planning and Land Act 1980 s 144(5), Sch 28 para 23 (see *infra*; and the text and notes 4-9 *infra*); and the enactments relating to compensation for the compulsory purchase of land apply with the necessary modifications as they apply to such compensation: Sch 28 para 21(2) (as so amended). See further COMPULSORY ACQUISITION OF LAND.

The following provisions of the Compulsory Purchase Act 1965 (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), namely: (1) s 9(4) (failure of owners to convey: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 663); (2) Sch 1 para 10(3) (owners under incapacity: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 670); (3) Sch 2 para 2(3) (absent and untraced owners: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 663); and (4) Sch 4 paras 2(3), 7(2) (common land: see COMMONS vol 13 (2009) PARAS 484-486), are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be purchased compulsorily is vested absolutely in the acquiring authority: Local Government, Planning and Land Act 1980 Sch 28 para 23(3).

The Compulsory Purchase Act 1965 s 11 (as amended) (powers of entry: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARAS 549, 645) is to be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which is to be deemed for this purpose to have been created on the date of service of the notice); and s 12 (as amended) (penalty for unauthorised entry: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 644) and s 13 (entry on sheriff's warrant in the event of obstruction: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 646) are to be modified correspondingly: Local Government, Planning and Land Act 1980 Sch 28 para 23(4).

The Compulsory Purchase Act 1965 s 20 (as amended) (compensation for short-term tenants: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 699 *et seq*) applies with the modifications necessary to secure that persons with such interests as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the interests but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question: Local Government, Planning and Land Act 1980 Sch 28 para 23(4).

The Compulsory Purchase Act 1965 s 22 (protection of acquiring authority's possession of land where by inadvertence an interest in the land has not been purchased: see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 648) is to be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right in question, subject to compliance with that section as respects compensation: Local Government, Planning and Land Act 1980 Sch 28 para 23(5).

4 For these purposes, 'acquiring authority' means the person authorised by the compulsory purchase order to purchase the land: see the Compulsory Purchase Act 1965 s 1(3) (substituted by the Acquisition of Land Act 1981 s 34(1), Sch 4; definition amended by s 34(3), Sch 6).

5 Compulsory Purchase Act 1965 s 7(1) (ss 7, 8 substituted for these purposes by the Local Government, Planning and Land Act 1980 Sch 28 para 23(1), (2)). The modifications subject to which the Land Compensation Act 1973 s 44(1) is to have effect, as applied by s 44(2) (as amended) to compensation for injurious affection under these provisions, are that for the words 'land is acquired or taken' there are to be substituted the words 'a right over land is purchased' and for the words 'acquired or taken from him' there are to be substituted the words 'over which the right is exercisable': Compulsory Purchase Act 1965 s 7(2) (as so substituted).

6 le in pursuance of *ibid* 5 (as amended): see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 616.

7 *Ibid* s 8(1) (as substituted: see note 5 *supra*). As to the Lands Tribunal see COMPULSORY ACQUISITION OF LAND vol 18 (2009) PARA 720 *et seq*.

8 *Ibid* s 8(2) (as substituted: see note 5 *supra*).

9 Ibid s 8(3) (as substituted: see note 5 supra). The modifications subject to which the Land Compensation Act 1973 s 58(1) (as amended) is to have effect, as applied by s 58(2) (as amended) to the duty of the Tribunal in determining whether it is satisfied as mentioned in the Compulsory Purchase Act 1965 s 8(1) (as so substituted), are that at the beginning of the Land Compensation Act 1973 s 58(1)(a) and (b) there are to be inserted the words 'a right over', for the word 'severance' there are to be substituted the words 'right on the whole of the house, building or manufactory or of the house and the park or garden' and for the words 'part proposed' and 'part is' there are to be substituted respectively the words 'right proposed' and 'right is': Compulsory Purchase Act 1965 s 8(4) (as so substituted).

UPDATE

1459 Application of statutory provisions relating to compulsory purchase of rights

NOTE 3--1980 Act Sch 28 para 23(4) amended: Tribunals, Courts and Enforcement Act 2007 Sch 22 para 2.

TEXT AND NOTES 7-9--References to the Lands Tribunal are now to the Upper Tribunal: Compulsory Purchase Act 1965 s 8(1), (3) (amended by SI 2009/1307).

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1460. Application of statutory provisions relating to blighted land.

Land¹ which is within an area:

- 5097 (1) intended to be designated as an urban development area² by an order which has been made³ but has not come into effect; or
- 5098 (2) which has been so designated by an order⁴ which has come into effect,

is blighted land in relation to which the relevant provisions of the Town and Country Planning Act 1990⁵ apply⁶.

Where a blight notice⁷ has been served in respect of such land, then, until such time as an urban development corporation⁸ is established for the urban development area, the Secretary of State⁹ or, in relation to Wales, the National Assembly for Wales¹⁰ has power to acquire compulsorily any interest in the land in pursuance of the blight notice so served¹¹. If the land is or becomes land within head (2) above, the interest must be transferred by him or by the Assembly to the urban development corporation established for the urban development area¹².

1 For the meaning of 'land' see PARA 2 note 10 ante.

2 For the meaning of 'urban development area' for these purposes see PARAS 981 note 6, 1426 note 4 ante.

3 Ie under the Local Government, Planning and Land Act 1980 s 134 (as amended): see PARA 1426 ante.

4 See note 3 supra.

5 Ie the Town and Country Planning Act 1990 Pt VI Ch II (ss 149-171) (as amended): see PARA 979 et seq ante.

6 Ibid s 149(1), Sch 13 para 9.

7 For the meaning of 'blight notice' see PARA 990 note 20 ante.

8 For the meaning of 'urban development corporation' for these purposes see PARAS 35 note 2, 1429 note 1 ante.

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Town and Country Planning Act 1990 s 165, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 Town and Country Planning Act 1990 s 165(1). The Land Compensation Act 1961 has effect in relation to the compensation payable in respect of the acquisition of an interest by the Secretary of State or the Assembly under the Town and Country Planning Act 1990 s 165(1) as if (1) the acquisition were by an urban development corporation under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended) (see PARA 1426 et seq ante, PARA 1461 et seq post); and (2) in the case of land falling within the Town and Country Planning Act 1990 Sch 13 para 9(a) (see head (1) in the text), the land formed part of an area designated as an urban development area by an order under the Local Government, Planning and Land Act 1980 s 134 (as amended) which has come into operation: Town and Country Planning Act 1990 s 165(3)(a), (c).

12 Ibid s 165(2)(a). In any other case, the interest may be disposed of by the Secretary of State or the Assembly in such manner as he or it thinks fit: s 165(2)(b).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/ (iv) Vesting and Acquisition of Land/D. EXTINGUISHMENT OF RIGHTS/1461. Extinguishment of rights over land.

D. EXTINGUISHMENT OF RIGHTS

1461. Extinguishment of rights over land.

On a vesting order¹ coming into force or the completion by an urban development corporation² or local highway authority³ of a compulsory acquisition of land⁴, subject to certain exceptions⁵ all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land are extinguished, and any such apparatus vests in the corporation or, as the case may be, the authority⁶.

Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under these provisions is, however, entitled to compensation from the corporation⁷.

1 I.e. an order under the Local Government, Planning and Land Act 1980 s 141 (as amended): see PARA 1454 ante.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

4 I.e. under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1462 et seq post. For the meaning of 'land' see PARA 1423 note 7 ante.

5 The Local Government, Planning and Land Act 1980 s 144(4), Sch 28 para 5(1) (see the text to notes 1-4 supra, 6 infra) does not apply to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of carrying on their undertaking or to any right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network or to any electronic communications apparatus kept installed for the purposes of any such network: Sch 28 para 5(2) (amended by

the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (2); the Communications Act 2003, s 406(1), Sch 17, PARA 52(1), (2)). For the meaning of 'statutory undertakers' see PARA 1425 ante.

In respect of any right or apparatus not falling within the Local Government, Planning and Land Act 1980 Sch 28 para 5(2) (as so amended), Sch 28 para 5(1) has effect subject (1) to any direction given by the Secretary of State or, in relation to Wales, by the National Assembly for Wales, before the coming into force of the order or, as the case may be, by the corporation before the completion of the acquisition, that Sch 28 para 5(1) shall not apply to any right or apparatus specified in the direction; and (2) to any agreement which may be made, whether before or after the coming into force of the order or completion of the acquisition, between the Secretary of State or the Assembly (or the corporation) and the person in or to whom the right or apparatus in question is vested or belongs: Sch 28 para 5(3). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 28 para 5 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Local Government, Planning and Land Act 1980 s 144(1), (4), Sch 28 para 5(1).

7 Ibid Sch 28 para 5(4). Any compensation so payable must be determined in accordance with the Land Compensation Act 1961 (see generally COMPULSORY ACQUISITION OF LAND): Local Government, Planning and Land Act 1980 Sch 28 para 5(5).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/A. PLANNING FUNCTIONS/1462. Planning control; in general.

(v) Development of Designated Areas

A. PLANNING FUNCTIONS

1462. Planning control; in general.

An urban development corporation¹ may submit to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³ proposals for the development of land⁴ within the urban development area⁵, and the Secretary of State or the Assembly, after consultation⁶ with the local planning authority⁷ within whose area the land is situated and with any other local authority which appears to him or to the Assembly to be concerned, may approve any such proposals either with or without modification⁸.

A special development order made⁹ by the Secretary of State or the Assembly with respect to an urban development area may¹⁰ grant permission for any development of land in accordance with proposals so approved, subject to such conditions¹¹, if any, as may be specified in the order¹².

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to transfer of functions under the Local Government, Planning and Land Act 1980 s 148 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

6 For the meaning of 'consult' para 2 note 1 ante.

7 For these purposes, except in relation to land in Wales, references to the local planning authority are references (1) in relation to land outside Greater London, to the district planning authority and also, in relation to proposals for any development which is a county matter, as defined in the Town and Country Planning Act 1990 s 1(5), Sch 1 para 1 (as amended) (see PARA 38 ante) to the county planning authority; and (2) in relation to land in Greater London, to the authority which is the local planning authority as ascertained in accordance with Pt I (ss 1-9) (as amended) (see PARA 28 et seq ante): Local Government, Planning and Land Act 1980 s 148(4) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(5); the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 16(1)). As to county planning authorities and district planning authorities see PARA 28 ante; and as to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

8 Local Government, Planning and Land Act 1980 s 148(1).

9 Ie under the Town and Country Planning Act 1990 s 59: see PARA 252 ante.

10 Ie without prejudice to the generality of the powers conferred by ibid s 59.

11 Ie including conditions requiring details of any proposed development to be submitted to the local planning authority.

12 Local Government, Planning and Land Act 1980 s 148(2) (as modified (see note 8 supra); amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 44(5)). As to the exercise of this power see eg the Urban Development Corporations in England (Planning Functions) Order 1998, SI 1998/84.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/A. PLANNING FUNCTIONS/1463. Features of special architectural or historic interest.

1463. Features of special architectural or historic interest.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² must give to an urban development corporation³ such directions with respect to the disposal of land⁴ vested in or acquired by it⁵ and with respect to the development by it of such land as appear to him or to the Assembly to be necessary or expedient for securing, so far as practicable, the preservation of any features of special architectural or historic interest, and in particular of buildings included in any list compiled or approved, or having effect as if compiled or approved, under the relevant⁶ statutory provisions⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 148 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 Ie under the Local Government, Planning and Land Act 1980: see PARA 1426 et seq ante.

6 Ie under the Planning (Listed Buildings and Conservation Areas) Act 1990 s 1: see PARA 1092 ante.

7 Local Government, Planning and Land Act 1980 s 148(3) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(5)).

UPDATE

1463-1464 Features of special architectural or historic interest, Corporation as planning authority

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/A. PLANNING FUNCTIONS/1464. Corporation as planning authority.

1464. Corporation as planning authority.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² so provides by order³, an urban development corporation⁴ is the local planning authority for the whole or any portion of its area for such purposes⁵ and in relation to such kinds of development as may be prescribed⁶. The order may provide that any enactment relating to local planning authorities shall not apply to the corporation and that any such enactment which applies to the corporation shall apply to it subject to such modifications as may be specified in the order⁷.

If the Secretary of State or the Assembly so provides by order:

5099 (1) an urban development corporation specified in the order may have, in the whole or any portion of its area, the functions conferred by such of the relevant statutory provisions⁸ as are specified in the order;

5100 (2) such of the specified statutory provisions⁹ as are mentioned in the order have effect, in relation to an urban development corporation specified in the order and to land¹⁰ in that corporation's area, subject to the specified¹¹ modifications¹².

The Secretary of State may direct that Part 2 of the Planning and Compulsory Purchase Act 2004¹³, which relates to local development in England, does not apply to the area of an urban development corporation¹⁴.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 149 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 An order under the Local Government, Planning and Land Act 1980 s 149 (as amended) has effect subject to such saving and transitional and supplementary provisions as may be specified in the order: s 149(11). The power to make an order under s 149 (as amended) is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 149(12). See also the Town and Country Planning Act 1990 s 7; and PARA 35 ante.

4 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

5 Ie for such purposes of the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

6 Local Government, Planning and Land Act 1980 s 149(1) (amended by the Planning (Consequential Provisions) Act 1990 ss 3, 4, Sch 1 Pt I, Sch 2 para 44(6)). For these purposes, 'prescribed' means prescribed by an order under the Local Government, Planning and Land Act 1980 s 149 (as amended): s 149(13). As to the exercise of these powers by the Secretary of State see eg the Urban Development Corporations in England (Planning Functions) Order 1998, SI 1998/84; the Thurrock Development Corporation (Planning Functions) Order 2005, SI 2005/2572; the London Thames Gateway Development Corporation (Planning Functions) Order 2005, SI 2005/2721.

For similar powers in England in relation to the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 ss 170, 171; and PARA 1306 ante.

7 Local Government, Planning and Land Act 1980 s 149(2).

8 le the provisions of the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 mentioned in the Local Government, Planning and Land Act 1980 s 149(3)(a), Sch 29 Pt I (amended by the Planning (Consequential Provisions) Act 1990 Sch 2 para 44(12); the Planning and Compensation Act 1991 ss 25, 32, Sch 3 para 17, Sch 7 para 5). The enactments so mentioned are:

91 (1) the Town and Country Planning Act 1990 s 171C (as added and amended) (see PARA 559 ante), s 172 (as substituted) (see PARA 561 ante), s 173 (as substituted) (see PARAS 563-567 ante), s 173A (as substituted) (see PARA 566 ante), s 178 (as amended) (see PARA 568 ante), s 183 (as amended) (see PARAS 577-579 ante), s 184 (as amended) (see PARAS 577-579 ante), s 187A (as added) (see PARA 583 ante), s 187B (as added) (see PARA 585 ante), s 188 (as amended) (see PARA 553 ante), ss 196A-196C (as added) (see PARAS 556-558 ante), s 197 (see PARA 847 ante), s 198 (as amended) (see PARA 850 ante), s 199 (see PARAS 850, 856 ante), s 201 (see PARA 853 ante), s 206 (see PARA 873 ante), s 207 (as amended) (see PARA 874 ante), s 209 (as amended) (see PARA 875 ante), s 211 (as amended) (see PARA 877 ante), ss 213-214D (as amended) (see PARAS 877, 879 et seq ante), s 215 (see PARA 887 ante), s 219 (as amended) (see PARA 889 ante), s 220 (as amended) (see PARA 769 ante), s 224 (as amended) (see PARA 830 ante) and s 324(1)(b), (c), (7) (as amended) (see PARA 57 ante);

92 (2) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 3 (as amended) (see PARA 1098 ante), s 4 (see PARA 1099 ante), s 8 (as amended) (see PARA 1109 ante), s 10 (as amended) (see PARAS 1111-1112 ante), s 11 (see PARA 1113 ante), ss 13-16 (see PARA 1117 et seq ante), s 20 (as amended) (see PARA 1186 ante), ss 23-25 (as amended) (see PARAS 1132-1134 ante), s 38 (as amended) (see PARAS 1146-1147 ante), s 42 (as amended) (see PARA 1148 ante), s 44A (as added) (see PARA 1151 ante), s 47 (as amended) (see PARAS 1154, 1157 ante), s 48 (see PARA 1156 ante), s 50 (as amended) (see PARA 1159 ante), s 53 (see PARA 1162 ante), s 54 (see PARA 1163 ante), s 60 (see PARA 1101 ante), ss 69-72 (as amended) (see PARA 1169 et seq ante), s 74 (see PARA 1174 ante), s 75 (see PARA 1174 ante), s 82 (as amended) (see PARA 1077 ante), s 88 (as amended) (see PARA 1083 ante), s 88A (as substituted) (see PARA 1085 ante).

9 le the provisions of the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990 specified in the Local Government, Planning and Land Act 1980 s 149(3)(b), Sch 29 Pt II (paras 1-14) (substituted by the Planning (Consequential Provisions) Act 1990 Sch 2 para 44(13)). The provisions so specified are:

93 (1) the Town and Country Planning Act 1990 s 139 (see PARA 970 ante), s 140(2)(d) (see PARA 971 ante), s 141(4) (see PARA 972 ante), s 143(1)(b) (see PARA 974 ante), s 148 (as amended) (see PARAS 966, 970 ante), ss 249, 251, 258 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq) and s 330 (as amended) (see PARA 53 ante);

94 (2) the Planning (Listed Buildings and Conservation Areas) Act 1990 s 33 (see PARA 1141 ante), s 34(2)(d) (see PARA 1142 ante), s 35(6) (see PARA 1143 ante), s 36(4) (see PARA 1144 ante) and s 91(2) (as amended) (miscellaneous definitions).

10 For the meaning of 'land' see PARA 1423 note 7 ante.

11 le the modifications specified in the Local Government, Planning and Land Act 1980 Sch 29 Pt II (paras 1-14) (as substituted: see note 9 supra). The modifications so specified are:

95 (1) to the Town and Country Planning Act 1990 s 330 (as amended) (see PARA 53 note 3 ante), s 139 (see PARA 970 note 8 ante), s 140(2)(d) (see PARA 971 note 17 ante), s 141(4) (see PARA 972 note 20 ante), s 143(1)(b) (see PARA 974 note 11 ante), s 148 (as amended) (meaning of 'the relevant provisions') (see PARA 970 note 10 ante), ss 249, 251, 258 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 791 et seq); and

- 96 (2) to the Planning Listed Buildings and Conservation Areas) Act 1990 s 33 (see PARA 1141 note 8 ante), s 34(2)(d) (see PARA 1142 note 14 ante), s 35(6) (see PARA 1143 note 23 ante), s 36(4) (see PARA 1144 note 5 ante); and s 91(2) (as amended) also has effect as if the words 'urban development corporation' were inserted at the appropriate place (see PARA 1141 note 8 ante).

12 Local Government, Planning and Land Act 1980 s 149(3) (amended by the Planning (Consequential Provisions) Act 1990 Sch 1 Pt I, Sch 2 para 44(6)). Such an order may provide (1) that any enactment relating to local planning authorities shall apply to the urban development corporation specified in the order for the purposes of any of the provisions specified in the Local Government, Planning and Land Act 1980 Sch 29 (as amended) (see notes 8-9 supra) which relate to land in the urban development area by virtue of the order; and (2) that any such enactment which so applies to the corporation shall apply to it subject to such modifications as may be specified in the order: s 149(4). For the meaning of 'urban development area' see PARA 1426 note 4 ante.

13 I.e. the Planning and Compulsory Purchase Act 2004 Pt 2 (ss 13-37) (local development in England): see PARA 89 et seq ante.

14 Ibid s 33.

UPDATE

1463-1464 Features of special architectural or historic interest, Corporation as planning authority

Certain persons or indorsements mentioned in these paragraphs are specified for the purposes of Regulatory Enforcement and Sanctions Act 2008 s 37, Schs 5, 6 (meaning of 'regulator' for the purposes of imposing civil sanctions): see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 196A.

1464 Corporation as planning authority

NOTES--The Local Government, Planning and Land Act 1980 s 149 and the Planning and Compulsory Purchase Act 2004 s 33 apply in relation to the Olympic Delivery Authority ('ODA') (see THEATRES AND OTHER FORMS OF ENTERTAINMENT vol 45(2) (Reissue) PARA 125A) as they apply to an urban development corporation: London Olympic Games and Paralympic Games Act 2006 s 5(1). In the application of the 1980 Act s 149, Sch 29 (1) and the 2004 Act s 33 a reference to an urban development corporation is to be taken as a reference to the ODA; (2) a reference to a corporation's area is to be taken as a reference to an area specified in an order made under s 149 (as modified by the 2006 Act s 5(1)(a)); (3) a reference to the 1980 Act s 142 must be disregarded; and (4) a reference to a London borough is to be taken as a reference to an area in respect of which an order is made under s 149: 2006 Act s 5(2), (3).

Where the ODA is appointed as a local planning authority the Town and Country Planning Act 1990 s 74(1B)(a) does not apply, but the Mayor of London may direct the ODA to refuse an application for planning permission in a specified case: 2006 Act s 5(4). In discharging such functions the ODA must have regard, in particular (a) to the desirability of making proper preparation for the London Olympics; (b) to the desirability of maximising the benefits to be derived after the London Olympics from things done in preparation for them; (c) to the terms of any planning permission already granted in connection with preparation for the London Olympics; (d) to any guidance issued by the Secretary of State, which may, in particular, refer to other documents; and (e) to the development plan for any area in respect of which an order is made under the 1980 Act s 149 by virtue of the 2006 Act s 5(1), construed in accordance with the 2004 Act s 38: 2006 Act s 5(5).

As to the development area in respect of which the ODA is given planning functions and its functions as a local planning authority in relation to certain development in that area see the Olympic Delivery Authority (Planning Functions) Order 2006, SI 2006/2185.

NOTE 6--SI 2005/2721 amended: SI 2006/2186.

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1465. Delegation of planning functions.

The following provisions apply in relation to any function conferred on an urban development corporation¹ by virtue of an order² that it is to be the local planning authority³.

The corporation may appoint committees⁴ and such committees may appoint sub-committees⁵. Anything which is authorised or required to be done by the corporation:

- 5101 (1) may be done by any member of the corporation or of its staff who is authorised for the purpose either generally or specifically;
- 5102 (2) may be done by a committee or sub-committee which is so authorised⁶.

The corporation may determine the quorum of a committee or sub-committee⁷ and may make such arrangements as it thinks appropriate relating to the meetings and procedure of a committee or sub-committee⁸. Anything done for these purposes is, however, subject to directions given by the Secretary of State or, in relation to Wales, by the National Assembly for Wales⁹.

The validity of anything done by a committee or sub-committee is not affected by any vacancy among its members or any defect in the appointment of any of its members¹⁰.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Ie an order under the Local Government, Planning and Land Act 1980 s 149 (as amended): see PARA 1464 ante.

3 Ibid s 135(5), Sch 26 para 14A(1) (Sch 26 paras 14A, 14B added by the Planning and Compulsory Purchase Act 2004 ss 118(2), 121(6), Sch 7 para 10(7); for transitional provisions see Sch 7 para 10(6)).

4 Such a committee may consist of: (1) such members of the corporation as it appoints; (2) such other persons as the corporation (with the consent of the Secretary of State or, in relation to Wales, of the National Assembly for Wales) appoints: Local Government, Planning and Land Act 1980 Sch 26 para 14B(1), (2) (as added: see note 3 supra). The membership of a committee must always include at least one person who is a member of the corporation and must not include any person who is a member of the staff of the corporation: Sch 26 para 14B(4) (as so added). As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 26 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Local Government, Planning and Land Act 1980 Sch 26 para 14A(2) (as added: see note 3 supra). A sub-committee of such a committee may consist of: (1) such members of the committee as it appoints; (2) such persons who are members of another committee of the corporation (whether or not they are members of the corporation) as the committee appoints; (3) such other persons as the corporation (with the consent of the Secretary of State or the Assembly) appoints: Sch 26 para 14B(1), (3) (as so added). The membership of a sub-

committee must always include at least one person who is a member of the corporation; and must not include any person who is a member of the staff of the corporation: Sch 26 para 14B(4) (as so added).

6 Ibid Sch 26 para 14A(3) (as added: see note 3 supra).

7 Ibid Sch 26 para 14A(4)(a) (as added: see note 3 supra).

8 Ibid Sch 26 para 14A(4)(b) (as added: see note 3 supra).

9 Ibid Sch 26 para 14A(5) (as added: see note 3 supra).

10 Ibid Sch 26 para 14A(6) (as added: see note 3 supra).

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B. DISPOSAL OF LAND

1466. Disposal by corporation.

An urban development corporation¹ may² dispose³ of any land vested in or acquired by it to such persons, in such manner, and subject to such covenants or conditions, as it considers expedient for securing the regeneration of the corporation's area or for purposes connected with the regeneration of the area⁴.

The powers of an urban development corporation with respect to the disposal of land vested in or acquired by it under the Local Government, Planning and Land Act 1980 must be so exercised as to secure, so far as practicable, that persons who were living or carrying on business or other activities on land so acquired have an opportunity⁵, if they desire to obtain accommodation on land belonging to the corporation and are willing to comply with any requirements of the corporation as to its development and use, to obtain on it accommodation suitable to their reasonable requirements on terms settled with due regard to the price at which any such land has been acquired from them⁶. An urban development corporation does not, however, have any duty to afford to a person who was carrying on a business of selling alcohol⁷ by retail on land acquired by the corporation an opportunity of obtaining alternative accommodation for such a business⁸.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Ie subject to the Local Government, Planning and Land Act 1980 s 146 (as amended) (see the text and notes 3-8 infra) and to any directions given by the Secretary of State or, in relation to Wales, by the National Assembly for Wales under the Local Government, Planning and Land Act 1980: s 146(1). As to the Secretary of State see PARA 19 ante; and as to the transfer of functions under s 146 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, references to disposing of land include references to granting an interest in or right over land: Local Government, Planning and Land Act 1980 s 146(5). Nothing in the Local Government, Planning and Land Act 1980, however, enables an urban development corporation to dispose of land by way of gift, mortgage or charge: s 146(4). For the meaning of 'land' see PARA 1423 note 7 ante.

4 Ibid s 146(1).

5 Ie subject to ibid s 146(3) (as originally enacted or as prospectively amended): see the text and notes 7-8 infra.

6 Ibid s 146(2).

7 At the date at which this title states the law, the statutory wording is 'intoxicating liquor' (see *ibid* s 146(3) (as originally enacted)) which has the meaning assigned by the Licensing Act 1964 s 201 (prospectively repealed) (see the Local Government, Planning and Land Act 1980 s 146(6) (as originally enacted)). The word 'alcohol' is substituted for the words 'intoxicating liquor' in the text, and is defined in s 146(6) (as prospectively amended) as having the meaning assigned by the Licensing Act 2003 s 191: see the Local Government, Planning and Land Act 1980 s 143(3), (6) (prospectively amended by the Licensing Act 2003, s 198(1), Sch 6 paras 76, 79, as from a day to be appointed under s 201(2); at the date at which this title states the law, no such day had been appointed).

8 Local Government, Planning and Land Act 1980 s 146(3) (as prospectively amended: see note 7 *supra*).

UPDATE

1466 Disposal by corporation

NOTE 7--Day now appointed: SI 2005/3056.

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C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND

1467. Power to override easements and other rights.

The erection, construction or carrying out, or maintenance, of any building or work on land¹ which has been vested in or acquired² by an urban development corporation³ or local highway authority⁴, whether done by the corporation or authority or by any other person, is authorised by virtue of the following provisions if it is done in accordance with planning permission⁵, notwithstanding that it involves:

- 5103 (1) interference with any easement, servitude, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support⁶; or
- 5104 (2) a breach of a restriction as to the user of land arising by virtue of a contract⁷.

Compensation is payable⁸ in respect of any such interference or breach⁹.

Nothing in head (1) or head (2) above authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land, being a right vested in or belonging to statutory undertakers¹⁰ for the purpose of the carrying on of their undertaking or a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications network¹¹; and nothing in the above provisions is to be construed as authorising any act or omission:

- 5105 (a) on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in heads (1) and (2) above¹²;

5106 (b) on the part of an urban development corporation or local highway authority, or of any body corporate, in contravention of any limitation imposed by law on its capacity by virtue of the constitution of the corporation, authority or body¹³.

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 le for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante; the text and notes 3-13 infra; and PARA 1468 et seq post.

3 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

5 le planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

6 Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 6(1), (3).

7 Ibid Sch 28 para 6(1).

8 le under the Compulsory Purchase Act 1965 ss 7 or 10 (as amended): see COMPULSORY ACQUISITION OF LAND.

9 Local Government, Planning and Land Act 1980 Sch 28 para 6(4). Compensation must be assessed in the same manner and subject to the same rules as in the case of other compensation under the Compulsory Purchase Act 1965 ss 7 or 10 (as amended) in respect of injurious affection where: (1) the compensation is to be estimated in connection with a purchase by an urban development corporation or local highway authority; or (2) the injury arises from the execution of works on land acquired by such a corporation or authority: Local Government, Planning and Land Act 1980 Sch 28 para 6(4).

Where a person other than the urban development corporation or local highway authority by or in whom the land in question was acquired or vested is liable to pay compensation by virtue of Sch 28 para 6(4) and fails to discharge that liability, the liability is enforceable against the corporation or authority (Sch 28 para 6(5)); but nothing in Sch 28 para 6(5) is to be construed as affecting any agreement between that corporation or authority and any other person for indemnifying the corporation or authority against any liability under Sch 28 para 6(5) (Sch 28 para 6(6)).

10 For the meaning of 'statutory undertakers' see PARA 1425 ante.

11 Local Government, Planning and Land Act 1980 Sch 28 para 6(2) (amended by the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (3); the Communications Act 2003 s 406(1), Sch 17 para 52(1), (2)). As to the extinguishment of rights of statutory undertakers and the payment of compensation for them see PARA 1476 et seq post.

12 Local Government, Planning and Land Act 1980 Sch 28 para 6(7).

13 Ibid Sch 28 para 6(8).

UPDATE

1467 Power to override easements and other rights

TEXT AND NOTES--Local Government, Planning and Land Act 1980 Sch 28 para 6 amended: Planning Act 2008 Sch 9 para 1.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1468. Power to use consecrated land.

1468. Power to use consecrated land.

Any consecrated land, whether including a building or not, which has been vested in or acquired¹ by an urban development corporation² or local highway authority³ may be used by the corporation or authority, or by any other person, in any manner in accordance with planning permission⁴, notwithstanding any obligation or restriction imposed under ecclesiastical law or otherwise in respect of consecrated land⁵. This provision does not, however, apply to land which consists of or forms part of a burial ground⁶.

Any use of consecrated land so authorised is subject to:

- 5107 (1) compliance with the prescribed⁷ requirements with respect to the removal and reinterment of any human remains and the disposal of monuments⁸ and fixtures and furnishings; and
- 5108 (2) such provisions as may be prescribed for prohibiting or restricting the use of the land, either absolutely or until the prescribed consent has been obtained, so long as any church or other building used or formerly used for religious worship, or any part of it, remains on the land⁹.

The use of any land, not being consecrated land, vested or acquired as mentioned above which at the time of acquisition included a church or other building used for religious worship, or its site, is subject to compliance with the requirements mentioned in head (1) above⁹.

1 le for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante; the text and notes 2-9 infra; and PARA 1469 et seq post.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

4 le planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

5 Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 7(1). Any power so conferred to use land in the manner so mentioned is to be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not: Sch 28 para 7(9). Nothing in Sch 28 para 7 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in Sch 28 para 7(1) or Sch 28 para 7(5) (see PARA 1469 post) (Sch 28 para 7(10)); and Sch 28 para 6(8) (see PARA 1467 ante) applies in relation to Sch 28 para 7 as it applies in relation to Sch 28 para 6 (as amended) (Sch 28 para 7(11)). As to the consecration of land, and the effect of consecration, see CREMATION AND BURIAL vol 10 (Reissue) PARA 1019 et seq; ECCLESIASTICAL LAW. For the meaning of 'land' see PARA 1423 note 7 ante.

6 Ibid Sch 28 para 7(2). For these purposes, 'burial ground' includes any churchyard, cemetery or other ground, whether consecrated or not, which has at any time been set apart for the purposes of interment: Sch 28 para 7(12). As to the use of burial grounds see PARA 1469 post.

7 For these purposes, 'prescribed' means prescribed by regulations made by the Secretary of State or, in relation to Wales, by the National Assembly for Wales: ibid Sch 28 para 7(13). The power so to make regulations is exercisable by statutory instrument; and any statutory instrument containing regulations so made is subject to annulment in pursuance of a resolution of either House of Parliament: Sch 28 para 7(14). As to the power to make regulations see further PARA 1470 post. As to the transfer of functions under Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 For these purposes, 'monument' includes a tombstone or other memorial: Local Government, Planning and Land Act 1980 Sch 28 para 7(12).

9 Ibid Sch 28 para 7(3). Subject to the provision of any such regulations, no faculty is required for the removal or reinterment in accordance with the regulations of any human remains or for the removal or disposal of any monuments: Sch 28 para 7(8). See further PARA 1470 post. As to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1469. Power to use burial grounds.

1469. Power to use burial grounds.

Any land¹ consisting of a burial ground² or part of a burial ground which has been vested in or acquired³ by a development corporation⁴ or local highway authority⁵ may be used by the corporation or authority in any manner in accordance with planning permission⁶ notwithstanding anything in any enactment relating to burial grounds or any obligation or restriction imposed under ecclesiastical law or otherwise in respect of burial grounds⁷. These provisions do not, however, have effect in respect of any land which has been used for the burial of the dead until the prescribed⁸ requirements with respect to the removal and reinterment of human remains, and the disposal of monuments⁹, in or upon the land have been complied with¹⁰.

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 For the meaning of 'burial ground' see PARA 1468 note 6 ante.

3 I.e. for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante; the text and notes 4-10 infra; and PARA 1470 et seq post.

4 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

5 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

6 I.e. planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

7 Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 7(5). Any power so conferred to use land in a manner so mentioned is to be construed as a power so to use the land, whether it involves the erection, construction or carrying out of any building or work, or the maintenance of any building or work, or not: Sch 28 para 7(9). Nothing in Sch 28 para 7 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in Sch 28 para 7(1) (see PARA 1468 ante) or Sch 28 para 7(5) (Sch 28 para 7(10)); and Sch 28 para 6(8) (see PARA 1467 ante) applies in relation to Sch 28 para 7 as it applies in relation to Sch 28 para 6 (as amended) (Sch 28 para 7(11)).

8 For the meaning of 'prescribed' see PARA 1468 note 7 ante.

9 For the meaning of 'monument' see PARA 1468 note 8 ante.

10 Local Government, Planning and Land Act 1980 Sch 28 para 7(6). As to the power to make regulations see PARA 1470 post. At the date at which this title states the law no such requirements had been prescribed; but it is apprehended that, by virtue of the Interpretation Act 1978 s 17(2)(b), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792 (as amended), partly have effect for these purposes. See CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1470. Power to make regulations.

1470. Power to make regulations.

Provision must be made by any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land¹ and burial grounds² for:

5109 (1) requiring the persons in whom the land³ is vested to publish notice of their intention to carry out the removal and reinterment of any human remains or the disposal of any monuments⁴;

5110 (2) enabling the personal representatives or relatives of any deceased person themselves to undertake:

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36. (a) the removal and reinterment of the remains of the deceased; and

37. (b) the disposal of any monument commemorating the deceased,

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and for requiring the persons in whom the land is vested to defray the expenses of such removal, reinterment and disposal, not exceeding such amount as may be prescribed⁵;

5111 (3) requiring compliance with:

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38. (a) such reasonable conditions, if any, as may be imposed, in the case of consecrated land, by the bishop of the diocese, with respect to the manner of removal, and the place and manner of reinterment of any human remains, and the disposal of any monuments; and

39. (b) any directions given in any case by the Secretary of State⁶ or, in relation to Wales, by the National Assembly for Wales⁷ with respect to the removal and reinterment of any human remains⁸.

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Subject, however, to the provisions of any such regulations, no faculty⁹ is required for the removal and reinterment in accordance with the regulations of any human remains or for the removal or disposal of any monuments¹⁰.

Any regulations made for the purposes of the statutory provisions relating to the use and development of consecrated land¹¹:

5112 (i) must contain such provisions as appear to the Secretary of State or to the Assembly to be requisite for securing that any use of land which is subject to compliance with the regulations is, as nearly as may be, subject to the like control as is imposed by law in the case of a similar use authorised by an enactment¹² or by a Measure, or as it would be proper to impose on a disposal of the land in question otherwise than in pursuance of an enactment or Measure;

5113 (ii) must contain requirements relating to the disposal of any such land as is mentioned above¹³ such as appear to the Secretary of State or the Assembly requisite for securing that the relevant statutory provisions¹⁴ are complied with in relation to the use of the land; and

5114 (iii) may contain such incidental and consequential provisions, including provisions as to the closing of registers, as appear to the Secretary of State or the Assembly to be expedient for the purposes of the regulations¹⁵.

1 le the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 7(3): see PARA 1468 ante.

2 le ibid Sch 28 para 7(6): see PARA 1469 ante.

3 For the meaning of 'land' see PARA 1423 note 7 ante.

4 For the meaning of 'monument' see PARA 1468 note 8 ante.

5 For the meaning of 'prescribed' see PARA 1468 note 7 ante.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Local Government, Planning and Land Act 1980 Sch 28 para 7(7). Nothing in Sch 28 para 7 is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such obligation, restriction or enactment as is mentioned in Sch 28 para 7(1) (see PARA 1468 ante) or Sch 28 para 7(5) (see PARA 1469 ante) (Sch 28 para 7(10)); and Sch 28 para 6(8) (see PARA 1467 ante) applies in relation to Sch 28 para 7 as it applies in relation to Sch 28 para 6 (as amended) (Sch 28 para 7(11)).

9 As to the normal requirement for a faculty see CREMATION AND BURIAL vol 10 (Reissue) PARA 1125 et seq; and as to the faculty jurisdiction of the Church of England see ECCLESIASTICAL LAW vol 14 para 1306 et seq.

10 Local Government, Planning and Land Act 1980 Sch 28 para 7(8). The Burial Act 1857 s 25 (as amended) (prohibition of removal of human remains without the licence of the Secretary of State except in certain cases: see CREMATION AND BURIAL vol 10 (Reissue) PARA 1123) does not apply to a removal carried out in accordance with the regulations: Local Government, Planning and Land Act 1980 Sch 28 para 7(8).

11 See note 1 supra.

12 le by an enactment not contained in the Local Government, Planning and Land Act 1980.

13 le such land as is mentioned in ibid Sch 28 para 7(3): see PARA 1468 ante.

14 le ibid Sch 28 para 7(3).

15 Ibid Sch 28 para 7(4). At the date at which this title states the law no such regulations had been made; but it is apprehended that, by virtue of the Interpretation Act 1978 s 17(2)(b), the Town and Country Planning (Churches, Places of Religious Worship and Burial Grounds) Regulations 1950, SI 1950/792 (as amended), partly have effect for these purposes. See PARAS 959-961 ante; and CREMATION AND BURIAL vol 10 (Reissue) PARAS 1170-1172.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1471. Power to use open spaces etc.

1471. Power to use open spaces etc.

Any land¹ being, or forming part of, a common², open space³ or fuel or field garden allotment⁴, which has been vested in or acquired⁵ by an urban development corporation⁶ or local highway

authority⁷ may be used by the corporation or authority, or by any other person, in any manner in accordance with planning permission⁸ notwithstanding anything in any enactment relating to land of that kind, or in any enactment by which the land is specially regulated⁹. Nothing in this provision is, however, to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than contravention of any such enactment as is mentioned above¹⁰.

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 As to the meaning of 'common' see PARA 1457 note 4 ante.

3 As to the meaning of 'open space' see PARA 1457 note 5 ante.

4 As to the meaning of 'fuel or field garden allotment' see PARA 1457 note 6 ante.

5 Ie for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante.

6 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

7 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

8 Ie planning permission under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended): see PARA 217 et seq ante.

9 Local Government Planning and Land Act 1980 s 144(1), (3), Sch 28 para 9(1).

10 Ibid Sch 28 para 9(2). Schedule 28 para 6(8) (see PARA 1467 ante) applies in relation to Sch 28 para 6 (as amended): Sch 28 para 9(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/C. POWERS EXERCISABLE IN RELATION TO ACQUIRED LAND/1472. Displacement of persons.

1472. Displacement of persons.

If the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² certifies that possession of a house³ which has been vested in or acquired⁴ by an urban development corporation⁵ or local highway authority⁶ and which is for the time being held by that corporation or authority for the purposes for which it was acquired is immediately required for those purposes, nothing in the specified statutory provisions for the protection of private sector tenants' rights⁷ prevents that corporation or authority from obtaining possession of the house⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 There is no statutory definition of 'house' for these purposes.

4 Ie for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante.

5 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

6 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

7 ie the Rent (Agriculture) Act 1976, the Rent Act 1977 or the Housing Act 1988: see LANDLORD AND TENANT.

8 Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 10 (amended by the Housing Act 1988 s 140(1), Sch 17 para 29). Tenancies granted after 15 January 1989 are subject to the Housing Act 1988 which excludes security of tenure where the landlord is an urban development corporation: see s 1(2), Sch 1 para 12(1), (d). There is, however, no similar provision enabling the corporation or authority to overcome the protection afforded to a secure tenant of a council house or one owned by a housing association under the Housing Act 1985 Pt IV (ss 79-117) (as amended).

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1473. Extinguishment of public rights of way.

Where any land¹ has been vested in or acquired² by an urban development corporation³ or local highway authority⁴ and is for the time being held by that corporation or authority for the statutory purposes⁵, the Secretary of State⁵ or, in relation to Wales, the National Assembly for Wales⁷ may by order extinguish any public right of way over the land⁸.

Where the Secretary of State or the Assembly proposes to make such an order, he or it must publish in such manner as appears to him or to it to be requisite a notice stating the effect of the order and specifying the time, not being less than 28 days from the publication of the notice, within which and the manner in which objections to the proposal may be made, and must serve a like notice on the district planning authority⁹ or, in Wales, on the local planning authority¹⁰ in whose area the land is situated and on the relevant¹¹ highway authority¹². Where an objection to a proposal to make such an order is duly made¹³ and is not withdrawn, the statutory procedure for dealing with objections¹⁴ has effect in relation to the proposal¹⁵.

Where it is proposed to make such an order extinguishing a public right of way over a road on land acquired¹⁶ by an urban development corporation and compensation in respect of restrictions¹⁷ has been paid by the highway authority¹⁸, the order may provide for the payment by the urban development corporation to that authority, in respect of the compensation so paid, of such sums as the Secretary of State with the consent of the Treasury, or as the Assembly, may determine¹⁹.

Where the Secretary of State or the Assembly is satisfied that the construction or improvement of a road is or will be needed in consequence of the extinguishment of a public right of way under these provisions, the statutory provisions relating to acquisition of land for highways²⁰ apply as they apply where he or it is satisfied that the construction or improvement of a road is needed²¹ as mentioned therein²².

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 ie for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante; the text and notes 3-22 infra; and PARA 1474 et seq post.

3 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

5 See note 2 supra.

6 As to the Secretary of State see PARA 19 ante.

7 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 11(1). Where such an order is made, special provisions apply in relation to electronic communications apparatus (see Sch 28 para 13(1) (as substituted and amended); and PARA 1475 post); and the Secretary of State or the Assembly must, where he or it makes an order under Sch 28 para 11 (as amended) to which Sch 28 para 13(1) (as substituted and amended) applies in relation to the operator of any electronic communications code network, send a copy of the order to the operator: Sch 28 para 13(2) (substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (5); amended by the Communications Act 2003 s 406(1), Sch 17 para 52(1), (2)).

9 As to district planning authorities see PARA 28 ante.

10 As to local planning authorities see PARA 28 et seq ante.

11 For these purposes, 'the relevant highway authority' means any authority which is a highway authority in relation to the right of way proposed to be extinguished by the order, other than an authority which has applied for the order to be made: Local Government, Planning and Land Act 1980 Sch 28 para 11(2).

12 Ibid Sch 28 para 11(2) (amended by the Local Government (Wales) Act 1994 s 20(4)(b), Sch 6 Pt II para 16(2)).

13 For these purposes, an objection to such a proposal is not treated as duly made unless (1) it is made within the time and in the manner specified in the notice required by the Local Government, Planning and Land Act 1980 Sch 28 para 11 (as amended); and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: Sch 28 para 11(4).

14 Ie ibid Sch 28 para 12: see PARA 1474 post.

15 Ibid Sch 28 para 11(3). As to the service of notices see PARA 1423 ante.

16 Ie for the purposes of the Local Government, Planning and Land Act 1980.

17 Ie imposed in respect of that road under the Restriction of Ribbon Development Act 1935 ss 1 or 2 (repealed).

18 Or in the case of a trunk road, by the authority which, when the compensation was paid, was the authority for the purposes of the Trunk Roads Act 1936 s 4 (repealed).

19 Local Government, Planning and Land Act 1980 Sch 28 para 11(5).

20 Ie ibid s 143 (as amended): see PARA 1456 ante.

21 Ie as mentioned in ibid s 143(1): see PARA 1456 ante.

22 Ibid Sch 28 para 11(6). Where the Secretary of State or the Assembly makes an order under Sch 28 para 11 (as amended) on the application of an urban development corporation or local highway authority, he must send a copy of it to the universal service provider (within the meaning of the Postal Services Act 2000) who provides a universal postal service (within the meaning of that Act) for the area in which the land is situated: Sch 28 para 11(7) (amended by the Postal Services Act 2000 (Consequential Modifications No 1) Order 2001, SI 2001/1149, art 3(1), Sch 1, PARA 48(1), (6)). As to the provision of a universal postal service see POST OFFICE vol 36(2) (Reissue) PARA 24.

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1474. Procedure for dealing with objections to orders extinguishing public rights of way.

Unless the Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, he or the Assembly must, before making a final decision³, consider the grounds of the objection as set out in the statement comprised in or submitted with the objection, and may, if he or the Assembly thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates⁴.

In so far as the Secretary of State or the Assembly, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates to a matter which can be dealt with in the assessment of compensation, the Secretary of State or the Assembly may treat the objection as irrelevant for the purpose of making a final decision⁵.

The Secretary of State or the Assembly may make a final decision without further investigation as to the matters to which the objection relates if:

- 5115 (1) after considering the grounds of the objection as set out in the original statement and in any such further statement, he or it is satisfied that, for the purpose of making a final decision, he or it is sufficiently informed as to those matters; or
- 5116 (2) where a further statement has been required, it is not submitted within the specified period⁶.

Before making a final decision, the Secretary of State or the Assembly must⁷:

- 5117 (a) afford to the objector an opportunity of appearing before, and being heard by, a person appointed for the purpose by the Secretary of State or the Assembly; and
- 5118 (b) if the objector avails himself of that opportunity, afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers⁸, urban development corporation⁹ or other person, if any, on whose representation the order is proposed to be made, and to any other person to whom it appears to the Secretary of State or to the Assembly to be expedient to afford such an opportunity¹⁰.

If it appears to the Secretary of State or the Assembly that the matters to which the objection relates are such as to require investigation by public local inquiry¹¹ before he or it makes a final decision, then, notwithstanding anything in the above provisions, he or it must cause such an inquiry to be held; and, where he or the Assembly determines to cause such an inquiry to be held, any of the requirements of those provisions to which effect has not been given at the time of that determination must be dispensed with¹².

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 For these purposes, any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification, if any, ought to be made: Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 12(1).

4 Ibid Sch 28 para 12(2).

5 Ibid Sch 28 para 12(3).

6 Ibid Sch 28 para 12(4).

7 Ie subject to ibid Sch 28 para 12(3), (4): see the text and notes 5-6 supra.

8 For the meaning of 'statutory undertakers' see PARA 1425 ante.

9 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

10 Local Government, Planning and Land Act 1980 Sch 28 para 12(5).

11 As to public local inquiries see PARA 651 et seq ante.

12 Local Government, Planning and Land Act 1980 Sch 28 para 12(6).

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1475. Electronic communications apparatus.

Where an order¹ extinguishing a public right of way is made on the application of an urban development corporation² or local highway authority³, and at the time of the publication of the required notice⁴ any electronic communications apparatus was kept installed for the purposes of an electronic communications code network under, in, over, along or across the land⁵ over which the right of way subsisted:

5119 (1) the power of the operator of the network to remove the apparatus is exercisable, notwithstanding the making of the order, at any time not later than the end of the period of three months from the date on which the right of way is extinguished and is exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the network has given notice to the corporation or authority of his intention to remove the apparatus or that part of it, as the case may be;

5120 (2) the operator of the network may by notice given in that behalf to the corporation or authority not later than the end of that period of three months abandon the electronic communications apparatus or any part of it;

5121 (3) subject to head (2) above, the operator of the network is deemed at the end of that period to have abandoned any part of the apparatus which he has then neither removed nor given notice of his intention to remove;

5122 (4) the operator of the network is entitled to recover from the corporation or authority the expense of providing, in substitution for the apparatus and any other electronic communications apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first mentioned apparatus, any electronic communications apparatus in such other place as the operator may require;

5123 (5) where under these provisions the operator of the network has abandoned the whole or any part of any electronic communications apparatus, that apparatus or that part of it vests in the corporation or authority and is deemed, with its abandonment, to cease to be kept installed for the purposes of an electronic communications code network⁶.

1 le under the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 11 (as amended): see PARA 1473 ante.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 For the meaning of 'local highway authority' see PARA 1456 note 7 ante.

4 le the notice required by the Local Government, Planning and Land Act 1980 Sch 28 para 11(2) (as amended): see PARA 1473 ante.

5 For the meaning of 'land' see PARA 1423 note 7 ante.

6 Local Government, Planning and Land Act 1980 Sch 28 para 13(1) (substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (5); amended by the Communications Act 2003 s 406(1), Sch 17 para 52(1), (2)). See also PARA 1473 note 8 ante.

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D. STATUTORY UNDERTAKERS

1476. Extinguishment of rights of way and removal of apparatus.

Where any land¹ has been acquired² by an urban development corporation³ and:

5124 (1) there subsists over that land a right vested in or belonging to statutory undertakers⁴ for the purpose of the carrying on of their undertaking⁵, being a right of a way or a right of laying down, erecting, continuing or maintaining apparatus on, under or over that land; or

5125 (2) there is on, under or over the land apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking⁶,

the corporation, if satisfied that the extinguishment of the right or, as the case may be, the removal of the apparatus, is necessary for the purpose of carrying out any development, may serve on the statutory undertakers⁷ a notice stating that, at the end of the period of 28 days from the date of service of the notice or such longer period as may be specified therein, the right will be extinguished, or requiring that, before the end of that period, the apparatus shall be removed⁸.

The statutory undertakers on whom a notice is so served may, before the end of the period of 28 days from the service of the notice, serve a counter-notice on the corporation stating that they object to all or any of the provisions of the notice, and specifying the grounds of their objection⁹. If no counter-notice is so served:

- 5126 (a) any right to which the notice relates is extinguished at the end of the period specified in that behalf in the notice; and
- 5127 (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the notice as to removal of the apparatus has not been complied with, the corporation may remove the apparatus and dispose of it in any way the corporation may think fit¹⁰.

If a counter-notice is so served on a corporation, the corporation may either withdraw the notice, without prejudice to the service of a further notice, or may apply to the Secretary of State¹¹, or, in relation to Wales, to the National Assembly for Wales¹², and to the appropriate minister¹³ for an order¹⁴ embodying the provisions of the notice, with or without modification¹⁵.

Where any right vested in or belonging to statutory undertakers is so extinguished, or any requirement is imposed on statutory undertakers, those undertakers are entitled to compensation from the corporation¹⁶.

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 le under the Local Government, Planning and Land Act 1980 s 142 (as amended): see PARAS 1455, 1457 ante.

3 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 For the meaning of 'statutory undertakers' generally see PARA 1425 ante. See also note 7 infra.

5 Except in a case in which the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 13 (as substituted) (see PARA 1475 ante) has effect, the reference in Sch 28 para 14(1)(a) (see head (1) in the text) to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking includes a reference to a right conferred by or in accordance with the electronic communications code: Sch 28 para 14(7)(a) (Sch 28 para 14(7) substituted by the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (6); amended by the Communications Act 2003 s 406(1), Sch 17 para 52(1), (2)). For the meaning of 'statutory undertakers' for these purposes see note 7 infra.

6 Except in a case in which the Local Government, Planning and Land Act 1980 Sch 28 para 13 (as substituted) (see PARA 1475 ante) has effect, the reference in Sch 28 para 14(1)(b) to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking includes a reference to electronic communications apparatus kept installed for the purposes of any electronic communications code network: Sch 28 para 14(7)(b) (as substituted and amended: see note 5 supra).

7 For the purposes of ibid Sch 28 para 14(7) (as substituted and amended) (see notes 5-6 supra, 13 infra), references in Sch 28 para 14 (as amended), except in Sch 28 para 14(1)(a), (b) (see heads (1)-(2) in the text), and in Sch 28 para 15 (see PARA 1477 post) to statutory undertakers have effect as references to the operator of any electronic communications code network: Sch 28 para 14(7) (as so substituted and amended).

8 Ibid Sch 28 para 14(1). As to the service of notices see PARA 1423 ante.

9 Ibid Sch 28 para 14(2).

10 Ibid Sch 28 para 14(3).

11 As to the Secretary of State see PARA 19 ante.

12 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. See also PARA 1477 note 2 post.

13 For the purposes of the Local Government, Planning and Land Act 1980 Sch 28 para 14(7) (as substituted and amended: see notes 5-7 supra), references to the appropriate minister have effect as references to the Secretary of State for Trade and Industry: Sch 28 para 14(7) (as so substituted). For the meaning of 'the appropriate minister' generally see PARA 1424 ante.

14 le under the Local Government, Planning and Land Act 1980 Sch 28 para 14 (as amended).

15 Ibid Sch 28 para 14(4).

16 Ibid Sch 28 para 14(5). The Town and Country Planning Act 1990 s 280 (as amended) (see PARA 1028 ante) and s 282 (see PARA 1030 ante) apply to compensation under the Local Government, Planning and Land Act 1980 Sch 28 para 14(5) as they apply to compensation under the Town and Country Planning Act 1990 s 279(2) (see PARA 1027 ante): Local Government, Planning and Land Act 1980 Sch 28 para 14(6) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(11)(a)).

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1477. Orders for extinguishment of rights and removal of apparatus.

Before making an order for the extinguishment of rights or the removal of apparatus¹, the ministers proposing to make the order, or, in relation to Wales, the National Assembly for Wales, and the appropriate minister²:

- 5128 (1) must afford to the statutory undertakers³ on whom notice was served⁴ an opportunity of objecting to the application for the order; and
- 5129 (2) if any objection is made, must consider the objection and afford to those statutory undertakers and to the corporation on whom the counter-notice was served an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State⁵ or by the Assembly, and by the appropriate minister⁶ for the purpose,

and may then, if they think fit, make the order in accordance with the application either with or without modification⁷.

Where such an order is made⁸:

- 5130 (a) any right to which the order relates is extinguished at the end of the period specified in that behalf in the order; and
- 5131 (b) if, at the end of the period so specified in relation to any apparatus, any requirement of the order as to the removal of the apparatus has not been complied with, the corporation may remove the apparatus and dispose of it in any way the corporation may think fit⁹.

1 ie under the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 14 (as amended): see PARA 1476 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. Note that the functions of the 'appropriate minister' under the Local Government, Planning and Land Act 1980 Sch 28 (as amended) are not transferred to the Assembly.

3 For the meaning of 'statutory undertakers' for these purposes see PARA 1476 note 7 ante.

4 ie under the Local Government, Planning and Land Act 1980 Sch 28 para 14(1): see PARA 1476 ante.

5 As to the Secretary of State see PARA 19 ante.

- 6 For the meaning of 'the appropriate minister' for these purposes see PARA 1476 note 13 ante.
- 7 Local Government, Planning and Land Act 1980 Sch 28 para 15(1).
- 8 le under the Local Government, Planning and Land Act 1980 Sch 28 para 14(4): see PARA 1476 ante.
- 9 Ibid Sch 28 para 15(2).

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1478. Removal or resiting of apparatus.

Where any land¹ has been acquired² by an urban development corporation³ and:

- 5132 (1) there is on, under or over the land apparatus⁴ vested in or belonging to statutory undertakers; and
- 5133 (2) the undertakers claim that development to be carried out on the land is such as to require, on technical or other grounds connected with the carrying on of the undertaking, the removal or resiting of the apparatus affected by the development,

the undertakers may serve on the corporation a notice claiming the right to enter on the land and carry out such works for the removal or resiting of the apparatus or any part of it as may be specified in the notice⁵. Where, however, after the land has been so acquired, development of the land is begun to be carried out, no such notice may be served later than 21 days after the beginning of the development⁶.

Where a notice is so served, the corporation on which it is served may, before the end of the period of 28 days from the date of service, serve on the statutory undertakers a counter-notice stating that it objects to all or any of the provisions of the notice and specifying the grounds of its objection⁷.

If no counter-notice is so served, the statutory undertakers have, after the end of that period of 28 days, the rights claimed in their notice⁸; and, if a counter-notice is so served, the statutory undertakers who served the notice may either withdraw it or may apply to the Secretary of State⁹, or, in relation to Wales, to the National Assembly for Wales¹⁰, and to the appropriate minister¹¹ for an order¹² conferring on the undertakers the rights claimed in the notice or such modified rights as the Secretary of State or the Assembly and the appropriate minister think it expedient to confer on them¹³.

Where¹⁴ statutory undertakers have a right to execute works for the removal or resiting of apparatus, they may arrange with the corporation for the works to be carried out by the corporation, under the superintendence of the undertakers, instead of by the undertakers themselves¹⁵.

Where works¹⁶ are carried out for the removal or resiting of statutory undertakers' apparatus, the undertakers are entitled to compensation from the corporation¹⁷.

1 For the meaning of 'land' see PARA 1423 note 7 ante.

2 le under the Local Government, Planning and Land Act 1980 s 142 (as amended): see PARAS 1455, 1457 ante.

3 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

4 For the purposes of the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 16(1)(a) (see head (1) in the text), the reference to apparatus vested in or belonging to statutory undertakers includes a reference to electronic communications apparatus kept installed for the purposes of an electronic communications code network; and in Sch 28 para 16 (as amended), except in Sch 28 para 16(1)(a), references to statutory undertakers have effect as references to the operator of any such network: Sch 28 para 16(9) (added by the Telecommunications Act 1984 s 109(1), Sch 4 para 75(1), (7); amended by the Communications Act 2003 s 406(1), Sch 17 para 52(1), (2)). For the meaning of 'statutory undertakers' generally see PARA 1425 ante.

5 Local Government, Planning and Land Act 1980 Sch 28 para 16(1). As to the service of notices see PARA 1423 ante.

6 Ibid Sch 28 para 16(2).

7 Ibid Sch 28 para 16(3).

8 Ibid Sch 28 para 16(4).

9 As to the Secretary of State see PARA 19 ante.

10 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. Note that the functions of the 'appropriate minister' under the Local Government, Planning and Land Act 1980 Sch 28 (as amended) are not transferred to the Assembly.

11 For the purposes of the Local Government, Planning and Land Act 1980 Sch 28 para 16 (as amended), references to the appropriate minister have effect as references to the Secretary of State for Trade and Industry: Sch 28 para 16(9) (as added and amended: see note 4 supra). For the meaning of 'the appropriate minister' generally see PARA 1424 ante.

12 le under ibid Sch 28 para 16 (as amended).

13 Ibid Sch 28 para 16(5).

14 le by virtue of ibid Sch 28 para 16 (as amended) or an order of ministers or of the Assembly and the appropriate minister made thereunder.

15 Ibid Sch 28 para 16(6).

16 le being works which the undertakers have the right to carry out by virtue of ibid Sch 28 para 16 (as amended) or an order of ministers or of the Assembly and the appropriate minister made thereunder.

17 Ibid Sch 28 para 16(7). The Town and Country Planning Act 1990 s 280 (as amended) (see PARA 1028 ante) and s 282 (see PARA 1030 ante) apply to compensation under the Local Government, Planning and Land Act 1980 Sch 28 para 16(7) as they apply to compensation under the Town and Country Planning Act 1990 s 279(4) (see PARA 1027 ante): Local Government, Planning and Land Act 1980 Sch 28 para 16(8) (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(11)(b)).

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1479. Extension or modification of functions.

The powers conferred by the following provisions are exercisable where, on a representation made by statutory undertakers¹, it appears to the Secretary of State² or, in relation to Wales, to the National Assembly for Wales³, and to the appropriate minister⁴ to be expedient that the powers and duties of those undertakers should be extended or modified, in order:

- 5134 (1) to secure the provision for an urban development area⁵ of services which would not otherwise be provided, or which would not otherwise be satisfactorily provided; or
- 5135 (2) to facilitate an adjustment of the undertaking necessitated by:
- 442 40. (a) the acquisition⁶ of any land⁷ in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers in question;
41. (b) the extinguishment of a right or the imposition of any requirement by virtue of the relevant⁸ statutory provisions⁹.

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The powers so conferred are also exercisable where, on a representation made by an urban development corporation¹⁰, it appears to the Secretary of State or the Assembly and to the appropriate minister to be expedient that the powers and duties of statutory undertakers should be extended or modified in order to secure the provision of new services, or the extension of existing services, for the purposes¹¹ of an urban development area¹².

As soon as may be after making such a representation¹³, the statutory undertakers, or the urban development corporation, as the case may be, must publish, in such form and manner as may be directed by the Secretary of State or the Assembly and by the appropriate minister, a notice:

- 5136 (i) giving such particulars as may be directed of the matters to which the representation relates; and
- 5137 (ii) specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made¹⁴,

and must also, if it is so directed by the Secretary of State or the Assembly and the appropriate minister, serve a like notice on such persons, or persons of such classes, as may be so directed¹⁵.

Where the powers so conferred are exercisable, the Secretary of State or the Assembly and the appropriate minister may, if they think fit, by order¹⁶ provide for such extension or modification of the powers and duties of the statutory undertakers as appears to them to be requisite in order to secure the provision of the services¹⁷ or the adjustment¹⁸ in question, as the case may be¹⁹. Such an order may make provision²⁰:

- 5138 (A) for empowering the statutory undertakers to acquire, whether compulsorily or by agreement, any land specified in the order, and to erect or construct any buildings or works so specified;
- 5139 (B) for applying, in relation to the acquisition of any such land or the construction of any such works, enactments relating to the acquisition of land and the construction of works;
- 5140 (C) where it has been represented that the making of the order is expedient for certain purposes²¹, for giving effect to such financial arrangements between the urban development corporation and the statutory undertakers as they may agree, or as, in default or agreement, may be determined to be equitable in such manner and by such tribunal as may be specified in the order;

5141 (D) for such incidental and supplemental matters as appear to the Secretary of State or the Assembly and the appropriate minister to be expedient for the purposes of the order²².

1 For the meaning of 'statutory undertakers' see PARA 1425 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. Note that the functions of the 'appropriate minister' under the Local Government, Planning and Land Act 1980 Sch 28 (as amended) are not transferred to the Assembly.

4 For the meaning of 'the appropriate minister' and references to the Secretary of State and the appropriate minister see PARA 1424 ante.

5 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

6 Ie under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1480 et seq post.

7 For the meaning of 'land' see PARA 1423 note 7 ante.

8 Ie the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 14 (as amended): see PARA 1476 ante.

9 Ibid Sch 28 para 17(1), (2).

10 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

11 Ie for the purposes of the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1480 et seq post.

12 Ibid Sch 28 para 17(3).

13 Ie such as is mentioned in ibid Sch 28 para 17(1) or (3).

14 For these purposes, an objection to the making of an order is not treated as duly made unless (1) the objection is made within the time and in the manner specified in the notice required by ibid Sch 28 para 18; and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: Sch 28 para 20(1).

15 Ibid Sch 28 para 18(1). Where an objection to the making of such an order is duly made and is not withdrawn, Sch 28 para 20(2)-(8) (see PARA 1481 post) has effect in relation to the objection: Sch 28 para 20(2). As to the service of notices see PARA 1423 ante.

16 Orders under ibid Sch 28 para 17 are subject to special parliamentary procedure: Sch 28 para 18(2). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq; and as to special parliamentary procedure in relation to such orders made by the Assembly see the Government of Wales Act 1998 s 44(4)(a); para 20 ante; and CONSTITUTIONAL LAW AND HUMAN RIGHTS.

17 Ie as mentioned in the Local Government, Planning and Land Act 1980 Sch 28 para 17(1)(a) or (3): see head (1) in the text and notes 10-12 supra.

18 Ie as mentioned in ibid Sch 28 para 17(1)(b): see head (2) in the text.

19 Ibid Sch 28 para 17(4).

20 Ie without prejudice to the generality of ibid Sch 28 para 17(4).

21 Ie for the purposes mentioned in ibid Sch 28 para 17(1)(a) or (3).

22 Ibid Sch 28 para 17(5).

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1480. Relief from obligation rendered impracticable.

Where, on a representation made by statutory undertakers¹, the appropriate minister² is satisfied that the fulfilment of any obligation incurred by those undertakers in connection with the carrying on of their undertaking has been rendered impracticable by:

5142 (1) the compulsory acquisition³ of any land⁴ in which an interest was held, or which was used, for the purpose of the carrying on of the undertaking of the statutory undertakers; or

5143 (2) the extinguishment of a right or the imposition of any requirement by virtue of the relevant statutory provisions⁵,

the appropriate minister may, if he thinks fit, by order direct that the statutory undertakers shall be relived of the fulfilment of that obligation, either absolutely or to such extent as may be specified in the order⁶.

As soon as may be after so making a representation to the appropriate minister, the statutory undertakers must, as may be directed by the appropriate minister, either:

5144 (a) publish, in such form and manner as may be so directed, a notice giving such particulars as may be so directed of the matters to which the representation relates, and specifying the time within which, and the manner in which, objections to the making of an order on the representation may be made; or

5145 (b) serve such a notice on such person, or persons of such classes, as may be so directed; or

5146 (c) both publish and serve such notices⁷;

and, if any objection to the making of such an order is duly made⁸ and is not withdrawn before the order is made, the order is subject to special parliamentary procedure⁹.

Immediately after an order is so made by the appropriate minister, he must publish a notice stating that the order has been made and naming a place where a copy of it may be seen at all reasonable hours, and must serve a like notice:

5147 (i) on any person who duly made an objection to the order and has sent to the appropriate minister a request in writing to serve him with the required notice¹⁰, specifying an address for service; and

5148 (ii) on such other persons, if any, as the appropriate minister thinks fit¹¹.

An order becomes operative¹² on the date on which the required notice¹³ is first published¹⁴.

In relation to Wales, these functions of the appropriate minister have not been transferred to the National Assembly for Wales¹⁵.

1 For the meaning of 'statutory undertakers' see PARA 1425 ante.

2 For the meaning of 'the appropriate minister' see PARA 1424 ante.

3 le under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended): see PARA 1426 et seq ante, PARA 1481 et seq post.

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 le the Local Government, Planning and Land Act 1980 s 144(1), (4), Sch 28 para 14 (as amended): see PARA 1476 ante.

6 Ibid Sch 28 paras 19(1), (2).

7 Ibid Sch 28 para 19(3). As to the service of notices see PARA 1423 ante.

8 For these purposes, an objection to the making of an order is not treated as duly made unless (1) the objection is made within the time and in the manner specified in the notice required by ibid Sch 28 para 19; and (2) a statement in writing of the grounds of the objection is comprised in or submitted with the objection: Sch 28 para 20(1). Where an objection to the making of such an order is duly made and is not withdrawn, Sch 28 para 20(2)-(8) (see PARA 1481 post) has effect in relation to the objection: Sch 28 para 20(2).

9 Ibid Sch 28 para 19(4). As to special parliamentary procedure see PARLIAMENT vol 34 (Reissue) PARA 912 et seq.

10 le the notice required by ibid Sch 28 para 19(5).

11 Ibid Sch 28 para 19(5).

12 le subject to ibid Sch 28 para 19(8)-(10): see PARA 1482 post.

13 See note 10 supra.

14 Local Government, Planning and Land Act 1980 Sch 28 para 19(6). Schedule 28 para 19(6) does not, however, apply where, in accordance with Sch 28 para 19(4), the order is subject to special parliamentary procedure: Sch 28 para 19(7).

15 See the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended). As to the Assembly see PARA 20 ante.

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1481. Procedure for dealing with objections to orders relating to statutory undertakers.

Unless the appropriate minister¹ decides apart from the objection not to make the order, or decides to make a modification which is agreed to by the objector as meeting the objection, the appropriate minister:

- 5149 (1) must, before making a final decision², consider the grounds of the objection as set out in the statement comprised in or submitted with the objection; and
- 5150 (2) may, if he thinks fit, require the objector to submit within a specified period a further statement in writing as to any of the matters to which the objection relates³.

In so far as the appropriate minister, after considering the grounds of the objection as set out in the original statement and in any such further statement, is satisfied that the objection relates

to a matter which can be dealt with in the assessment of compensation⁴, he may treat the objection as irrelevant for the purpose of making a final decision⁵.

The appropriate minister may make a final decision without further investigation as to the matters to which the objection relates if:

- 5151 (a) after considering the grounds of the objection as set out in the original statement and in any such further statement, the appropriate minister is satisfied that, for the purpose of making a final decision, he is sufficiently informed as to those matters; or
- 5152 (b) where a further statement has been required, it is not submitted within the specified period⁶.

The appropriate minister must⁷:

- 5153 (i) before making a final decision, afford to the objector an opportunity of appearing before and being heard by a person appointed for the purpose by the appropriate minister; and
- 5154 (ii) if the objector avails himself of that opportunity, afford an opportunity of appearing and being heard on the same occasion to the statutory undertakers⁸, local authority or minister on whose representation the order is proposed to be made, and to any other person to whom it appears to the appropriate minister to be expedient to afford such an opportunity⁹.

Notwithstanding anything in the above provisions, if it appears to the appropriate minister that the matters to which the objection relates are such as to require investigation by public local inquiry¹⁰ before he makes a final decision, he must cause an inquiry to be held; and, where he determines to cause such an inquiry to be held, any of the requirements of the above provisions to which effect has not been given at the time of that determination must be dispensed with¹¹.

1 In the application of the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 20(3)-(8) to an order under Sch 28 para 17 (see PARA 1479 ante), any reference to the appropriate minister is to be construed as a reference to the Secretary of State or the National Assembly for Wales and the appropriate minister: Sch 28 para 20(2). For the meaning of 'the appropriate minister' generally see PARA 1424 ante. As to the Secretary of State see PARA 19 ante; as to the transfer of functions under Sch 28 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante. Note that the functions of the 'appropriate minister' under the Local Government, Planning and Land Act 1980 Sch 28 (as amended) are not transferred to the Assembly.

2 For these purposes, any reference to making a final decision, in relation to an order, is a reference to deciding whether to make the order or what modification, if any, ought to be made: Local Government, Planning and Land Act 1980 Sch 28 para 20(8).

3 Ibid Sch 28 para 20(3).

4 As to compensation see generally COMPULSORY ACQUISITION OF LAND.

5 Local Government, Planning and Land Act 1980 Sch 28 para 20(4).

6 Ibid Sch 28 para 20(5).

7 Ie subject to ibid Sch 28 para 20(4), (5): see the text and notes 4-6 supra.

8 For the meaning of 'statutory undertakers' see PARA 1425 ante.

9 Local Government, Planning and Land Act 1980 Sch 28 para 20(6).

10 As to public local inquiries see PARA 651 et seq ante.

11 Local Government, Planning and Land Act 1980 Sch 28 para 20(7).

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1482. Validity of certain orders.

If any person aggrieved¹ by an order relieving statutory undertakers of any obligation² wishes to challenge the validity of the order on the ground that it is not within the statutory powers³, or that any statutory requirement⁴ has not been complied with in relation to the order, he may, within six weeks from the date on which the required notice⁵ is first published, make an application to the High Court⁶.

On any such application the High Court:

5155 (1) may by interim order wholly or in part suspend the operation of the order, either generally or in so far as it affects any property of the applicant, until the final determination of the proceedings;

5156 (2) if satisfied that the order is wholly or to any extent outside the powers conferred by the relevant statutory provisions⁷, or that the interests of the applicant have been substantially prejudiced⁸ by the failure to comply with any statutory requirement⁹, may wholly or in part quash the order, either generally or in so far as it affects any property of the applicant¹⁰.

The validity of such an order may not be questioned¹¹ in any legal proceedings whatsoever, either before or after the order has been made¹².

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 Ie an order under the Local Government, Planning and Land Act 1980 s 144(1), (3), Sch 28 para 19: see PARA 1480 ante.

3 Ie the powers conferred by ibid Sch 28 para 19.

4 Ie any requirement of ibid Sch 28 para 19.

5 Ie required by ibid Sch 28 para 19(5): see PARA 1480 ante.

6 Ibid Sch 28 para 19(8).

7 See note 3 supra.

8 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

9 See note 4 supra.

10 Local Government, Planning and Land Act 1980 Sch 28 para 19(9).

11 Ie subject to ibid Sch 28 para 19(8): see the text and notes 1-6 supra.

12 Ibid Sch 28 para 19(10).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/E. MISCELLANEOUS FUNCTIONS/1483. Performance of sewerage undertaker's functions.

E. MISCELLANEOUS FUNCTIONS

1483. Performance of sewerage undertaker's functions.

The urban development corporation for any urban development area¹ may, in accordance with any arrangements which it has entered into for the purpose with any sewerage undertaker, carry out sewerage functions² on that undertaker's behalf in relation to such area, comprising the whole or any part of that corporation's relevant area³, as may be specified in the arrangements⁴. Arrangements entered into for these purposes may contain any such provision as may be agreed between the corporation and the sewerage undertaker but do not affect the availability to any person, other than the corporation, of any remedy against the undertaker in respect of the carrying out of the undertaker's sewerage functions or of any failure to carry them out⁵.

If arrangements entered into for these purposes so provide, an urban development corporation is entitled to exercise on behalf of a sewerage undertaker any power which by or under any enactment⁶ is exercisable by the undertaker for the purposes of, or in connection with, the carrying out of the undertaker's sewerage functions⁷.

1 For these purposes, 'urban development area' means any area so designated under the Local Government, Planning and Land Act 1980 Pt XVI (ss 134-172) (as amended) (see PARA 1426 note 4 ante): Water Industry Act 1991 s 97(5).

2 For the meaning of 'sewerage functions' see PARA 1381 note 2 ante.

3 For these purposes, 'relevant area', in relation to any urban development corporation for any urban development area, means that area: Water Industry Act 1991 s 97(5).

4 Ibid s 97(1).

5 Ibid s 97(2).

6 For the meaning of 'enactment' see PARA 1381 note 6 ante.

7 Water Industry Act 1991 s 97(3). A new town development corporation, and the Commission for the New Towns, have similar powers in relation to any new town: see PARA 1381 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(4) URBAN DEVELOPMENT AREAS/(v) Development of Designated Areas/E. MISCELLANEOUS FUNCTIONS/1484. Adoption etc of private streets.

1484. Adoption etc of private streets.

Where any street works¹ have been executed on any land² in an urban development area³ which was then or has since become a private street⁴ or part of a private street, the urban

development corporation⁵ may serve a notice (an 'adoption notice') on the street works authority⁶ requiring the authority to declare the street or part to be a highway⁷ which is a highway maintainable at the public expense⁸. Within the period of two months beginning with the date on which the adoption notice was served, the street works authority may appeal against the notice to the Secretary of State⁹ or, in relation to Wales, to the National Assembly for Wales¹⁰. After considering any representations made to him or to it by the corporation and the street works authority, the Secretary of State or the Assembly must determine such an appeal by setting aside or confirming the adoption notice with or without modifications¹¹. Where the Secretary of State or the Assembly confirms the adoption notice, he or it he may at the same time impose conditions, including financial conditions, upon the corporation with which it must comply in order for the notice to take effect¹²; and with effect from such date as the Secretary of State or the Assembly may specify, the street or part becomes a highway which is a highway maintainable at the public expense¹³. Where a street works authority neither complies with the adoption notice, nor appeals under the above provisions, the street or part becomes, upon the expiry of the period of two months referred to above, a highway which is a highway maintainable at the public expense¹⁴.

An urban development corporation may serve a notice (a 'connection notice') on the local highway authority¹⁵ requiring the authority to connect a private street in the urban development area to an existing highway, whether or not it is a highway which is a highway maintainable at the public expense¹⁶. A connection notice must specify:

- 5157 (1) the private street and the existing highway;
- 5158 (2) the works which appear to the corporation to be necessary to make the connection; and
- 5159 (3) the period within which those works should be carried out¹⁷.

Before serving a connection notice an urban development corporation must consult¹⁸ the local highway authority about the proposed contents of the notice¹⁹.

Within the period of two months beginning with the date on which the connection notice was served, the local highway authority may appeal against the notice to the Secretary of State or to the Assembly²⁰. After considering any representations made to him or to it by the corporation and the local highway authority, the Secretary of State or the Assembly must determine such an appeal by setting aside or confirming the connection notice with or without modifications²¹. A connection notice becomes effective:

- 5160 (a) where no appeal is made within the period of two months referred to above, upon the expiry of that period;
- 5161 (b) where an appeal is made within that period but is withdrawn before it has been determined by the Secretary of State or the Assembly, on the date following the expiry of the period of 21 days beginning with the date on which the Secretary of State or the Assembly is notified of the withdrawal;
- 5162 (c) where an appeal is made and the connection notice is confirmed by a determination under the above provisions, on such date as the Secretary of State or the Assembly may specify in the determination²².

Where a connection notice becomes effective, the local highway authority must carry out the works specified in the notice within such period as may be so specified and may recover from the corporation the expenses reasonably incurred by the authority in doing so²³. If the local highway authority does not carry out the works specified in the notice within such period as may be so specified, the corporation may itself carry out or complete those works or arrange for another person to do so²⁴.

Where an urban development corporation submits to the Secretary of State or to the Assembly that an order under this provision should be made in relation to any road²⁵ in the urban development area which is a private street and it appears to the Secretary of State or the Assembly that the traffic authority²⁶ does not intend to make an order²⁷ concerning traffic regulation in relation to the road, the Secretary of State or the Assembly may by order²⁸ make in relation to the road any such provision as he or it might have made by order²⁹ if he or it had been the traffic authority³⁰.

1 For these purposes, 'street works' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 146): Local Government, Planning and Land Act 1980 s 157(6) (ss 157, 157A, 157B substituted by the Leasehold Reform, Housing and Urban Development Act 1993 s 178).

2 For the meaning of 'land' see PARA 1423 note 7 ante.

3 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

4 For these purposes, 'private street' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 10): Local Government, Planning and Land Act 1980 ss 157(6), 157A(9), 157B(3) (as substituted: see note 1 supra).

5 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

6 For these purposes, 'street works authority' has the same meaning as in the Highways Act 1980 Pt XI (ss 203-237) (as amended) (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 141 note 1): Local Government, Planning and Land Act 1980 s 157(6) (as substituted: see note 1 supra).

7 For these purposes, 'highway' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 7): Local Government, Planning and Land Act 1980 ss 157(6), 157A(9) (as substituted: see note 1 supra).

8 Ibid s 157(1) (as substituted: see note 1 supra). For similar powers conferred on the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 172; and PARA 1307 ante.

9 As to the Secretary of State see PARA 19 ante.

10 Local Government, Planning and Land Act 1980 s 157(2) (as substituted: see note 1 supra). As to the transfer of functions under ss 157-157B (as substituted), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

11 Local Government, Planning and Land Act 1980 s 157(3) (as substituted: see note 1 supra).

12 Ibid s 157(4)(a) (as substituted: see note 1 supra).

13 Ibid s 157(4)(b) (as substituted: see note 1 supra).

14 Ibid s 157(5) (as substituted: see note 1 supra).

15 For these purposes, 'local highway authority' has the same meaning as in the Highways Act 1980 (see HIGHWAYS, STREETS AND BRIDGES vol 21 (2004 Reissue) PARA 56 note 1): Local Government, Planning and Land Act 1980 s 157A(9) (as substituted: see note 1 supra).

16 Ibid s 157A(1) (as substituted: see note 1 supra). For similar powers in England conferred on the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 165 (now repealed).

17 Local Government, Planning and Land Act 1980 s 157A(2) (as substituted: see note 1 supra).

18 For the meaning of 'consult' see PARA 2 note 1 ante.

19 Local Government, Planning and Land Act 1980 s 157A(3) (as substituted: see note 1 supra).

20 Ibid s 157A(4) (as substituted: see note 1 supra).

21 Ibid s 157A(5) (as substituted: see note 1 supra).

22 Ibid s 157A(6) (as substituted: see note 1 supra).

23 Ibid s 157A(7) (as substituted: see note 1 supra).

24 Ibid s 157A(8) (as substituted: see note 1 supra).

25 For these purposes, 'road' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 206): Local Government, Planning and Land Act 1980 s 157B(3) (as substituted: see note 1 supra).

26 For these purposes, 'traffic authority' has the same meaning as in the Road Traffic Regulation Act 1984 (see ROAD TRAFFIC vol 40(1) (2007 Reissue) PARA 236 et seq): Local Government, Planning and Land Act 1980 s 157B(3) (as substituted: see note 1 supra).

27 Ie under the Road Traffic Regulation Act 1984 s 1 (as amended) or, as the case may be, s 6 (as amended): see ROAD TRAFFIC vol 40(2) (2007 Reissue) PARAS 742, 747.

28 Ie under the Local Government, Planning and Land Act 1980 s 157B (as substituted: see note 1 supra). The Road Traffic Regulation Act 1984 applies to such an order as it applies to an order made by the Secretary of State or the Assembly under s 1 (as amended) or, as the case may be, s 6 (as amended): Local Government, Planning and Land Act 1980 s 157B(2) (as substituted: see note 1 supra).

29 See note 27 supra.

30 Local Government, Planning and Land Act 1980 s 157B(1) (as substituted: see note 1 supra). For similar powers in England conferred on the Urban Regeneration Agency see the Leasehold Reform, Housing and Urban Development Act 1993 s 173; and PARA 1307 ante.

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1485. Loans for building or in pursuance of building agreements.

For the purpose of enabling any person to whom an urban development corporation¹ has sold or let any land² to erect a building on the land, the corporation may³ lend money to that person⁴. A loan so made, together with interest on the loan, must be secured by a mortgage of the land in respect of which the loan is made⁵.

The amount of the principal of a loan so made may not exceed whichever of the following is the less:

5163 (1) three-quarters of the value of the mortgaged security at the time the loan is made;

5164 (2) one-half of the value which it is estimated the mortgaged security will bear when the building for the erection of which the loan is made has been erected⁶;

and a loan so made carries interest at such rate as may be specified by the Treasury or, in relation to Wales, by the National Assembly for Wales⁷.

The mortgage deed securing a loan so made must provide:

5165 (a) for repayment being made, subject to heads (c) and (d) below, within such period, not exceeding 30 years, as may be specified in the deed;

- 5166 (b) for repayment being made, subject to heads (c) and (d) below, either by instalments of principal or by an annuity of principal and interest combined;
- 5167 (c) that, in the event of any of the conditions subject to which the loan is made not being complied with, the balance for the time being unpaid shall become repayable on demand by the corporation;
- 5168 (d) that that balance, or such part of it as may be provided for in the mortgage, may, in any other event than that specified in head (c) above, be repaid on any such conditions as may be specified in the mortgage after one month's written notice of intention to repay has been given to the corporation;
- 5169 (e) where repayment is to be made by an annuity of principal and interest combined, for determining the amount by which the annuity or the life of the annuity is to be reduced when a part of the loan is paid off otherwise than by way of an instalment of the annuity⁸.

Where an urban development corporation enters into an agreement with a person ('the builder') by which provision is made:

- 5170 (i) authorising the builder to enter on land belonging to the corporation for the purpose of the builder erecting a building on the land;
- 5171 (ii) for the sale of the land to the builder, if the building is erected to the satisfaction of the corporation, or, as the agreement may provide, for the grant of a lease to him if the building is so erected;
- 5172 (iii) for the corporation to lend money to the builder for the purpose of enabling him to erect the building;
- 5173 (iv) for securing that, on such a sale or, as the case may be, grant of a lease, any amount lent as mentioned in head (iii) above will, together with the interest on the loan, be secured by a mortgage of the land,

then, in that case, the corporation may⁹ lend money to the builder for the purpose mentioned in head (iii) above¹⁰.

The amount of the principal of a loan so made may not exceed whichever of the following is the less:

- 5174 (A) three-quarters of the value of the land at the time the above-mentioned agreement is made;
- 5175 (B) one-half of the amount which it is estimated will be the value of the security for the mortgage for which the agreement provides when the building for the erection of which the loan is made has been erected¹¹.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For the meaning of 'land' see PARA 1423 note 7 ante.

3 Ie subject to the Local Government, Planning and Land Act 1980 s 160: see the text and notes 4-8 infra.

4 Ibid s 160(1).

5 Ibid s 160(2).

6 Ibid s 160(3).

7 Ibid s 160(4). As to the transfer of Treasury functions under s 160, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

8 Local Government, Planning and Land Act 1980 s 160(5).

9 le subject to *ibid* s 161: see the text and notes 10-11 *infra*.

10 *Ibid* s 161(1), (2).

11 *Ibid* s 161(3). Section 160(4), (5) (see the text and notes 7-8 *supra*) applies to a loan made under s 161 as to one made under s 160: s 161(4).

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1486. Other miscellaneous functions.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may:

5176 (1) by order³ provide that an urban development corporation⁴ shall have in its area, or in such part of its area as may be specified in the order, the functions conferred on a local authority by specified statutory provisions⁵ relating to public health⁶; on the order coming into force, the corporation has the functions conferred in relation to the area, or part, instead of or concurrently with any such authority, depending on the terms of the order⁷;

5177 (2) make an order⁸ directing that, subject to the provisions of the order, building control functions⁹ in an urban development area¹⁰ or in any portion of such an area shall be exercisable by the urban development corporation¹¹; such an order must identify by reference to a map the area to which the order relates¹² and may provide:

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42. (a) in England, that the London building legislation shall not have effect in the area to which the order relates but that building regulations and any enactment relating to such regulations shall have effect instead¹³;

43. (b) for all or any of the following, namely that the corporation shall have only such of the building control functions as may be specified in the order and that that any building legislation¹⁴ under which the corporation is to exercise building control functions shall apply, in relation to the corporation, as modified by the order¹⁵;

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5178 (3) make an order¹⁶ directing that, subject to the provisions of the order, an urban development corporation shall have in its area, or in such part of its area as may be specified in the order:

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44. (i) certain functions of a fire and rescue authority¹⁷;

45. (ii) the power of a local authority to make loans¹⁸ to meet expenditure on certain alterations to buildings¹⁹;

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5179 and on the order coming into force, the corporation has the functions conferred in relation to the area, or part, instead of or concurrently with any such authority, depending on the terms of the order²⁰.

If the Secretary of State or, in relation to Wales, the National Assembly for Wales so provides by order²¹, an urban development corporation has in its area, or in such part of its area as may be

specified in the order, specified statutory functions²² of a local authority in relation to housing²³. On the order coming into force, the corporation has the functions concerned in relation to the area, or part, instead of or concurrently with any such authority, depending on the terms of the order²⁴. Further, if the Secretary of State or the Assembly so provides by order²⁵, such of the statutory provisions²⁶ relating to rent rebates as may be specified in the order have effect in relation to an urban development corporation as if the corporation were a housing authority and with such other modifications (if any) as may be so specified²⁷.

At the date at which this title states the law, however, no orders had been made under any of the provisions set out above²⁸.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 159 (as amended) (see head (1) in the text), and also under ss 151, 152, 153, 154 (as amended) (see the text and notes 8-27 infra), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 The order has effect subject to such savings and transitional and supplementary provisions as may be specified in the order: Local Government, Planning and Land Act 1980 s 159(4). The power to make such an order is exercisable by statutory instrument (s 159(5)); but no such order has effect until approved by a resolution of each House of Parliament (s 159(6)).

4 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

5 I.e. the functions conferred by (1) the Public Health Act 1936 s 83 (as amended), s 84 and the Public Health Act 1961 ss 35-37 (as amended) (filthy or verminous premises or articles: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 855 et seq); (2) any enactment contained in the Public Health Act 1936 Pt III (ss 91-110) (now repealed); (3) so much of Pt XII (ss 275-347) (as amended) as relates to any of the enactments mentioned in heads (1)-(2) supra; (4) the Prevention of Damage by Pests Act 1949 Pt I (ss 1-12) (as amended) (rats and mice: see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 873 et seq); and (5) the Public Health (Control of Disease) Act 1984 ss 39-42 (as amended) (see ENVIRONMENTAL QUALITY AND PUBLIC HEALTH vol 46 (2010) PARA 959) and so much of Pt VI (ss 57-79) (as amended) as relates to ss 39-42 (as amended).

6 Local Government, Planning and Land Act 1980 s 159(1) (amended by the Public Health (Control of Disease) Act 1984 s 78, Sch 2 para 8; the Housing (Consequential Provisions) Act 1985 s 3, Sch 1 Pt I). The order may provide that any enactment under which the corporation is to exercise function by virtue of the order shall have effect in relation to the corporation and, where the corporation is to have any function concurrently with another authority, in relation to that authority, as modified by the order: Local Government, Planning and Land Act 1980 s 159(3).

7 Ibid s 159(2).

8 I.e. under ibid s 151: see head (2) in the text. Such an order has effect subject to such savings and transitional and supplementary provisions as may be specified in the order: s 151(6). The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 151(7), (8).

9 For these purposes, 'building control functions' means: (1) as regards England and Wales other than inner London boroughs, functions under or in connection with building regulations or any enactment, including a local Act, relating to such regulations; (2) as regards inner London boroughs, functions exercisable under the London building legislation or, as the case may be, under or in connection with building regulations and any enactment relating to such regulations: ibid s 151(3)(a), (b). 'The London building legislation' means the London Building Acts 1930-1978, any byelaws made under those Acts, and the Building Act 1984 s 91(2) (as amended), Sch 3 para 2 and any regulations made thereunder (see BUILDING vol 4(2) (2002 Reissue) PARAS 302, 352): Local Government, Planning and Land Act 1980 s 151(9); Interpretation Act 1978 s 17(2)(a). For the meaning of 'London borough' see PARA 28 note 7 ante.

10 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

11 Local Government, Planning and Land Act 1980 s 151(1).

12 Ibid s 151(2).

13 Ibid s 151(4).

14 For these purposes, 'building legislation' means the London building legislation, any other enactments under which the corporation is to exercise building control functions, and building regulations: *ibid* s 151(9).

15 Ibid s 151(5). Section 151 has effect accordingly: s 151(5).

16 *Ie* under the Local Government, Planning and Land Act 1980 s 152 (as amended): see head (3) in the text. The order has effect subject to such savings and transitional and supplementary provisions as may be specified in the order: s 152(4). The power to make such an order is exercisable by statutory instrument; but no such order has effect until approved by a resolution of each House of Parliament: s 152(5), (6).

17 *Ie* functions under the Fire Precautions Act 1971: see generally FIRE SERVICES.

18 *Ie* under *ibid* s 36 (as amended): see FIRE SERVICES vol 18(2) (Reissue) PARA 148.

19 Local Government, Planning and Land Act 1980 s 152(1)(a), (b) (amended by the Fire and Rescue Services Act 2004 s 53(1), Sch 1 para 49(1), (3)). The order might also direct that the urban development corporation had the functions of a local authority under any scheme for the making of grants towards the cost of works undertaken to improve the thermal insulation of dwellings made by virtue of the Housing Act 1985 s 521 (repealed): see the Local Government, Planning and Land Act 1980 s 152(1)(c) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 46(1), (2)).

The order may provide that any enactment under which the corporation is to exercise functions by virtue of the order shall have effect in relation to the corporation and, where the corporation is to have any function concurrently with another authority, in relation to that authority, as modified by the order: Local Government, Planning and Land Act 1980 s 152(3).

20 Ibid s 152(2).

21 The order has effect subject to such savings and transitional and supplementary provisions as may be specified in the order: Local Government, Planning and Land Act 1980 s 153(4). The power to make such an order is exercisable by statutory instrument but no such order has effect until approved by a resolution of each House of Parliament: s 153(5), (6).

22 *Ie* (1) the functions conferred on a local authority by the Housing Act 1985 or the Housing Associations Act 1985 or the Housing Act 1996 s 22; (2) the functions conferred on the authority which is the relevant authority for the purposes of the Land Compensation Act 1973 ss 39-41 (as amended) (rehousing of displaced residential occupiers); or (3) such of those functions as the order may specify. See further HOUSING.

23 Local Government, Planning and Land Act 1980 s 153(1) (amended by the Housing (Consequential Provisions) Act 1985 s 4, Sch 2 para 46(1), (3); and by the Housing Act 1996 (Consequential Provisions) Order 1996, SI 1996/2325, art 5(1), Sch 2 para 10). The order may provide that any enactment under which the corporation is to exercise functions by virtue of the order shall have effect in relation to the corporation and, where the corporation is to have any function concurrently with any other authority, in relation to that authority, as modified by the order: Local Government, Planning and Land Act 1980 s 153(3).

24 Ibid s 153(2).

25 The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: *ibid* s 154(2) (s 154 substituted by the Social Security and Housing Benefits Act 1982 s 48(5), Sch 4, PARA 36).

26 *Ie* the provisions of the Social Security Contributions and Benefits Act 1992 Pt VII (ss 123-137) (as amended) and the Social Security Administration Act 1992.

27 Local Government, Planning and Land Act 1980 s 154(1) (as substituted (see note 9 *supra*); amended by the Social Security (Consequential Provisions) Act 1992 s 4, Sch 2 para 61).

28 The Law Commission has, accordingly, proposed the repeal of the Local Government, Planning and Land Act 1980 ss 151, 152, 153, 154, 159 (as amended) as 'serving no practical utility': see *Statute Law Revision--Town and Country Planning Repeal Proposals* (Law Com, June 2005).

UPDATE

1486 Other miscellaneous functions

TEXT AND NOTES 17-19--1980 Act s 152(1)(a), (b) repealed: Regulatory Reform (Fire Safety) Order 2005, SI 2005/1541.

NOTE 17--1971 Act replaced: SI 2005/1541 (see TEXT AND NOTES 17-19).

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1487. Agreement with local authority for supply of goods and services.

An urban development corporation¹ is a 'public body' for the purposes of the Local Authorities (Goods and Services) Act 1970² and thus, subject to certain exceptions³, a local authority⁴ and an urban development corporation may enter into an agreement for all or any of the following purposes, that is to say:

- 5180 (1) the supply by the authority to the corporation of any goods or materials⁵;
- 5181 (2) the provision by the authority for the corporation of any administrative, professional or technical services;
- 5182 (3) the use by the corporation of any vehicle, plant or apparatus belonging to the authority and, without prejudice to head (2) above, the placing at the disposal of the corporation of the services of any person employed in connection with the vehicle or other property in question;
- 5183 (4) the carrying out by the authority of works of maintenance⁶ in connection with land or buildings for the maintenance of which the corporation is responsible⁷.

Any agreement made in pursuance of the above provisions may contain such terms as to payment or otherwise as the parties consider appropriate⁸.

Nothing in the above provisions is, however, to be construed as derogating from any powers otherwise exercisable by the corporation⁹.

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 Local Government, Planning and Land Act 1980 s 163(1). The provisions of s 163(1) have effect as if made by an order under the Local Authorities (Goods and Services) Act 1970 s 1(5) (power to provide that a person or description of persons shall be a public body for the purposes of that Act: see LOCAL GOVERNMENT vol 69 (2009) PARA 22 et seq495); and an order under s 1(5) may accordingly vary or revoke the provisions of the Local Government, Planning and Land Act 1980 s 163(1) as they apply to an urban development corporation specified in the order: s 163(2), (3).

3 Ie subject, in relation to England and Wales, to the Local Authorities (Goods and Services) Act 1970 s 1(2)-(7) (as amended): see LOCAL GOVERNMENT vol 69 (2009) PARA 495.

4 For these purposes, 'local authority', in relation to England and Wales, means the council of any county, county borough, county district or London borough, the Greater London Authority, the Broads Authority, the Common Council of the City of London, the Council of the Isles of Scilly and any joint board, joint committee and combined authority and any joint authority established by the Local Government Act 1985 Pt IV (ss 23-42) (as amended) and the London Fire and Emergency Planning Authority, Transport for London and the London Development Agency: Local Authorities (Goods and Services) Act 1970 s 1(4) (amended by the Local Government Act 1972 s 272(1), Sch 30; the Local Government Act 1985 ss s 84, 102, Sch 14 para 47, Sch 17; the Norfolk and Suffolk Broads Act 1988 s 21, Sch 6 para 8(1); the Education Reform Act 1988 s 237, Sch 13 Pt I; the Local Government (Wales) Act 1994 s 25(8); the Greater London Authority Act 1999 s 388(a), (b)).

5 A local authority may purchase and store any goods or materials which in its opinion it may require for the purposes of head (1) in the text: Local Authorities (Goods and Services) Act 1970 s 1(1).

6 For these purposes, 'works of maintenance' include minor renewals, minor improvements and minor extensions: *ibid* s 1(4).

7 *Ibid* s 1(1)(a)-(d).

8 *Ibid* s 1(3).

9 See *ibid* s 2(1).

UPDATE

1487 Agreement with local authority for supply of goods and services

NOTE 4--Definition of 'local authority' in Local Authorities (Goods and Services) Act 1970 s 1(4) further amended: Local Government and Public Involvement in Health Act 2007 Sch 13 para 29; Local Democracy, Economic Development and Construction Act 2009 Sch 6 para 9.

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(vi) Position after Development

1488. Power of corporation to transfer undertakings.

Without prejudice to the powers¹ of an urban development corporation² to dispose of any of its property, including any trade or business carried on by it, an urban development corporation may, by an agreement made with any local authority³ or other body or any statutory undertakers⁴ and approved by the Secretary of State⁵ with the Treasury's concurrence or, in relation to Wales, by the National Assembly for Wales⁶, transfer:

5184 (1) to the local authority or other body the whole or any part of the corporation's undertaking; or

5185 (2) to the statutory undertakers the whole or any part of the corporation's undertaking which consists of a statutory undertaking,

upon such terms as may be prescribed by the agreement⁷.

Before, however, approving such an agreement:

5186 (a) the Secretary of State or the Assembly must consult⁸ each local authority in whose area all or part of the urban development area⁹ is situated, except, in the case of an agreement made with such an authority, the authority with which it is made¹⁰;

5187 (b) for the transfer of a statutory undertaking, the Secretary of State or the Assembly must publish in the London Gazette, and in one or more newspapers circulating in the urban development area, a notice stating that the agreement has been submitted for approval, and describing the general effect of the agreement¹¹.

If, within 28 days from the publication of the notice in the London Gazette in accordance with head (b) above, any objection to the agreement is made by any statutory undertakers who are carrying on, or are authorised to carry on, within the urban development area or any area adjacent to it, a statutory undertaking similar to that proposed to be transferred by the agreement, the statutory requirement of approval¹² applies in relation to the agreement as if for the reference to the Secretary of State there were substituted a reference to the Secretary of State and the appropriate minister¹³.

If the Secretary of State or the Assembly is satisfied that it is expedient, having regard to any agreement made or proposed to be made under these provisions, that the liability of the urban development corporation in respect of advances made to it¹⁴ should be reduced, he or the Assembly may, by order¹⁵, reduce that liability to such extent as may be specified in the order¹⁶.

1 Ie under the Local Government, Planning and Land Act 1980: see PARA 1426 et seq ante.

2 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

3 The following are local authorities for these purposes and for the purposes of ss 165A-166 (as amended: see PARAS 1489-1490 post), namely, in the application of those provisions to England, a county council, a district council, a London borough council and the Common Council of the City of London; and in their application to Wales, a county council or county borough council: Local Government, Planning and Land Act 1980 s 165(9)(a), (aa) (s 165(9) amended by the Local Government Act 1985 s 102(2), Sch 17; by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 59(3), Sch 18; and by the Housing Grants, Construction and Regeneration Act 1996 s 143(3); the Local Government, Planning and Land Act 1980 s 165(1), (9) amended by the Leasehold Reform, Housing and Urban Development Act 1993 ss 180(1)-(3), 187(2), Sch 22). For the meaning of 'London borough' see PARA 28 note 7 ante. As to county and district councils see PARA 28 ante; and as to the Common Council of the City of London see LONDON GOVERNMENT vol 29(2) (Reissue) PARAS 51-55.

4 For the meaning of 'statutory undertakers' see PARA 1425 ante.

5 As to the Secretary of State see PARA 19 ante.

6 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 165 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

7 Local Government, Planning and Land Act 1980 s 165(1), (2) (as amended: see note 3 supra). Section 165 (as so amended) cannot reasonably be read as prohibiting the transfer of an undertaking only for a limited period: see *National Assembly for Wales v Cardiff City and County Council* [2005] EWHC 974 (QB), [2005] All ER (D) 134 (Jun).

8 For the meaning of 'consult' para 2 note 1 ante.

9 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

10 Local Government, Planning and Land Act 1980 s 165(4).

11 Ibid s 165(5).

12 Ie ibid s 165(1) (as amended): see the text and notes 1-7 supra.

13 Ibid s 165(6). For the meaning of 'the appropriate minister' see PARA 1424 ante.

14 Ie by the Secretary of State or the Assembly under ibid Pt XVI (ss 134-172) (amended): see PARA 1426 et seq ante, PARA 1489 et seq post.

15 An order so made is of no effect until it is approved by a resolution of the House of Commons: ibid s 165(8). Such an order made by the Secretary of State is subject to Treasury approval: s 165(7).

16 Ibid s 165(7).

UPDATE

1488 Power of corporation to transfer undertakings

NOTE 7--See *National Assembly for Wales v Cardiff City and County Council* [2005] EWHC 974 (QB), [2006] LGR 540.

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1489. Transfers of property, rights and liabilities by order.

Subject to the following provisions¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may at any time by order:

- 5188 (1) transfer to himself or to itself, upon such terms as he or it thinks fit, any property, rights or liabilities which are for the time being vested in an urban development corporation⁴ and which are not otherwise proposed⁵ to be transferred⁶;
- 5189 (2) transfer to a statutory body⁷, upon such terms as he or the Assembly thinks fit, any property, rights or liabilities which are for the time being vested in an urban development corporation and are not otherwise proposed⁸ to be transferred⁹.

Such an order may terminate any appointment of the corporation to act as agent of the Urban Regeneration Agency¹⁰ and any arrangements made by the corporation¹¹ for assisting the Agency to carry out its functions¹². Before making such an order the Secretary of State or the Assembly must consult¹³ each local authority¹⁴ in whose area all or part of the urban development area¹⁵ is situated¹⁶.

An order under head (2) above may:

- 5190 (a) establish new bodies corporate to receive any property, rights or liabilities to be transferred by such an order;
- 5191 (b) amend, repeal or otherwise modify any enactment for the purpose of enabling any body established under any enactment to receive such property, rights or liabilities¹⁷.

¹ The subject, in the case of an order under head (1) in the text, to the Local Government, Planning and Land Act 1980 s 165A (as added and amended) and in the case of an order under head (2) in the text to s 165B (as added): ss 165A(1), 165(B)(1) (ss 165A added by the Leasehold Reform, Housing and Urban Development Act 1993 s 180(2); s 165B added by the Housing Grants, Construction and Regeneration Act 1996 s 143(1)).

² As to the Secretary of State see PARA 19 ante.

³ As to the transfer of functions under the Local Government, Planning and Land Act 1980 ss 165A, 165B (as added and amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

⁴ For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

⁵ The which are not proposed to be transferred under the Local Government, Planning and Land Act 1980 s 165 (as amended) (see PARA 1488 ante) or under s 165B (as added: see note 1 supra) (see head (2) in the text).

6 Ibid s 165A(1) (as added (see note 1 supra); amended by the Housing Grants, Construction and Regeneration Act 1996 s 143(2), (4)). An order under the Local Government, Planning and Land Act 1980 s 165A (as added and amended) must be made by statutory instrument which subject to annulment in pursuance of a resolution of either House of Parliament: s 165A(4) (as so added). As to the exercise of this power see eg the London Docklands Development Corporation (Transfer of Property, Rights and Liabilities) Order 1998, SI 1998/83, which came into force on 31 March 1998 (art 1) and which transferred to the Secretary of State the shares in the share capital of Docklands Light Railway Ltd (company number 2052677) which were for the time being vested in the London Docklands Development Corporation, together with any rights and liabilities which the London Docklands Development Corporation had in relation to those shares (art 2).

The Local Government, Planning and Land Act 1980 s 165A (as added and amended) is wide enough to include rights and liabilities arising from the agreement under s 165 (as amended) (see PARA 1488 ante) under which the undertaking itself, or part thereof, has been transferred: see *National Assembly for Wales v Cardiff City and County Council* [2005] EWHC 974 (QB), [2005] All ER (D) 134 (Jun).

7 For these purposes, 'statutory body' means any body established under the Local Government, Planning and Land Act 1980 s 165B (as added: see note 1 supra) or any other enactment; and 'enactment' includes any instrument made under any enactment: s 165B(6) (as so added).

8 Ie which are not proposed to be transferred under the Local Government, Planning and Land Act 1980 s 165 (as amended) (see PARA 1488 ante) or under s 165A (as added and amended: see notes 1, 6 supra) (see head (1) in the text): s 165B(1) (as added: see note 1 supra).

9 Ibid s 165B(1) (as added: see note 1 supra). An order under s 165B (as so added) may contain such incidental, consequential, transitional or supplementary provision as the Secretary of State or the Assembly thinks necessary or expedient (including provisions amending, repealing or otherwise modifying any enactment) and must be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament: s 165B(4) (as so amended and modified). As to the exercise of this power see eg (1) the London Docklands Development Corporation (Transfer of Property, Rights and Liabilities) (Lee Valley Regional Park Authority) Order 1998, SI 1998/458, which came into force on 24 March 1998 (art 1) and which transferred certain land, together with any rights and liabilities which the corporation had in relation to that land, from the corporation to the Lee Valley Regional Park Authority (art 2); (2) the London Docklands Development Corporation (Transfer of Property, Rights and Liabilities) (Urban Regeneration Agency) Order 1998, SI 1998/569, which came into force on 31 March 1998 (art 1) and which transferred certain shares, land and rights and liabilities from the corporation to the Agency (arts 2, 3); and (3) the Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85, which came into force on 1 April 1998 (art 1) and which transferred (a) any property, rights and liabilities vested in an urban development corporation in England on that date to the Commission for the New Towns, with the exception of any property, rights or liabilities of a corporation which were proposed to be transferred under the Local Government, Planning and Land Act 1980 s 165 (as amended) or s 165A (as added and amended) or which the corporation had notified in writing to the Commission, at least 14 days before that date, as property, rights and liabilities which it thought necessary or expedient to retain for the purpose of preparing its final accounts and report and winding up its affairs (Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85, art 2(1), (2)); and (b) any property, rights and liabilities remaining vested in a corporation immediately before the dissolution date to the Commission on that dissolution date (art 2(3)). As to the dissolution date of the corporations in question see PARA 1490 post.

10 Ie under the Leasehold Reform, Housing and Urban Development Act 1993 s 177(1) (power of corporations): see PARA 1430 ante. As to the Urban Regeneration Agency see PARA 1306 ante.

11 Ie under ibid s 177(2): see PARA 1430 ante.

12 Local Government, Planning and Land Act 1980 ss 165A(2), 165B(2) (as added: see note 1 supra).

13 For the meaning of 'consult' see PARA 2 note 1 ante.

14 For the meaning of 'local authority' for these purposes see PARA 1488 note 3 ante.

15 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

16 Local Government, Planning and Land Act 1980 ss 165A(3), 165B(5) (as added and modified: see note 1 supra).

17 Ibid s 165B(3) (as added: see note 1 supra).

UPDATE

1489 Transfers of property, rights and liabilities by order

TEXT AND NOTE 12--Local Government, Planning and Land Act 1980 ss 165A(2), 165B(2) amended: Housing and Regeneration Act 2008 Sch 8 paras 29, 30.

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1490. Dissolution of corporations.

Where all property, rights and liabilities of an urban development corporation¹ have been transferred under or by one or more relevant instruments², the Secretary of State³ or, in relation to Wales, the National Assembly for Wales⁴ may make an order by statutory instrument under these provisions⁵. Any property, rights and liabilities retained by an urban development corporation for the purpose of preparing its final accounts and report and winding up its affairs are, however, to be disregarded for these purposes⁶. Before making such an order the Secretary of State or the Assembly must consult⁷ each local authority⁸ in whose area all or part of the urban development area⁹ is situated¹⁰.

On the order coming into force, the corporation must cease to act except for the purpose of preparing its final accounts and report and winding up its affairs¹¹. The corporation must, without more, be dissolved on a date specified in, or ascertained by reference to the provisions of, the order¹².

1 For the meaning of 'urban development corporation' see PARA 1429 note 1 ante.

2 For these purposes, 'relevant instrument' means an agreement made under the Local Government, Planning and Land Act 1980 s 165 (as amended) (see PARA 1488 ante) or an order made under s 165A (as added and amended) or s 165B (as added) (see PARA 1489 ante): s 166(5) (s 166(1), (5) substituted by the Leasehold Reform, Housing and Urban Development Act 1993 s 180(4), (5); the Local Government, Planning and Land Act 1980 s 166(5) (as so substituted) amended by the Housing Grants, Construction and Regeneration Act 1996 s 143(2), (5)).

3 As to the Secretary of State see PARA 19 ante.

4 As to the transfer of functions under the Local Government, Planning and Land Act 1980 s 166 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

5 Local Government, Planning and Land Act 1980 s 166(1) (as substituted: see note 1 supra).

6 Ibid s 166(1A) (added by the Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85, art 4(1)).

7 For the meaning of 'consult' see PARA 2 note 1 ante.

8 For the meaning of 'local authority' for these purposes see PARA 1488 note 3 ante.

9 For the meaning of 'urban development area' see PARA 1426 note 4 ante.

10 Local Government, Planning and Land Act 1980 s 166(2).

11 Ibid s 166(3).

12 Ibid s 166(4). As to the exercise of the powers under s 166 (as amended) by the Secretary of State see eg the Urban Development Corporations in England (Dissolution) Order 1998, SI 1998/953, dissolving the Birmingham Heartlands Development Corporation, the Black Country Development Corporation, the London Docklands Development Corporation, the Merseyside Development Corporation, the Plymouth Development Corporation, the Teesside Development Corporation, the Trafford Park Development Corporation and the Tyne and Wear Development Corporation on 1 July 1998: art 2. The remaining property, rights and liabilities vested in any of those corporations immediately before that date were vested in the Commission for the New Towns: see the Urban Development Corporations in England (Transfer of Property, Rights and Liabilities) (Commission for the New Towns) Order 1998, SI 1998/85, art 2(3). As to the Commission for the New Towns see PARA 1383 et seq ante. Any expenses incurred by any of those corporations on or after 1 April 1998 for the purpose of preparing its final accounts and report and winding up its affairs were, so far as not defrayed out of any property retained for the purpose, to be defrayed by the Commission: see art 4(2).

In relation to Wales, the Cardiff Bay Development Corporation was formally wound up by the National Assembly for Wales at the end of March 2000 and its assets, functions and associated liabilities transferred on 1 April 2000 to four successor organisations: Cardiff County Council, the Welsh Development Agency, the Countryside Council for Wales and the Vale of Glamorgan County Borough Council: see PARA 1422 ante.

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(5) ENTERPRISE ZONES

(i) Designation of Zones

1491. Invitation to prepare scheme.

The bodies in England and Wales which may be invited to prepare a scheme¹ are:

- 5192 (1) a district council²;
- 5193 (2) the council of a Welsh county or county borough³;
- 5194 (3) a London borough⁴ council;
- 5195 (4) a new town corporation⁵;
- 5196 (5) an urban development corporation⁶.

The Secretary of State⁷ or, in relation to Wales, the National Assembly for Wales⁸ may invite any of the bodies to prepare a scheme relating to the development of an area falling within the district, county, county borough, borough, new town area⁹ or urban development area¹⁰, as the case may be, and send the scheme to him or to the Assembly in accordance with the relevant¹¹ statutory provisions¹². The invitation must:

- 5197 (a) be made with a view to the designation as an enterprise zone of the area for which the scheme may be prepared¹³;
- 5198 (b) specify the area for which the scheme may be prepared¹⁴;

and may:

- 5199 (i) contain directions as to the drawing up of the scheme, in particular as to its form or content or any consultations to be made¹⁵;
- 5200 (ii) specify an area in which publicity¹⁶ is to be given¹⁷.

- 1 le under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see the text and notes 2-17 *infra*; and PARA 1492 *et seq post*.
- 2 As to district councils see PARA 28 *ante*.
- 3 As to Welsh county or county borough councils see PARA 28 *ante*.
- 4 For the meaning of 'London borough' see PARA 28 note 7 *ante*.
- 5 For these purposes, 'new town corporation' means a development corporation established under the New Towns Act 1981 (see PARA 1315 *et seq ante*): Local Government, Planning and Land Act 1980 Sch 32 para 1(7) (amended by the New Towns Act 1981 s 81, Sch 12 para 28).
- 6 *Ibid* Sch 32 para 1(1) (Sch 32 para 1(1), (3) amended by the Local Government (Wales) Act 1994 s 66(6), Sch 16 para 59(9)(a), (b)). For these purposes, 'urban development corporation' means a corporation established as such under the Local Government, Planning and Land Act 1980 (see PARA 1426 *et seq ante*): Sch 32 para 1(7).
- 7 As to the Secretary of State see PARA 19 *ante*.
- 8 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 *ante*.
- 9 For these purposes, 'new town area' means an area designated as the site of a new town by an order under the New Towns Act 1981 s 1 (as amended) (see PARA 1315 *ante*): Local Government, Planning and Land Act 1980 Sch 32 para 1(7) (as amended: see note 5 *supra*).
- 10 For these purposes, 'urban development area' means an area designated as such under the Local Government, Planning and Land Act 1980 (see PARA 1426 *et seq ante*): Sch 32 para 1(7).
- 11 *Ibid* Sch 32 (as amended): see PARA 1492 *et seq post*.
- 12 *Ibid* Sch 32 para 1(3). Where an environmental impact assessment is required, the designation or modification of an enterprise zone cannot grant planning permission, whether under a new or an existing scheme; but Schedule 2 development may be included in an enterprise zone and can be granted permission by the scheme providing the particular development has been the subject of a screening opinion or direction that it is not development for which an environmental impact assessment is required: see ODPM Circular 02/99 *Environmental Impact Assessment* paras 132-133. As to the status of this guidance see PARA 9 *ante*; as to environmental impact assessment see PARA 487 *et seq ante*, PARA 1502 *post*; and for the meaning of 'Schedule 2 development' see PARA 490 *ante*. As to planning permission see PARAS 1502-1503 *post*.
- 13 Local Government, Planning and Land Act 1980 Sch 32 para 1(4).
- 14 *Ibid* Sch 32 para 1(5)(a).
- 15 *Ibid* Sch 32 para 1(5)(b).
- 16 *Ibid* under *ibid* Sch 32 para 2(2)(b): see PARA 1492 *post*.
- 17 *Ibid* Sch 32 para 1(6).

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1492. Preparation of draft scheme.

A body which receives an invitation¹ may prepare a scheme in draft in accordance with the terms of the invitation². If the body so prepares a scheme, it must take such steps as will in its opinion secure that:

5201 (1) adequate publicity is given to the provisions of the scheme:

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- 46. (a) in Greater London³, if the area for which the scheme is to be prepared is within Greater London;
- 47. (b) in the county in which the area is situated, if the area for which the scheme is to be prepared is in England but outside Greater London;
- 48. (c) in the county or county borough in which the area is situated, if the area for which the scheme is to be prepared is in Wales;

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5202 (2) adequate publicity is also given to the provisions of the scheme in any specified⁴ area;

5203 (3) persons who may be expected to want to make representations to the body with respect to the provisions are made aware that they are entitled to do so; and

5204 (4) such persons are given an adequate opportunity of making such representations within a period specified by the body ('the specified period')⁵.

The body must consider any representation which is made to it within the specified period, and which is made on the ground that all or part of the development specified in the scheme should not be granted planning permission in accordance with the terms of the scheme⁶.

¹ ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 1 (as amended): see PARA 1491 ante.

² Ibid Sch 32 para 2(1).

³ As to Greater London see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 29.

⁴ ie under the Local Government, Planning and Land Act 1980 Sch 32 para 1(6): see PARA 1491 ante.

⁵ Ibid Sch 32 para 2(2) (amended by the Local Government (Wales) Act 1994 s 66(6), (8), Sch 16 para 59(9) (c), Sch 18).

⁶ Local Government, Planning and Land Act 1980 Sch 32 para 2(3). As to planning permission see PARAS 1502-1503 post.

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1493. Adoption of scheme.

After the expiry of the specified period¹ or, if any representations² have been made, after considering them, the body³ may adopt the scheme by resolution⁴. The scheme adopted may be the scheme prepared in draft⁵ or that scheme as modified to take account of any such representation or any matter arising out of the representation⁶; but a scheme may not be modified in any way inconsistent with the Secretary of State's⁷ or National Assembly for Wales's⁸ invitation⁹ to prepare a scheme¹⁰.

As soon as practicable after so adopting a scheme, the body must:

- 5205 (1) send a copy of the scheme to the Secretary of State or, in relation to Wales, to the Assembly;
- 5206 (2) deposit a copy of the scheme at its principal office; and
- 5207 (3) publish an advertisement in accordance with the statutory¹¹ requirements¹².

Any member of the public may inspect the copy so deposited, and make copies of or extracts from it, at any reasonable time without payment¹³; and the body must make available copies of the scheme, at a reasonable cost, to any member of the public¹⁴.

1 As to the specified period see PARA 1492 ante.

2 I.e. falling within the Local Government, Planning and Land Act 1980 s 179 (as amended), Sch 32 para 2(3): see PARA 1492 ante.

3 As to the bodies which may prepare and adopt a scheme see PARA 1491 ante.

4 Local Government, Planning and Land Act 1980 Sch 32 para 3(1).

5 I.e. under ibid Sch 32 para 2 (as amended): see PARA 1492 ante.

6 Ibid Sch 32 para 3(2).

7 As to the Secretary of State see PARA 19 ante.

8 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 I.e. under the Local Government, Planning and Land Act 1980 Sch 32 para 1 (as amended): see PARA 1491 ante.

10 Ibid Sch 32 para 3(3).

11 I.e. in accordance with ibid Sch 32 paras 3(7), (8). The advertisement must contain a statement (1) that the scheme has been adopted; (2) that a copy of the scheme can be inspected without payment; (3) of the address where and times when it can be inspected; and (4) that, if the Secretary of State or the Assembly makes an order designating the area to which the scheme relates as an enterprise zone, the order will have effect to grant planning permission in accordance with the scheme: Sch 32 para 3(7). The advertisement must be published in the London Gazette and, on at least two occasions, in a newspaper circulating in the area to which the scheme relates: Sch 32 para 3(8).

12 Ibid Sch 32 para 3(4).

13 Ibid Sch 32 para 3(5).

14 Ibid Sch 32 para 3(6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(i) Designation of Zones/1494. Questioning the scheme's validity.

1494. Questioning the scheme's validity.

If a person is aggrieved¹ by a scheme adopted by a body under the relevant statutory provisions² and wishes to question its validity on the ground that it is not within the powers conferred by those provisions or that any statutory requirement³ has not been complied with,

he may within the period of six weeks commencing with the first publication⁴ make an application to the High Court⁵.

On such an application the High Court, if satisfied:

- 5208 (1) that the scheme is wholly or to any extent outside the statutory powers; or
- 5209 (2) that the interests of the applicant would be substantially prejudiced⁶ by the failure to comply with any statutory requirement if an order were made⁷ designating the area to which the scheme relates as an enterprise zone,

may order that the Secretary of State⁸ or, in relation to Wales, the National Assembly for Wales⁹ is not to make an order¹⁰ designating the area as an enterprise zone in pursuance of the scheme¹¹. The court may, however, further order, in a case where head (2) above applies, that, if steps are taken to comply with the requirement concerned, an order may be made designating the area¹².

Except as so provided, the validity of a scheme adopted¹³ may not be questioned in any legal proceedings whatsoever¹⁴.

1 As to the meaning of 'person aggrieved' see JUDICIAL REVIEW vol 61 (2010) PARA 664.

2 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see PARA 1491 et seq ante, PARA 1495 et seq post.

3 Ie any requirement of ibid Sch 32 (as amended).

4 Ie under ibid Sch 32 para 3(8) (see PARA 1493 ante) and whether in the London Gazette or otherwise.

5 Ibid Sch 32 para 4(1).

6 As to the meaning of 'substantially prejudiced' see PARA 46 note 13 ante.

7 See note 2 supra.

8 As to the Secretary of State see PARA 19 ante.

9 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

10 See note 2 supra.

11 Local Government, Planning and Land Act 1980 Sch 32 para 4(2). No order made by the court under Sch 32 para 4(2) prejudices the making of an order under Sch 32 (as amended) designating the area as an enterprise zone in pursuance of another scheme so long as Sch 32 (as amended) is complied with: Sch 32 para 4(3).

12 Ibid Sch 32 para 4(2).

13 See note 2 supra.

14 Local Government, Planning and Land Act 1980 Sch 32 para 4(4).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(i) Designation of Zones/1495. Designation of enterprise zone.

1495. Designation of enterprise zone.

If a body adopts a scheme¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may, if he or it thinks it expedient to do so, by order designate the area to which the scheme relates as an enterprise zone⁴; but no such order may be made until:

- 5210 (1) the expiry of the period of six weeks commencing with the first publication of the required advertisement⁵; or
- 5211 (2) if an application is made⁶ in relation to the scheme questioning its validity, the time at which any proceedings arising out of the application are disposed of,

whichever is the later⁷.

The power to make the order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and only with the Treasury's consent⁸.

The order must:

- 5212 (a) specify the date of the designation taking effect ('the effective date');
- 5213 (b) specify the period for which the area is to remain an enterprise zone;
- 5214 (c) define the boundaries of the zone by means of a plan or map;
- 5215 (d) designate as the enterprise zone authority the body which was invited to prepare the scheme⁹.

In England, as soon as practicable after the making of such an order, the local planning authority¹⁰ must, if any part of its area is an area to which an enterprise zone scheme relates, review every local development document¹¹ in the light of the enterprise zone scheme and, if it thinks that any modifications of the document are required in consequence of the scheme, prepare a revised document containing the modifications¹².

1 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see PARA 1491 et seq ante, PARA 1496 et seq post.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 Local Government, Planning and Land Act 1980 Sch 32 para 5(1). As to the exercise of this power by the Secretary of State see eg the Sunderland (Hylton Riverside and Southwick) Enterprise Zone (Designation) Order 1990, SI 1990/795.

5 Ie under the Local Government, Planning and Land Act 1980 Sch 32 para 3(8) (see PARA 1493 ante) and whether in the London Gazette or otherwise.

6 Ie under ibid Sch 32 para 4(1): see PARA 1494 ante.

7 Ibid Sch 32 para 5(2).

8 Ibid Sch 32 para 5(3). Treasury consent is required in the case of an order made by the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. The power to amend orders conferred by the Interpretation Act 1978 s 14 does not include power to amend an order so made; and the power to revoke orders conferred by s 14 does not include power to revoke an order so made before the expiry of the period mentioned in the Local Government, Planning and Land Act 1980 Sch 32 para 5(4)(b) (see head (b) in the text): Sch 32 para 5(5), (6).

9 Ibid Sch 32 para 5(4). The order may provide that the enterprise zone authority is to be the local planning authority for the zone for specified purposes: see the Town and Country Planning Act 1990 s 6; and PARA 34 ante.

10 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

11 For the meaning of 'local development document' see PARA 92 note 7 ante.

12 See the Planning and Compulsory Purchase Act 2004 s 26(4)-(7); and PARA 123 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(i) Designation of Zones/1496. Publicity of designation.

1496. Publicity of designation.

As soon as practicable after the making of a designation order¹, the body which adopted the scheme² must publish an advertisement in accordance with the following provisions³. The advertisement must contain:

5216 (1) a statement that the order has been made and will have effect to make the area an enterprise zone; and

5217 (2) a statement that a copy of the scheme can be inspected without payment and a statement of the address where and times when it can be inspected⁴.

The advertisement must be published in the London Gazette and, on at least two occasions, in a newspaper circulating in the area to which the scheme relates⁵.

1 Ibid under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 ante.

2 For the purposes of ibid Sch 32 paras 6-26 (as amended), references to a scheme are, in relation to an area designated as an enterprise zone under Sch 32 para 5 (as amended), to the scheme adopted for the area under Sch 32 para 3(1) (see PARA 1493 ante): Sch 32 para 5(9).

3 Ibid Sch 32 para 6(1).

4 Ibid Sch 32 para 6(2).

5 Ibid Sch 32 para 6(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(i) Designation of Zones/1497. Statutory concessions and exemptions in relation to enterprise zones.

1497. Statutory concessions and exemptions in relation to enterprise zones.

Exemption from local non-domestic rating is available in relation to property situated in an enterprise zone¹.

An employer is not liable to any industrial training levy, or obliged to comply with certain requirements to provide information², in respect of any establishment situated wholly or mainly within an area designated as an enterprise zone³.

Capital allowances are available in relation to expenditure on the construction of certain buildings and structures in enterprise zones⁴.

1 See RATING AND COUNCIL TAX vol 39(1B) (Reissue) PARA 59.

2 See under the Industrial Training Act 1982 s 6 (as amended); and EMPLOYMENT vol 40 (2009) PARA 598.

3 See *ibid* s 16 (as amended); and EMPLOYMENT vol 40 (2009) PARA 599.

4 See the Capital Allowances Act 2001 ss 298-304 (as amended); and INCOME TAXATION vol 23(1) (Reissue) PARA 388.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(i) Designation of Zones/1498. Rights of entry.

1498. Rights of entry.

Any person duly authorised in writing by a body which has been invited to prepare a scheme¹ may at any reasonable time enter any land² in the area to which the scheme relates or could relate for the purpose of surveying the land in connection with the preparation or adoption of such a scheme³.

1 See under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see PARA 1491 *et seq ante*, and PARA 1499 *et seq post*. For the meaning of 'scheme' see PARA 1496 note 2 *ante*.

2 For the meaning of 'land' see PARA 1423 note 7 *ante*.

3 Local Government, Planning and Land Act 1980 Sch 32 para 7(1). In relation to England and Wales, the Town and Country Planning Act 1990 s 324(8) (see PARA 57 *ante*) and s 325 (as amended) (see PARAS 57-58 *ante*) apply in relation to the Local Government, Planning and Land Act 1980 Sch 32 para 7(1) as they apply in relation to the Town and Country Planning Act 1990 s 324 (as amended): Local Government, Planning and Land Act 1980 Sch 32 paras 7(2), 8 (amended by the Planning (Consequential Provisions) Act 1990 s 4, Sch 2 para 44(14)(a), (b)).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(ii) Modification of Scheme etc/1499. Modification of scheme.

(ii) Modification of Scheme etc

1499. Modification of scheme.

Where a designation order has been made¹, the Secretary of State² or, in relation to Wales, the National Assembly for Wales³ may invite the enterprise zone authority⁴ to prepare modifications

to the scheme⁵; and the enterprise zone authority may prepare modifications to a scheme in draft in accordance with the terms⁶ of the invitation⁷.

If an enterprise zone authority adopts modifications to a scheme, the Secretary of State or the Assembly may, if he or it thinks it expedient to do so, notify the authority of his or its approval of them⁸; but no such notification may be given until:

5218 (1) the expiry of the period of six weeks commencing with the first publication of the required advertisement⁹; or

5219 (2) if an application in relation to the scheme is made questioning its validity¹⁰, the time at which any proceedings arising out of the application are disposed of,

whichever is the later¹¹.

The notification must specify the date of the modifications taking effect ('the effective date of modification')¹². As soon as practicable after the date of the notification, the enterprise zone authority must publish an advertisement in accordance with the statutory¹³ requirements¹⁴.

The power so to modify a scheme includes power wholly to replace a scheme¹⁵.

In England, as soon as practicable after the giving of such notification of approval by the Secretary of State, the local planning authority¹⁶ must, if any part of its area is an area to which an enterprise zone scheme relates, review every local development document¹⁷ in the light of the enterprise zone scheme and, if it thinks that any modifications of the document are required in consequence of the scheme, prepare a revised document containing the modifications¹⁸.

1 Ie under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 ante.

2 As to the Secretary of State see PARA 19 ante.

3 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

4 As to the enterprise zone authority see PARA 1495 ante.

5 Local Government, Planning and Land Act 1980 Sch 32 para 9(1). For the meaning of 'scheme' see PARA 1496 note 2 ante.

6 The invitation may contain directions as to the drawing up of the modifications, in particular, as to their form or content or any consultations to be made: *ibid* Sch 32 para 9(2). For the meaning of 'consult' see PARA 2 note 1 ante.

7 *Ibid* Sch 32 para 10(1). Schedule 32 para 2(2), (3) (as amended) (see PARA 1492 ante), Sch 32 para 3 (see PARA 1493 ante) and Sch 32 para 4 (see PARA 1494 ante) apply in relation to modifications to a scheme as they apply in relation to a scheme: Sch 32 para 10(2).

8 *Ibid* Sch 32 para 11(1).

9 Ie under *ibid* Sch 32 para 3(8) (see PARA 1493 ante) as applied by Sch 32 para 10(2) (see note 7 supra), and whether in the London Gazette or otherwise.

10 Ie under *ibid* Sch 32 para 4(1) (see PARA 1494 ante) as applied by Sch 32 para 10(2) (see note 7 supra).

11 *Ibid* Sch 32 para 11(2).

12 *Ibid* Sch 32 para 11(3).

13 le in accordance with *ibid* Sch 32 para 12(2), (3). The advertisement must contain a statement (1) that the Secretary of State or the Assembly has notified the authority of his or its approval of the modifications; and (2) that a copy of the modifications can be inspected without payment; and (3) of the address where and times when they can be inspected: Sch 32 para 12(2). The advertisement must be published in the London Gazette and, on at least two occasions, in a newspaper circulating in the enterprise zone: Sch 32 para 12(3).

14 *Ibid* Sch 32 para 12(1).

15 *Ibid* Sch 32 para 13. As to the effect of modification of a scheme on planning permission see PARA 1503 post.

16 For the meaning of 'local planning authority' for these purposes see PARA 89 note 1 ante.

17 For the meaning of 'local development document' para 92 note 7 ante.

18 See the Planning and Compulsory Purchase Act 2004 s 26(4)-(7); and PARA 123 ante.

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(ii) Modification of Scheme etc/1500. Modification of orders by the Secretary of State or the Assembly.

1500. Modification of orders by the Secretary of State or the Assembly.

The Secretary of State¹ or, in relation to Wales, the National Assembly for Wales² may, if he or it thinks it expedient to do so, by order modify any designation order³ made⁴; but the power so conferred does not include power:

- 5220 (1) to alter the boundaries of an enterprise zone;
- 5221 (2) to designate a different enterprise zone authority⁵ for the zone; or
- 5222 (3) to reduce the period for which the zone is to remain an enterprise zone⁶.

An order so made may⁷, however, extend the period for which the zone is to remain an enterprise zone⁸.

The power to make such an order is exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament, and only with the Treasury's consent⁹.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

3 le an order made under the Local Government, Planning and Land Act 1980 s 179, Sch 32 para 5 (as amended): see PARA 1495 ante.

4 *Ibid* Sch 32 para 15(1).

5 As to the enterprise zone authority see PARA 1495 ante.

6 Local Government, Planning and Land Act 1980 Sch 32 para 15(3).

7 le without prejudice to the generality of *ibid* Sch 32 para 15(1) (as modified): see the text and notes 1-4 supra.

8 Ibid Sch 32 para 15(2)(a).

9 Ibid Sch 32 para 15(4). Treasury approval is required for such orders made by the Assembly: see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1. The power to amend orders conferred by the Interpretation Act 1978 s 14 does not include power to amend an order so made; and the power to revoke orders conferred by s 14 does not include power to revoke any order so made which extends the period for which a zone is to remain an enterprise zone before the expiry of the extended period: Local Government, Planning and Land Act 1980 Sch 32 para 15(5), (6).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(ii) Modification of Scheme etc/1501. Change of enterprise zone authority.

1501. Change of enterprise zone authority.

Where the body designated as an enterprise zone authority¹ is a new town corporation² or an urban development corporation³, and the Secretary of State⁴ or the National Assembly for Wales⁵ intends to make an order⁶ dissolving that body, the Secretary of State or the Assembly may by order made by statutory instrument designate as the enterprise zone authority for the zone any body which he or the Assembly could have invited⁷ to prepare a scheme⁸ for the area comprised in the zone⁹. Such an order must specify the date on which the body is to become the enterprise zone authority¹⁰.

1 As to the enterprise zone authority see PARA 1495 ante.

2 For the meaning of 'new town corporation' see PARA 1491 note 4 ante.

3 For the meaning of 'urban development corporation' see PARA 1491 note 5 ante.

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Local Government, Planning and Land Act 1980 Sch 32 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 I.e. under the New Towns Act 1981 s 41 (as amended) (see PARA 1406 ante) or under the Local Government, Planning and Land Act 1980 s 166 (as amended) (see PARA 1490 ante).

7 I.e. under ibid s 179, Sch 32 para 1 (as amended): see PARA 1491 ante.

8 For the meaning of 'scheme' see PARA 1496 note 2 ante.

9 Local Government, Planning and Land Act 1980 Sch 32 para 16(1), (2).

10 Ibid Sch 32 para 16(3).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(5) ENTERPRISE ZONES/(iii) Planning Control/1502. Planning permission for development in enterprise zones.

(iii) Planning Control

1502. Planning permission for development in enterprise zones.

An order¹ designating an enterprise zone has effect, without more, on the date on which the order designating the zone takes effect to grant planning permission² for development³ specified in the scheme or for development of any class so specified⁴; and the approval of a modified scheme⁵ has effect, without more, on the date on which the modifications take effect to grant planning permission for development specified in the modified scheme or for development of any class so specified⁶. Planning permission so granted is subject to such conditions or limitations as may be specified in the scheme or modified scheme or, if none is specified, is unconditional⁷.

Where planning permission is so granted for any development or class of development, the enterprise zone authority⁸ may direct that the permission shall not apply in relation to:

- 5223 (1) a specified development;
- 5224 (2) a specified class of development; or
- 5225 (3) a specified class of development in a specified area within the enterprise zone⁹;

but an enterprise zone authority may not so give a direction unless the authority has submitted it to the Secretary of State¹⁰ or, in relation to Wales, to the National Assembly for Wales¹¹ and he or the Assembly has notified the authority that he or the Assembly approves of the authority's giving it¹². If the scheme or the modified scheme specifies, in relation to any development it permits, matters which will require approval by the enterprise zone authority, the permission has effect accordingly¹³.

The Secretary of State or the Assembly may by regulations¹⁴ make provision as to the procedure for giving a direction¹⁵ and the method and procedure relating to the approval of matters specified¹⁶ in a scheme or modified scheme¹⁷.

Nothing in these provisions:

- 5226 (a) prevents planning permission being granted in relation to land¹⁸ in an enterprise zone otherwise¹⁹ than by virtue thereof²⁰;
- 5227 (b) prejudices the right of any person otherwise to carry out development²¹.

In relation to development for which an environmental impact assessment is required²², however, no order designating an enterprise zone made after 14 March 1999 or modified scheme in relation to an enterprise zone approved after that date grants planning permission for EIA development²³ or grants planning permission for Schedule 2 development²⁴ unless that grant is made subject to the prior adoption of a screening opinion²⁵ or prior making of a screening direction²⁶ that the particular proposed development is not EIA development²⁷. Furthermore, any order designating an enterprise zone or approval of a modified scheme in relation to an enterprise zone which had effect immediately before that date ceased, on or after that date, to have effect to grant planning permission for Schedule 1 development²⁸, and ceased to have effect to grant planning permission for Schedule 2 development unless either the relevant planning authority has adopted a screening opinion or the Secretary of State or the Assembly has made a screening direction to the effect that the particular proposed development is not EIA development²⁹.

1 le under the Local Government, Planning and Land Act 1980 s 179, Sch 32 (as amended): see PARA 1491 et seq ante.

2 For the meaning of 'planning permission' see PARA 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante. See, however, the text and notes 22-29 infra.

4 Town and Country Planning Act 1990 s 88(1).

5 le under the Local Government, Planning and Land Act 1980 Sch 32 para 11: see PARA 1499 ante.

6 Town and Country Planning Act 1990 s 88(2).

7 Ibid s 88(3).

8 As to the enterprise zone authority see PARA 1495 ante.

9 Town and Country Planning Act 1990 s 88(4).

10 As to the Secretary of State see PARA 19 ante.

11 As to the transfer of functions under the Town and Country Planning Act 1990 s 88 (as amended), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

12 Town and Country Planning Act 1990 s 88(5).

13 Ibid s 88(6).

14 Such regulations may modify any provision of the planning Acts or any instrument made under them or may apply any such provision or instrument, with or without modification, in making any such provision as is mentioned in the Town and Country Planning Act 1990 s 88(7) (see the text and notes 15-17 infra): s 88(8). For the meaning of 'the planning Acts' see PARA 2 ante.

15 le under the Town and Country Planning Act 1990 s 88(4).

16 le as mentioned in ibid s 88(6).

17 Ibid s 88(7). At the date at which this title states the law, no such regulations had been made. As to the making of regulations generally see PARA 3 ante.

18 For the meaning of 'land' see PARA 2 note 10 ante.

19 le whether the permission is granted in pursuance of an application made under the Town and Country Planning Act 1990 Pt III (ss 55-106B) (as amended) (see PARA 217 et seq ante) or by a development order or local development order. For the meaning of 'development order' see PARA 252 ante; and as to local development orders see PARA 419 ante.

20 Ibid s 88(9) (amended by the Planning and Compulsory Purchase Act 2004 s 40(2)(f), partly as from a day to be appointed under s 121; at the date at which this title states the law, 6 August 2004 had been appointed for limited purposes only: see PARA 4 ante).

21 Town and Country Planning Act 1990 s 88(10).

22 As to environmental impact assessment see PARA 487 et seq ante.

23 For the meaning of 'EIA development' see PARA 488 ante.

24 For the meaning of 'Schedule 2 development' see PARA 490 ante.

25 For the meaning of 'screening opinion' see PARA 492 note 10 ante.

26 For the meaning of 'screening direction' see PARA 492 note 20 ante.

27 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 24.

28 For the meaning of 'Schedule 1 development' see PARA 489 ante.

29 Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999, SI 1999/293, reg 23(1). Regulation 23(1) does not affect the completion of any development begun before 14 March 1999: reg 23(2).

UPDATE**1502 Planning permission for development in enterprise zones**

NOTE 20--Day now appointed in relation to England for remaining purposes: SI 2006/1061.

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1503. Effect on planning permission of modification or termination of scheme.

Modifications to an enterprise zone scheme¹ do not affect planning permission² under the scheme in any case where the development³ authorised by it has been begun before the modifications take effect⁴. When an area ceases to be an enterprise zone, planning permission under the scheme ceases to have effect except in a case where the development authorised by it has been begun⁵.

1 For these purposes, 'enterprise zone scheme' means a scheme or modified scheme having effect to grant planning permission in accordance with the Town and Country Planning Act 1990 s 88 (as amended) (see PARA 1502 ante): s 336(1).

2 For the meaning of 'planning permission' para 43 note 6 ante.

3 For the meaning of 'development' see PARA 217 ante.

4 Town and Country Planning Act 1990 s 89(1). As to the time when development is begun see PARA 221 ante.

5 Ibid s 89(2).

Halsbury's Laws of England/TOWN AND COUNTRY PLANNING (VOLUME 46(1) (REISSUE) PARAS 1-550; VOLUME 46(2) (REISSUE) PARAS 551-1008; VOLUME 46(3) (REISSUE) PARAS 1009-1508)/17. URBAN DEVELOPMENT AND REGENERATION/(6) FINANCIAL ASSISTANCE FOR URBAN REGENERATION/1504. Secretary of State's or Assembly's power to give financial assistance for regeneration and development.

(6) FINANCIAL ASSISTANCE FOR URBAN REGENERATION**1504. Secretary of State's or Assembly's power to give financial assistance for regeneration and development.**

The Secretary of State¹ with the consent of the Treasury, or, in relation to Wales, the National Assembly for Wales², may give financial assistance to any person in respect of expenditure incurred in connection with activities which contribute to the regeneration or development of an area³. Activities which contribute to the regeneration or development of an area include, in particular:

- 5228 (1) securing that land⁴ and buildings are brought into effective use;
- 5229 (2) contributing to, or encouraging, economic development;
- 5230 (3) creating an attractive and safe environment;
- 5231 (4) preventing crime or reducing the fear of crime;
- 5232 (5) providing or improving housing or social and recreational facilities, for the purpose of encouraging people to live or work in the area or of benefiting people who live there;
- 5233 (6) providing employment for local people⁵;
- 5234 (7) providing or improving training, educational facilities or health services for local people;
- 5235 (8) assisting local people to make use of opportunities for education, training or employment;
- 5236 (9) benefiting local people who have special needs because of disability or because of their sex or the racial group⁶ to which they belong⁷.

1 As to the Secretary of State see PARA 19 ante.

2 As to the transfer of functions under the Housing Grants, Construction and Regeneration Act 1996 s 126, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 19 ante.

3 Housing Grants, Construction and Regeneration Act 1996 s 126(1).

4 For the meaning of 'land' see PARA 1423 note 7 ante.

5 For these purposes, 'local people', in relation to an area, means people who live or work in the area: Housing Grants, Construction and Regeneration Act 1996 s 126(3).

6 For these purposes, 'racial group' has the same meaning as in the Race Relations Act 1976 (see DISCRIMINATION vol 13 (2007 Reissue) PARA 441): Housing Grants, Construction and Regeneration Act 1996 s 126(3).

7 Ibid s 126(2).

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1505. Forms of assistance by Secretary of State or Assembly and terms on which it is given.

Financial assistance in respect of expenditure incurred in connection with activities which contribute to the regeneration or development of an area¹ may be given in any form² and may, in particular, be given by way of grants, loans, guarantees or incurring expenditure for the benefit of the person assisted³. The Secretary of State⁴ or, in relation to Wales, the National Assembly for Wales⁵ must not, however, in giving such financial assistance purchase loan or share capital in a company⁶.

Such financial assistance may be given on such terms as the Secretary of State, with the consent of the Treasury, or as the Assembly considers appropriate⁷. The terms may, in particular, include provision as to:

- 5237 (1) circumstances in which the assistance is to be repaid, or otherwise made good, to the Secretary of State or to the Assembly, and the manner in which that is to be done; or
- 5238 (2) circumstances in which the Secretary of State or the Assembly is entitled to recover the proceeds or part of the proceeds of any disposal of land or buildings in respect of which assistance was provided⁸.

The person receiving assistance must comply with the terms on which it is given, and compliance may be enforced by the Secretary of State or by the Assembly⁹.

1 The financial assistance under the Housing Grants, Construction and Regeneration Act 1996 s 126: see PARA 1504 ante.

2 Ibid s 127(1).

3 Ibid s 127(2).

4 As to the Secretary of State see PARA 19 ante.

5 As to the transfer of functions under the Housing Grants, Construction and Regeneration Act 1996 ss 127, 128, so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

6 Housing Grants, Construction and Regeneration Act 1996 s 127(3).

7 Ibid s 128(1).

8 Ibid s 128(2).

9 Ibid s 128(3).

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1506. Financial assistance by the Urban Regeneration Agency or the Welsh Development Agency.

In relation to England, the Urban Regeneration Agency¹ has power, with the Secretary of State's² consent, to give financial assistance in respect of qualifying expenditure³ on such terms as the Agency, with the like consent, considers appropriate⁴.

The Agency may also be appointed as the agent of the Secretary of State in relation to his functions⁵ of giving financial assistance in respect of expenditure incurred in connection with activities which contribute to the regeneration or development of an area⁶.

In relation to Wales, the Welsh Development Agency⁷ may be appointed as the agent of the National Assembly for Wales⁸ in relation to its functions in giving such assistance⁹.

1 As to the Urban Regeneration Agency see PARA 1306 ante.

2 As to the Secretary of State see PARA 19 ante.

3 For the meaning of 'qualifying expenditure' see the Leasehold Reform, Housing and Urban Development Act 1993 s 164(2) (now repealed).

4 See *ibid* s 164(1) (now repealed).

5 See under the Housing Grants, Construction and Regeneration Act 1996 ss 126-128: see PARAS 1504-1505 ante.

6 Leasehold Reform, Housing and Urban Development Act 1993 s 175(1), (2)(b) (amended by the Housing Grants, Construction and Regeneration Act 1996 s 129). The terms of the appointment must, however, preclude the Agency from giving financial assistance in respect of expenditure which is not qualifying expenditure within the meaning of the Leasehold Reform, Housing and Urban Development Act 1993 s 164: s 175(3).

7 As to the Welsh Development Agency see PARA 1309 ante.

8 As to the transfer of functions under the Welsh Development Agency Act 1975 s 10A (as added), so far as exercisable in relation to Wales, to the Assembly see the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, art 2, Sch 1 (as amended); and as to the Assembly see PARA 20 ante.

9 See the Welsh Development Agency Act 1975 s 10A (added by the Housing Grants, Construction and Regeneration Act 1996 s 130(1)).

UPDATE

1506 Financial assistance by the Urban Regeneration Agency or the Welsh Development Agency

TEXT AND NOTES 7-9--The Welsh Development Agency has been abolished and its functions, property, rights and liabilities have been transferred to the National Assembly for Wales; 1975 Act s 10A repealed: see the Welsh Development Agency (Transfer of Functions to the National Assembly for Wales and Abolition) Order 2005, SI 2005/3226; and TRADE AND INDUSTRY vol 97 (2010) PARA 954 et seq.

TEXT AND NOTE 6--Leasehold Reform, Housing and Urban Development Act 1993 s 175 repealed: Housing and Regeneration Act 2008 Sch 8 para 63, Sch 16.

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(7) JUDICIAL REVIEW; MALADMINISTRATION

1507. Judicial review; in general.

Judicial review may be available as a means of challenging decisions relating to urban development and regeneration¹. The availability of, and procedure on, judicial review is discussed in detail elsewhere in this work².

1 As to judicial review of planning decisions generally see PARA 650 ante.

2 See JUDICIAL REVIEW. As to time limits for making applications in cases involving planning matters see eg *R (on the application of Young) v Oxford City Council* [2003] JPL 232, [2002] All ER (D) 226 (Jun), CA.

UPDATE

1507 Judicial review; in general

NOTE 2--See also *R (on the application of Finn-Kelcey) v Milton Keynes Council* [2008] EWCA Civ 1067, [2008] All ER (D) 94 (Oct).

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1508. Maladministration.

In relation to England, the following bodies are subject to investigation by the Commissioners for Local Administration¹:

5239 (1) the Commission for the New Towns² or any development corporation established for the purposes of a new town³, with regard to action taken in connection with functions related to housing⁴;

5240 (2) any urban development corporation⁵ or the Urban Regeneration Agency⁶ with regard to action taken in connection with functions related to town and country planning⁷.

In respect of action taken in connection with their other functions, those bodies are subject to investigation by the Parliamentary Commissioner for Administration⁸. Regional development agencies⁹ are also subject to such investigation¹⁰, except for the London Development Agency¹¹ which is subject to investigation by the Commissioners for Local Administration¹².

In relation to Wales, at the date at which this title states the law:

5241 (a) the Welsh Development Agency¹³ is subject to investigation by the Welsh Administration Ombudsman¹⁴; and

5242 (b) an urban development corporation established for an urban development area wholly within Wales is also so subject¹⁵ except in respect of action in connection with the exercise of its functions in relation to town and country planning¹⁶ which is subject to investigation by the Commissioners for Local Administration¹⁷.

As from a day to be appointed¹⁸, however, the office of Welsh Administration Ombudsman is abolished and replaced by the office of Public Services Ombudsman for Wales¹⁹.

1 As to the Commissioners for Local Administration see ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 46.

2 As to the Commission for the New Towns see PARA 1383 et seq ante.

3 As to new town development corporations see PARA 1322 et seq ante.

4 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 46-47.

5 As to urban development corporations see PARA 1428 et seq ante.

6 As to the Urban Regeneration Agency see PARA 1306 ante.

7 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 46-47.

- 8 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 43.
- 9 As to regional development agencies see PARA 1306 ante.
- 10 See note 8 supra.
- 11 As to the London Development Agency see LONDON GOVERNMENT vol 29(2) (Reissue) PARA 215.
- 12 See ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARAS 43, 47.
- 13 As to the Welsh Development Agency see PARA 1309 ante.
- 14 See the Government of Wales Act 1998 s 111(2), Sch 9 para 14(1)(b), (2)(i) (prospectively repealed); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45.
- 15 See ibid Sch 9 para 14(1)(b), (2)(g) (prospectively repealed); and ADMINISTRATIVE LAW vol 1(1) (2001 Reissue) PARA 45.
- 16 See ibid Sch 9 para 15(1) note (3) (prospectively repealed).
- 17 See note 7 supra.
- 18 le a day to be appointed under the Public Services Ombudsman (Wales) Act 2005 s 40. At the date at which this title states the law, no such day had been appointed.
- 19 See ibid ss 1, 36, Sch 1.

UPDATE

1508 Maladministration

TEXT AND NOTE 18--Day now appointed: SI 2005/2800.

NOTE 19--2005 Act Sch 1 amended: Government of Wales Act 2006 Sch 10 para 86.